N.K.S.

Before R. N. Mittal & M. M. Punchhi, JJ.

AVINASH CHANDER,—*Petitioner.*

versus

MOHAN LAL AND ANOTHER,—*Respondents.*

Civil Revision No. 2542 *of* 1981.

February 28, 1984.

Code of Civil Procedure (V *of* 1908)—*Sections* 47, 60, 99*A*, 145 *and Order* 21 *Rule* 58—*Decree obtained in money suit—Execution taken out against the surety of the judgment-debtor—Surety objecting that the attached goods were his tools as an artisan and were thus exempt from attachment and sale—Executing Court—disallowing the objections—Order of the Executing Court—Whether appealable—Tools of an artisan—Meaning of—Such tools—When exempt from attachment.*

Held, that the words 'artisan' and 'tool' are a few of the many words used in the proviso to section 60(1) of the Code of Civil Procedure, 1908 whereunder the judgment-debtor has been given relief from attachment and sale of properties mentioned therein.

(5) 1978 P.L.R. 216.

The spirit behind such beneficient legislation is that the judgment-debtor does not starve or is not deprived of his means of livelihood. Thus, before tools of an artisan can be exempt from attachment and sale, they must be such tools without the aid of which an artisan cannot earn his livelihood. Stress on the items mentioned in the proviso to section 60(1) is not on property in the abstract but is on the individual, keeping in view his need of that property. So in the expression 'tools of artisans', the stress is on the word 'artisan' and if the judgment-debtor claims himself to be an artisan, he has to be one as a handi-craftsman. This is how the word 'artisan' has been defined in the English dictionary to mean 'one trained to manual dexterity in some mechanic art or trade; a handicraftsman; a mechanic'. Thus, the meaning of the word 'artisan' used in the text of the provision is that the artisan's hands should not be allowed to stop by depriving him of his tools by their attachment and sale. Nowhere it was intended that tools which artisans employ are *per se* non-attachable and non-saleable even if they are with people other than artisans. The artisan's attachment to his tools necessarily in the context has to be intimate, proximate and not distant or remotely controlled. (Para 20)

Held, (per M. M. Punchhi J.), that the specific provision for determining questions which squarely fall for determination under Order XXI, Rule 58 of the Code of Civil Procedure, 1908 are in the nature of an exception to the general rule as embodied in section 47. Thus, if there is a claim to the property attached, or any objection to its attachment, and has been determined under Order XXI, Rule 58, the order made thereon, though relating to the execution, discharge or satisfaction of a decree, is an order specifically appealable. Such is the outcome of the joint analysis of Order XXI, Rule 58 and section 47. In that specific sense, orders of that kind are appealable. It is even otherwise in the context inconceivable that when questions relating to right, title or interest in the property attached can be adjudicated upon under Order XXI, Rule 58, and that too with the means of pleading and proof, evidence and inference, the Legislature in its wisdom considered this matter so light so as not to provide therefor an appellate evenue. Further still, it appears innocuous that if the claim or objection is entertained by the Court, then its final order is not to be appealable, but if it is not entertained on account of prior sale of the property attached, or being unnecessarily or designedly delayed, the matter can be taken to Court in a suit where appellate avenue is available. If that is so, then the legislative change brought about is otiose. Why at all would anyone prefer a claim or objection and be worse off in one bout. He would rather file a suit straightaway and not suffer an order as if a decree. There is an obvious advantage to settle those limited questions at the stage of execution itself if brought forward promptly and diligently before the executing Court. Thus, those questions which come within the ambit of

Order XXI Rule 58 even if they arise between the parties to the suit or parties as amplified under section 47 or third parties are questions on the determination of which an appealable order would emerge and be appealable as such. (Para 15)

Petition under Section 115 C.P.C. for revision of the order of the court of Shri P. C. Singal, Additional District Judge, Faridkot, dated the 7th October, 1981 affirming that of Shri B. C. Rajput, Sub Judge Ist Class, Muktsar, dated the 7th February, 1981 dismissing the objection petition so far as the attachment of the lathe machines concerned. The drilling machine ordered to be released from attachment.

H. S. Sawhney, Advocate, *for the Petitioner.*

Sarjit Kaur, Advocate, *for Respondent No. 1.*

JUDGMENT

M. M. Punchhi, J.

(1) This petition for revision raising important procedural questions has arisen in this matter.

(2) Mohan Lal, respondent No. 1, filed a suit against Naresh Kumar, respondent No. 2, for the recovery of some money. During the pendency of that suit, Avinash Chander, the present petitioner, furnished a surety bond in the sum of Rs. 10,000 to the effect that in case any decree was passed against Naresh Kumar, respondent No. 2, and remained unsatisfied, the decree-holder could recover the amount from his property which consisted of two lathe machines, one drilling machine and one welding machine. It transpires that a decree was passed in favour of the plaintiff-decree-holder and against the defendant-judgment-debtor for the recovery of Rs. 10,000. During the execution of that decree, the plaintiff-decree holder got attached the aforesaid machines belonging to the petitioner. The executing Court ordered them to be put to sale. At that stage, the petitioner filed an objection petition claiming that he was an artisan and the attached goods being his tools were exempt from attachment under sale under section 60, Civil Procedure Code. The objections were upheld with regard to the drilling machine and welding machine but were dismissed with regard to the two lathe machines on the finding that the lathe machines were being operated by his employees and were thus not tools coverable under section 60, Civil Procedure Code. The

dissatisfied objector's appeal before the Additional District Judge, Faridkot was dismissed and the view of the Executing Court was affirmed. The aforesaid appellate order is sought to be revised.

(3) At the motion stage, the parties were heard. A preliminary objection had been raised by Miss Surjit Kaur Taunque, learned counsel for the respondent-decree-holder that no appeal was maintainable against the order of the Executing Court to the Additional District Court and as such both the orders of the said Courts are not now revisable.

(4) Shri H. S. Sawhney, learned counsel for the petitioner, attempted to meet the objection on the basis of the amended Order XXI, rule 58(4), Civil Procedure Code, and maintained that such appeal was permissible. Finding the question raised to be an important one and likely to affect a large number of cases, my learned brother R. N. Mittal J. admitted the revision petition to a Division Bench. This is how the matter has been placed before us.

(5) A matter of form and status be cleared at the outset. The petitioner was concededly not a party-defendant to the suit. Yet he was a 'judgment-debtor' with the aid of section 145, Civil Procedure Code, which provides that when any person has furnished security or given a guarantee to do the things mentioned therein under an order of the Court, in any suit, or in any proceedings consequent thereon, the decree or order may be executed in the manner provided therein for the execution of decrees and such person is to be deemed to be a party within the meaning of section 47. Thus, the petitioner deducibly was a judgment-debtor within the meaning of section 2(10) and deemingly a party within the meaning of section 47. Procedure for execution, on the other hand, is provided in section 51, whereunder the Court has power to take one or more steps as enumerated therein towards execution of the decree. One of such steps is described as "by attachment and sale or by sale without attachment of any property". So it is just one of the steps, others being delivery of any property specifically decreed, arrest and detention in prison of the judgment-debtor, appointment of receiver etc. Undisputably, then property of the petitioner as a judgment-debtor could be sold when attached. Having settled this, we may proceed further.

(6) Pressing the preliminary objection, Miss Surjit Kaur Taunque relied on a decision rendered by my learned brother

R. N. Mittal J. in *Karam Singh* v. *Kirpal Singh*, (1) in which it has been held that after the Civil Procedure Code (Amendment) Act, 1976, no appeal is maintainable against an order passed by the Executing Court under section 47, Civil Procedure Code. It seems that this view has uniformally prevaded this Court and many a decision has been based thereon. Instances require no enlisting. The tenor of debate *per necessitus* thus revolved around the correctness of the aforesaid decision in the light of the amended provisions which are presently being adverted to.

(7) Prior to the Civil Procedure Code (Amendment) Act, 1976, it was well understood that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, were to be determined by the Court executing the decree and not by a separate suit. The term "decree" as defined in section 2(2) deemingly included the adjudication on the determination of any question within section 47. Yet "decree", as the definition went, was the formal expression of an adjudication in a suit. Thus, a decision under section 47 was equated with that of a decree and proceedings *qua* that to a suit. So, a question determined under section 47 was for all intents and purposes a decree and, as such, was appealable under section 96 as if the decree had been passed by a Court in exercise of its original jurisdiction. Obviously, those proceedings confined to the parties to the suit or their representatives.

(8) Besides, Order XXI, rule 58 provided a venue to third parties to approach the Executing Court if they had any claim to the property, or objection to the attachment of any property, attached in execution of a decree, on the ground that such property was not liable to attachment. The Executing Court was given the power to investigate the claim of the claimant or objection of the objector as if he was a party to the suit. On the decision of such claim preferred, or objection made, the party against whom went the decision was entitled to institute a suit under Order XXI, rule 63 to establish his right which he claimed to the property in dispute. The result of such suit, if any, could alone cause affectation to the otherwise conclusive order passed under Order XXI, rule 58. An order passed under Order XXI, rule 58 simpliciter, unless it could also fall within the ambit of

(1) 1980 P.L.R. 375.

Section 47, was not appealable as it neither came within the ambit of a decree as defined in section 2(2), nor of an order appealable under section 104, nor even under Order XLIII, rule 1. Such was the settled position.

(9) After the Civil Procedure Code (Amendment) Act, 1976, the words "within section 47 or" from the definition of the term "decree" have been deleted so the proceedings under section 47 neither partake the character of a suit nor adjudication thereunder a decree any more. And if it is not decree, it obviously on first principles means that it is not appealable under section 96, Civil Procedure Code. Apparently for that reason, my learned brother R. N. Mittal J. in *Karam Singh's case* (supra) took the following view :—

> "The result is that now no appeal lies under section 96 against the orders determining questions within section 47. It is an established principle of law that appeal is a creation of a statute and unless power to file an appeal is given by it, no appeal can be maintained. In these circumstances, in my view, after the passing of the Amendment Act, no appeal is maintainable against an order passed in proceedings under section 47 of the Code."

(10) Such view was taken despite the objection by the losing side on the basis of the newly inserted section 99A. But it was observed that section 99A appeared to be superfluous. Support for the view was sought from the views of the Commentator in the Law of Civil Procedure by S. S. Sarkar, 6th Edition, at page 240. The Commentator was of the view that as there was no appeal against the final order under section 47, Section 99A remained on the statute as otiose serving no useful function.

(11) The aforesaid case arose out of an objection under section 47 *simpliciter*. There was a decree for possession by redemption which the decree-holder started executing. The judgment-debtor objected that the decree had partially been satisfied. The Executing Court came to the view that the decree had been satisfied and thus dismissed the execution petition. The decree-holder filed an appeal before the District Judge. Objection was raised before him that no appeal lay. The District Judge, however, held the appeal maintainable, accepted it and remanded the case to the

Executing Court. That view was challenged in the aforesaid case. It was in that context appropriately held that orders passed under section 47 no longer were to be treated as decrees and hence not appealable under section 96. Whether some orders could otherwise be appealable, as was indicative from section 99A, was not even thought of. The Legislature in its wisdom has, however, studded section 99A at such a place in Part-VII of the Code so as to be read as an adjunct to section 99. Yet, the import of section 99 pertaining to decrees and that of section 99A to specific orders under section 47, seemingly, has a purpose in the scheme of things, which would be discerned later.

(12) On the other limb of the amendment, it is noticeable that Order XXI, rule 58(1) now bears three significant changes inasmuch as the Executing Court under the old provision was required merely in a summary way to *investigate* the claim or objection but under the new provision has now to *adjudicate* upon the claim or objection. The second change is that the new provision is not merely confined to third parties in the narrow sense, as was the view before, as the words "as if he was a party to the suit" have been deleted. It now has been made to apply to all claimants or objectors, whether they were parties to the original suit or not, or their representatives. The third change is that the claim preferred or objection made is to be decided in accordance with the provisions contained in the rule itself. And the said rule along with the succeeding rule 59 provides a self-contained Code for determination of all questions including questions relating to right, title or interest in the property attached.

(13) Significantly, rules 59 to 63 of Order XXI, as of old have been deleted and some particulars thereof, with necessary modifications, have found way in rules 58 and 59 and others have been given a go-by. Noticeably, the right to institute a suit under Order XXI. rule 63, has been taken away. Yet an inbuilt *infra-structure* to provide relief has been given, as would be plain from reading sub-rules 2 and 4 of rule 58, which are reproduced hereafter.

> "58. *Adjudication of claims to, or objections to attachment of, property.*—(1) * *
>
> (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.

(3) * * * *

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have *the same force* and be subject to the same conditions as to appeal or otherwise as if it were a decree."

Still an exception has been made to cover a situation when the Court refuses to entertain the claim or objection when the property attached has already been sold, or the Court considers that the claim or objection was designedly or unnecessarily delayed. In that event sub-rule (5) gives the right to the aggrieved party to institute a suit to establish the right which he claims to the property in dispute. However, subject to the result of such suit, if any, an order so refusing to entertain a claim or objection is conclusive. So, in that limited sphere the safety value by means of a suit is present.

(14) The conjoint reading of all the provisions afore-referred to leads me to conclude that all claims to property, or objections to attachment of any property, attached in execution of a decree, on the ground that such property is not liable to attachment, whether preferred by the parties to the suit or their representatives, or third parties, are to be adjudicated under Order XXI, rule 58 if entertained by the Court and all questions, including questions relating to right, title or interest in the property attached, raised by such parties therein under this rule, are required to be determined by the Court dealing with the claim or objection, and not by a separate suit. Further, the order made on such determination is to have the same force as if it were a decree, but not being a decree itself. Furthermore, the order is subject to same conditions as to appeal or otherwise as if it were a decree without being a decree itself. And since the order is appealable as specifically provided in the rule, it is conditioned on the way and manner, as provided under section 96, under which original decrees are appealable. That is to say that ordinarily the order is appealable, even if it is passed *ex parte* [S. 96(1)(2)]. It is otherwise not appealable if it is passed with the consent of parties [S. 96(3)]. It is also not appealable, except on a question of law, if were it a decree and passed in a suit cognizable by the Courts of Small Causes, when the amount of the subject

matter of the original suit did not exceed three thousand rupees [S. 96(4)].

(15) Now the adjudication of claims and objections under Order XXI, rules 58 and 59, do arise in relation to the execution, discharge or satisfaction of a decree. The said rules being in the first schedule have the effect of being enacted in the body of the Civil Procedure Code by virtue of section 121 thereof. It stands noticed that if a question is determined under section 47, an order emerges (whether appealable or not). And if a question is determined under Order XXI rule 58, there too an order emerges, though appealable. Thus, to harmoneously construe both the provisions, it would be apt to hold that the specific provision for determining questions which squarely fall for determination under Order XXI, rule 58, are in the nature of an exception to the general rule as embodied in Section 47. Thus, if there is a claim to the property attached, or any objection to its attachment, and has been determined under Order XXI, rule 58, the order made thereon, though relating to the execution, discharge or satisfaction of a decree, is an order specifically appealable. Such is the outcome of the joint analysis of Order XXI, rule 58 and Section 47. In that specific sense, orders of that kind are appealable. It is even otherwise in the context inconceivable that when questions relating to right title or interest in the property attached can be adjudicated upon under Order XXI, rule 58, and that too with the means of pleading and proof, evidence and inference, the Legislature in its wisdom considered this matter so light so as not to provide thereof an appellate avenue. Further still it appears innocuous that if the claim or objection is entertained by the Court, then its final order is not to be appealable, but if it is not entertained on account of prior sale of the property attached, or being unnecessarily or designedly delayed, the matter can be taken to Court in a suit where appellate avenues are available. If that is so, then the legislative change brought about is otiose. Why at all would anyone prefer a claim of objection and be worse off in one bout. He would rather file a suit straightaway and not suffer an order as if a decree. There is an obvious advantage to settle those limited questions at the stage of execution itself if brought forward promptly and diligently before the executing Court. Thus, I am of the considered view that those questions which come within the ambit of Order XXI, rule 58, even if they arise between the parties to the suit, or parties as amplified under Section 47 (as is the case of the petitioner)

or third parties are questions on the determination of which an appealed order would emerge and be appealable as such.

(16) A note of elucidation need be added re *Karam Singh's case* (supra). It is an authority good for the proposition that orders passed by the Executing Court under Section 47, except those passed under Order XXI, rule 58, no longer are appealable after the passing of the Civil Procedure Code (Amendment) Act, 1976. But the present being a case falling within the ambit of Order XXI, rule 58, the order as such was appealable subject to the same conditions or otherwise as if a decree. But since the order made under Order XXI, rule 58(4), despite being of the value of a decree, is still an order, it is appealable as expressly provided therein and yet is an order within the ambit of Section 47. being an order appealable, the appellate Court was required to adhere to the provisions of Sections 99 and 99A while considering the grant of relief therein. These provisions may at this stage be noticed :—

> "99. *No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction*—No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any mis-joinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court:
>
> Provided that nothing in this section shall apply to non-joinder of a necessary party.
>
> 99A. *No order under section 47 to be reversed for modified unless decision of the case is prejudicially affected.*— Without prejudice to the generality of the provisions of Section 99, no order under Section 47 shall be reversed or substantially varied, on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case."

Support for the view is also available in the Objects and Reasons of the Code of Civil Procedure (Amendment) Bill, 1974, which are to the following effect:—

> "Sub-clause (XXV)—Rule 58 to 63 deal with claims and objections in execution. At present the adjudication in

execution has a limited scope and the matter can be further agitated by way of a regular suit. In order to prevent protraction of litigation, it is thought desirable to have all questions (including questions of title) settled finally in the execution proceeding itself. This would be in keeping with the tenor of section 47 wherein it is provided that all questions arising between parties to the suit relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. Rule 58 to 63 are being substituted accordingly."

(17) Thus, in my considered view, the appeal before the Additional District Judge, Faridkot was competent. Therefore, a revision could be entertained against the appellate order of the Additional District Judge. The preliminary objection raised by the learned counsel for the respondent is thus overruled.

(18) To be fair to the learned counsel for the petitioner, I must notice a Single Bench decision of the Karnataka High Court in *Sidramappa Rachappa Chiniwar and others* v. *Shankaralinqappa Veerappa Bilaqi and others*, (2) wherein an order passed under Order XXI, rule 58(4) was held necessarily to be an appealable decree but without any discussion on the distinction which I have drawn holding it to be an appealable order. *Mohammad Khan* v. *State Bank of Travancore*, (3) and *Mohan Das and others* v. *Kamla Devi*, (4), cited by the learned counsel for the respondent, are akin to *Karam Singh's case* (supra) and are of no assistance to the respondent.

(19) On merits, the learned counsel for the petitioner contended that the two lathe machines which are being put to auction are tools and the petitioner to whom they belong an artisan within the meaning of section 60, proviso (b). In support thereof, he relied on a Single Bench decision of the Rajasthan High Court in *Harjiram* v. *Ghanshyam Das*, (5). Therein lathe machine was held to be a tool of an artisan. The learned Judge observed as under:—

"I see no reason for holding that clause (b) of the proviso to section 60, Civil Procedure Code, applies only to the cases

(2) A.I.R. 1979 Karnataka 89.
(3) A.I.R. 1978 Kerala 201.
(4) A.I.R. 1978 Rajasthan 127.
(5) A.I.R. 1972 Rajasthan 62.

of very small artisans and not to the case of an artisan working on a large scale. There is nothing to indicate that the clause is limited to artisans working on a small scale. There will be a further difficulty if I were to hold that the clause was limited to such artisans only then there would be no criterion for determining as to who is a small artisan and who is a big artisan. The tools of an artisan may be petty or may be costly. They may be ordinary or they may be complicated. If the tools are necessary for carrying on the trade of an artisan, they will be tools irrespective of the fact that they are mechanical and of a complicated character."

(20) The learned counsel for the parties expanded the debate so as to explain with the aid of dictionaries as to what is meant by an "artisan" and "tool". But before we enter that arena, it needs to be brought to the fore that these words are a few of the many words used in the proviso to section 60(1). Civil Procedure Code, whereunder the judgment-debtor has been given relief from attachment and sale of properties mentioned therein. Th spirit behind such beneficient legislation is so that the judgment-debtor does not starve or is not deprived of his means of livelihood. Thus, before tools of an artisan can be exempt from attachment and sale, they must be such tools without the aid of which an artisan cannot earn his livelihood. Stress on the items mentioned in the proviso to section 60(1) is not on property in the abstract but is on the individual, keeping in view his need of that property. So in the expression "tools of artisans", it appears to me that the stress is on the word "artisan". And if the judgment-debtor claims himself to be an artisan, he has to be one as a handicraftsman. This is how the word "artisan" has been defined in Webster's New International Dictionary to mean "one trained to manual dexterity in some mechanic art or trade; a handicraftsman; a mechanic". Thus, the meaning of the word "artisan" used in the text of the provision seems to me plain that the emphasis is that the artisan's hands should not be allowed to stop by depriving him of his tools, by their attachment and sale. Nowhere was it intended that tools which artisans employ are *per se* non-attachable and non-saleable even if they are with people other than artisans. The artisan's attachment to his tools necessarily in the context has to be intimate, proximate and not distant or remotely controlled. It is so held.

(21) Now here the finding of the Courts below is that the lathe machines of the petitioner were being operated by his employees

and were thus not "tools" coverable under section 60, Civil Procedure Code. It can be read to mean that the petitioner was not an artisan to those lathe machines as he was not employing his own hands to work at them and had rather employed labour on them. It was not the intention of the Code that tools in the actual use of others should be exempt from attachment and sale, though belonging to a person styling himself to be an artisan. Thus, without going into the question whether the lathe machines are tools or not, I have no hesitation in coming to the conclusion that the petitioner was not an artisan *qua* the attached lathe machines without deciding the question whether those lathe machines were tools or not. It equally requires no discussion whether electrically run machines or manually run machines of simple or complicated character fall within the ambit of tools or not. In the same strain, it does not require to be determined here whether the artisan should be functioning in a small scale or a big scale or that the machines employed by him are costly or not costly. In the Rajasthan case relied upon by the learned counsel for the petitioner, the artisan was himself working a lathe machine and the judgment proceeded to discern as to whether a lathe machine fell within the meaning of tool. No such occasion has arisen in the case in hand because between the petitioner and the lathe machines, his employees intervene, who run the two lathe machines. On this finding, the Rajasthan case is not available to advance the case of petitioner. Pithily put, tools of a worker are exempt from attachment and sale, and not tools of an industrialist/trader, though both can be called artisans in different senses. Thus, for the view taken, the order of the learned Additional District Judge, Faridkot does not require any interference in this petition.

(22) For the reasons stated above, this petition fails and is hereby dismissed with costs.

Rajendra Nath Mittal, J.

(23) I have gone through the lucid and exhaustive judgment of my learned brother. M. M. Punchhi, J. I agree with my brother that the petitioner was not an artisan *qua* the attached lathe machines and, therefore, he could not claim benefit of section 60 of the Code of Civil Procedure. I also agree that the revision petition is liable to be dismissed on this ground. However, I do not express any opinion on the preliminary objection of Miss Surjit Kaur Tanuque that no appeal against the order of the executing