

CASE NO.:  
Appeal (civil) 5042 of 2001

PETITIONER:  
BARNES INVESTMENTS LTD. & ORS.

Vs.

RESPONDENT:  
RAJ K. GUPTA & ORS.

DATE OF JUDGMENT: 06/08/2001

BENCH:  
V.N. Khare & Ruma Pal

JUDGMENT:

RUMA PAL, J.

Leave granted.

The questions raised in this appeal relate to the interpretation of Order 21 Rules 54, 55 and 58 of the Code of Civil Procedure (hereinafter referred to as the Code). All the provisions relate to the attachment of immovable property in execution of a decree.

The decree, in this case, was passed in favour of the appellants against respondent No. 1 by the Queens Bench Division of the High Court in England on 29th November 1990 for a sum of US\$ 12,48,415,49 (being the equivalent of Rs.3,60,09,821.01) together with interest @ 15 per cent per annum from the date of the judgment. The decree was put to execution by the appellants by filing an execution application in the original side of the Delhi High Court on 27th November 1991 requiring the attachment of property, being 20, Barakhamba Lane, New Delhi 110 001 and also the share holding of the respondent No. 1 in the companies of respondent Nos. 2 to 7 herein.

Nobody appeared on behalf of the judgment debtors before the Court when the matter was listed on 4th May, 1994. This was recorded by the Court which accordingly issued warrants of attachment with regard to premises No. 22, Barakhamba Lane, New Delhi 110001. The matter was made returnable on 31st August 1994. On an application for amendment moved by the appellants, the Court corrected the description of the premises to read as 20, Barakhamba Road, instead of Barakhamba Lane and the returnable date was extended to 3rd January, 1995.

On 22nd September 1994 an objection was preferred to the attachment by the respondent No. 1 under Order 21, Rule 58 of the Code ( EA 278/94). A second application was also filed by the respondent No. 1 on the same date under Section 151 of the Code for recalling the warrants of attachment ( E.A.279/94). Neither of these applications appear to have been proceeded with.

While these applications were pending, on 16th January

1995 the respondent No. 1 filed a suit against the appellants herein in the High Court of Delhi praying, inter-alia, for a declaration that the judgment passed by the Queens Bench Division in favour of the appellant was void. The respondent No.1 also sought for a permanent injunction restraining the appellants from executing the judgment and decree of the High Court of England (hereinafter referred to as the decree). An interlocutory application was moved in the respondent No. 1s suit and an order was passed on 3rd April, 1995 staying the execution of the decree. It is not in dispute that the interim order is still operative and the suit is pending.

On 17th October 1997, the respondent No. 8 herein, namely, United Towers India Private Ltd., filed an application (EA No. 343/97) asking for impleadment as a party to the appellants execution proceedings and also for recalling and setting aside the warrants of attachment dated 4th May 1994. On the same day, an application (EA No. 344/97) was filed by the respondent No. 1 herein under Section 151 of the Code of Civil Procedure for seeking substantially the same relief as had been claimed earlier in the application filed by him under Section 151 on 22nd September 1994.

Both the applications were heard by the Learned Single Judge and an interim order was passed on 3rd February, 1998 accepting the offer of the respondent No. 8 and modifying the attachment order dated 4th May 1994 subject to the Principal Officer of the respondent No. 8 filing an affidavit undertaking not to sell 3000 sq. ft. of the covered area in the multi-storey building proposed to be constructed on the property by the respondent No. 8. The affidavit was to be accompanied by a resolution of the Board of Directors of the respondent No. 8 authorising the Principal Officer of the respondent No. 8 to furnish the undertaking. On the filing of the said affidavit, the attachment order dated 4th May 1994 shall stand modified to the extent that 3000 sq. ft. of the covered area in the superstructure proposed to be constructed on the land in question shall remain attached till the disposal of the main execution petition. The Learned Judge also set down EA No. 343/97 and EA No. 344/97 for trial on evidence.

The appellants preferred an appeal from the order dated 3rd February, 1998 before the Division Bench. The Division Bench affirmed the order of the Single Judge on 5th October, 1998 holding that he had not committed any illegality by modifying the order of attachment but at the same time protecting the interest of the decree holder by requiring United Towers to file undertaking not to sell 3000 sq. ft. of the covered area in the multi-storeyed building proposed to be constructed at 20, Barakhamba Road. The appeal was accordingly dismissed. Hence this appeal.

It is not necessary for us to go into the merits of the respective cases of the parties as we are of the view that the High Court was clearly procedurally wrong in modifying the order of attachment dated 4th May 1994,

First, there is nothing on record to show that respondent No. 8s prayer for being impleaded as a party in the execution proceedings had been allowed and yet the learned Single Judge accepted the respondent No.8s offer and partially allowed the application of the respondent No. 8 in terms of such offer.

Secondly, by the impugned orders the attachment has been directed to be effected on non-existent property. The building is

proposed to be constructed by respondent No. 8 on the property. It has not been decided whether the respondent No.8 has any right to construct on the property. According to the High Courts order, if and when the proposed building is constructed an attachment will be effected of an area of 3000 sq. ft. in an unspecified area of the building. The High Court has in effect removed the attachment for the present to be operative at an un-determined point of time in the future on property which is not and may never come into existence.

Thirdly, Order 21, Rule 54 in terms prohibits the judgment debtor from transfer or charging property attached in any way and all persons from taking any benefit from such transfer or charge. As long the order of attachment is operative, no third party rights can be created. Pending the determination of the validity of the order of attachment and ultimate disposal of EA 343/97 and EA 344/97, the Court should not have allowed the attachment to be rendered infructuous.

Order 21, Rule 55 indicates situations where an attachment order may be withdrawn, namely, where

- (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or
- (b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or
- (c) the decree is set aside or reversed

If the Court was minded to lift the attachment temporarily, it should, therefore, have at least secured the decretal amount.

In any case the Court could not have passed an interim order virtually granting the final relief in EA 343 and EA 344 without any decision on the merits of the case. This is fortified by Order 21, Rule 58 which has been substituted in the Code by the Amendment Act, 1976. Sub-rule 2 of Rule 58 provides:

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit."

It is only upon determination of the questions referred to in sub-Rule (2) that the Court, in accordance with such determination may, either

- (a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or
- (b) disallow the claim or objection; or
- (c) continue the attachment subject to any mortgage, charge or other interest in

favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

Without any determination of the questions referred to in sub-Rule (2), the Court did not have the jurisdiction to pass any order varying the orders of attachment.

The appellant has also raised a preliminary issue as to the maintainability of EA 343/97 and EA 344/97. Under Order 21, Rule 58 sub-Rule (1) no claim or objection shall be entertained where the Court considers that the claim or objection was designedly or unnecessarily delayed. That the attachment order had been issued was known at least to the respondent No.1 in 1994. The High Court has not addressed its mind to this aspect before entertaining the applications filed by respondents Nos. 1 and 8.

Finally, the learned Single Judge himself observed that in the suit filed by respondent No. 1, an order has been passed staying the execution of the appellants decree and that that order was still operative. In the circumstances, it was not open to the Court to proceed with the execution proceedings. As long as the interim order passed in respondent No. 1's suit is operative, no further steps can be taken in the execution proceedings.

We, therefore, allow this appeal and set aside the impugned orders of the High Court but without any order as to costs.

J.  
(V.N. Khare)

..J  
(Ruma Pal)

August 6, 2001