

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Appellate Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

FAO No. 02 of 2023

1. M/s Lexicon Commercial Enterprises Ltd.
Registered Office: 84/1A, Topsia Road (S)
Kolkata-46
Local Address: Babumoshai Hotel & Restaurant,
14th Mile, New Sada Block, Ravangla,
Namchi District, Sikkim-737126.
Through: Mr. Harish Himatsingka,
Director,
Lexicon Commercial Enterprises Ltd.

..... **Appellant**

Versus

1. Umakanta Sharma,
S/o U.K. Sharma,
R/o Bageykhola, LPG-Refill Centre IOC,
P.O. Majitar, Rangpo, East Sikkim
A/p Amdogolai, Bye Pass, P.O. Tadong,
East Sikkim-737102.
2. Udhay Kumar Pradhan,
S/o Late Prem Bahadur Pradhan,
R/o Pradhan Gaon, Middle Aritar, P.O. Aritar,
Rhenock, East Sikkim-737133.
3. The Manager,
Citizen Urban Co-operative Bank Ltd.,
Kashi Raj Pradhan Marg,
Nam Nang, Gangtok, East Sikkim-737101.
4. District Collector-cum-CALA,
Namchi District,
South Sikkim-737126.
5. Additional District Collector,
Namchi District,
South Sikkim-737126.

6. Branch Manager,
IndusInd Bank,
Gangtok-737102.

..... **Respondents**

An appeal under Rule 1A of Order XLIII read with Sub-Rule 4 of Rule 58 of Order XXI and Section 97 of the Code of Civil Procedure, 1908.

Appearance:

Mr. S. S. Hamal and Mr. Karma Thinlay, Senior Advocates with Mr. Varun Pradhan, Mr. Yashir N. Tamang, Mr. Pradeep Sharma and Ms. Ramdevi Chettri, Advocates for the Appellant.

Mr. Rajendra Upreti, Advocate for the Respondent No.1.

Mr. Jorgay Namka, Senior Advocate with Ms. Deempal Tamang, Advocate for Respondent No.2.

None for Respondent Nos. 3 & 6.

Mr. Thinlay Dorjee Bhutia, Government Advocate for Respondent Nos. 4 and 5.

Date of Hearing : 27.03.2025

Date of Order : 27.03.2025

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. A short but interesting question arises in the present first appeal. What is the procedure to be followed when a claim is made before the executing court under Order 21 Rule 58 of the Code of Civil Procedure, 1908 (CPC) and can the claim be rejected summarily ?.

2. Umakanta Sharma (respondent no.1 herein) on 05.03.2021 filed a petition under Order XXI Rule 11 of the CPC for execution of a decree passed in Money Suit No.208 of 2019 in his favour. On 03.03.2023 the respondent no.1 sought attachment of the compensation amount sanctioned by the NHIDCL in the name of Uday Kumar Pradhan (respondent no.2 herein). On 02.06.2023 the learned Principal District Judge directed the District Collector (respondent no.4 herein) to deduct a sum of Rs.30,39,395/- from the total compensation amount sanctioned by NHIDCL in the name of respondent no.2 and to give it to respondent no.1 and submit compliance report. Subsequently, the amount in the order dated 02.06.2023 was corrected to Rs.30,93,395/-. During the pendency of the execution proceedings the M/s Lexicon Commercial Enterprises Ltd. (the appellant herein) moved an application under Order 21 Rule 58 of CPC on 01.08.2023. On the said date i.e. 01.08.2023 the learned Principal District Judge ordered that the disbursement as directed vide order dated 02.06.2023 and 27.06.2023 be kept on hold. The application filed by the appellant was then placed for hearing on 29.08.2023. On 29.08.2023 on the plea of the appellant that the parties were exploring possibility of settlement the matter was posted for

hearing on 05.09.2023 on which date the application was heard by the learned Principal District Judge. Impugned herein are two orders dated 03.10.2023 and 31.10.2023 passed by the learned Principal District Judge thereafter.

3. By the impugned order dated 03.10.2023 the learned Principal District Judge rejected the application filed by the appellant.

4. The appellant had moved this application claiming that it had purchased the suit property including a 4^{1/2} storied hotel building for a sum of Rs.49,25,000/- from the Central Bank of India under the SARFAESI Act, 2002 and thereafter, it was also delivered its khas and vacant possession in the year 2012.

5. It was the appellant's case that it holds the title and possession of the suit property, which was subsequently acquired by NHIDCL. The appellant objected to the attachment of the compensation amount claimed by respondent no.1 as a decree holder in a suit and challenged the attachment.

6. After the passing of the impugned order dated 03.10.2023 the learned Principal District Judge vide impugned order dated 31.10.2023 directed the District Collector-cum-CALA, Namchi District to abide with the order

dated 03.10.2023 to enable the decree in favour of respondent no.1 is satisfied in accordance with law.

7. At this juncture the learned Government Advocate draws the attention of this Court to the reply to the application i.e I.A. No. 01 of 2023 filed by the respondent nos. 4 and 5 in which it has been stated that as directed by the Order dated 03.10.2023 and 31.10.2023 passed by the learned Principal District Judge they have already disbursed an amount of Rs.30,93,395/- in favour of respondent no.1 in his Axis Bank Account. The learned Senior Counsel for the appellant submits that they would take necessary steps regarding this issue.

8. The impugned order dated 03.10.2023 records that the learned Principal District Judge had heard the said application. However, the impugned order does not reflect that the matter was “determined” in accordance with the requirements of Order 21 Rule 58 of the CPC which is reproduced herein below:-

“58. Adjudication of claims to, or objections to attachment of, property.- (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained-

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(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) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,-

(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.

(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.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claims or objection shall be conclusive.”

9. The provision makes it amply clear that the learned Principal District Judge, as the executing court, was required to “adjudicate” upon the claims or objections

including all questions relating to right, title or interest in the property attached arising between the parties to a proceeding and relevant to the adjudication of the claim or objection and “determine” the same. It also makes it clear that there was no need for a separate suit to “adjudicate” and “determine” the questions involved.

10. The proviso to sub-rule (1) of Rule 58 makes it further clear that the application of the appellant could have been not “entertained” only on the grounds provided in proviso (a) and (b) thereof. Under proviso (a) no such claim or objection shall be entertained where, before the claim is preferred or objection is made, the property attached has already been sold. Under proviso (b) no such claim or objection shall be entertained where the court considers that the claim or objection was designedly or unnecessary delayed.

11. The orders passed by the learned Principal District Judge in the application filed by the appellant does not reflect that the learned Principal District Judge had not entertained the claim or objection either under proviso (a) or under proviso (b).

12. Therefore, if the learned Principal District Judge decided to “adjudicate” upon the claim or objection to the

attachment of suit property filed by the appellant it was incumbent upon the court to be mindful of sub-rule (2) to (5) thereof. More importantly the learned Principal District Judge in the impugned order dated 03.10.2023 recorded that the sale certificate dated 05.04.2012 would show that the Central Bank of India had sold the mortgaged property of the judgment debtor no.1 falling in plot no.782/924 of Rabongla Block to the appellant for a sum of Rs.49,25,000/- and the loan reportedly taken by the judgment debtor no.1 from Central Bank of India was to the tune of Rs.50,00,000/-.

13. A composite reading of the provision leads this court to conclude that the executing court examining an application under Order 21 Rule 58 CPC is required to “adjudicate” and “determine” the right, title and interest in the property attached in the very same proceeding and not by a separate suit. Right, title and interest in a property is usually determined in a suit after a trial wherein pleadings are exchanged, issues framed, witnesses examined and documents exhibited. Therefore, when the legislature thought it fit to provide the power to “adjudicate” upon the claim or objection to the attachment of property claiming right, title and interest therein under the provision of Order

21 Rule 58 itself and not by a separate suit it is quite clear that the “determination” must be as conclusive as a decree of the court. This would be clear from the sub-rule (4) which provides that where any claim or an objection has been adjudicated upon under this rule, the order made thereon shall have the same force and subject to the same conditions as to appeal or otherwise as if it were a “decree”.

14. It is noticed that Order 21 Rule 58 gives a statutory and a substantial right to the appellant to get his claim or objection to attachment of property to be adjudicated by the executing court. However, the records do not reveal that any opportunity was given to the contesting parties to adduce evidence. It is imperative that the executing court comes to an effective conclusion on the claim of the appellant by recording evidence and not on the basis of pleadings and statements made in the objection petition and the reply thereto. It is the duty of the executing court to decide the objection on its merits. All questions raised by the appellant have to be comprehensively considered on their merits. The objections cannot be summarily dismissed. If triable issues arise from the objection, the objections have to be adjudicated by the executing court. A perusal of Order 21 Rule 58 reflects that an investigation is necessary of the

claims to and objections to attachment of, attached properties. It is under this rule that the appellant who claims that his property was wrongfully attached in execution of a decree passed against another, is entitled to object to the said attachment. All questions raised by the objector have to be comprehensively considered on their merits.

15. The right, title and interest in a property are valuable rights and it should be effectively determined. A proper procedure is required to be followed to do so. The impugned order dated 03.10.2023 does not reflect any “adjudication” or “determination” of the claim made by the appellant save the learned Principal District Judge’s thoughts on the fact that even after 11 years the suit property had not been registered in the name of the appellant. In such view of the matter, the impugned order dated 03.10.2023 cannot be sustained. It is accordingly set aside. The application is restored to the Court of the learned Principal District Judge, East Sikkim at Gangtok requesting the learned Principal District Judge to re-determine this application as per law by following a proper procedure for determination of the questions raised.

16. The learned Senior Counsel representing the appellant and the respondent no.2 made various submissions on merits of the dispute. This Court refrains from making any comment on the rival submissions on the merits of the case so that no prejudice is caused to any of the parties before the learned Principal District Judge. All questions of fact and law which are open to the parties for the effective determination of the application are left open for determination by the learned Principal District Judge.

17. The FAO No 02 of 2023 is allowed to the above extent and disposed along with the interim application.

**(Bhaskar Raj Pradhan)
Judge**

Internet :**Yes**
to