

Power of Indian Courts to Issue Garnishee Order

L. Raj Subash

Student

Saveetha School of Law, Chennai, Tamil Nadu.

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The word 'Garnish' is derived from an old French word 'garnir' which means to warn or to prepare. It is to serve an heir with notice i.e. to warn of certain debts that must be paid before the person is entitled to receive property as an heir. Garnishee means a judgment-debtor's debtor. He is a person or institution that is indebted to another whose property has been subject to garnishment. He is a person who is liable to pay a debt to a judgment debtor or to deliver any movable property to him. A third person or party in whose hands money is attached by process of court; so called, because he had garnishment or warning, not to pay the money to the defendant, but to appear and answer to the plaintiff creditor's suit Garnisher is a judgment-creditor (decree-holder) who initiates a garnishment action to reach the debtor's property that is thought to be held or owed by a third party.

OBJECTIVE OF THE STUDY:-

- To study about the various powers of the court to give Garnish order .
- To analyse the nature of the development in it.

HYPOTHESIS:-

The Code of Civil Procedure empowers the court to issue the garnishee order. Prior to the amendment in 1976, there was no provision relating to garnishee order in the code of civil procedure, 1908. After the insertion of Amendment by the way of Code of civil procedure Amendment Act, 1976, a direct provision was added to the Code of Civil Procedure, 1908

SOURCE OF STUDY:-

PRIMARY SOURCE:-

- NEWS PAPER

SECONDARY SOURCE

- BOOKS
- JOURNALS
- E-SOURCE

CHAPTER 1

Garnisher is a judgment-creditor (decree-holder) who initiates a garnishment action to reach the debtor's property that is thought to be held or owed by a third party. A garnishee order is an order passed by an executing court directing or ordering a garnishee not to pay money to judgment debtor since the latter is indebted to the Garnisher (decree-holder)⁴. It is an order of court to attach money or goods belonging to the judgment debtor in the hands of a third person. It is a remedy available to any judgment creditor; this order may be made by the court to holders of funds (3rd party) that no payments are to be made until the court authorizes them. The third party is known as garnishee and the court order is known as garnishee order. The purpose of the order is to protect the interest of the creditors.⁵ An order served upon a garnishee requiring him not to pay or deliver the money or property of the debtor (defendant) to him and / or requiring him to appear in the court and answer to the suit of the plaintiff to the extent of the liability to the defendant. Suppose A owes Rs. 1000 to B and B owes Rs. 1000 to C. by a garnishee order the court may require A not pay money owed to him to B, but instead to Pay C, since B owes the said amount to C, who has obtained the order.

Suppose A owes B Rs 2,000/-. A refuses to repay the amount to B and B sues A. He obtains a decree in his favor. Here B is a judgment-creditor and A is the judgment-debtor. B comes to know that A has some money in a bank account and would like to have his decree satisfied by attaching the funds in the hands of

A's bank. For this purpose he approaches a court and obtains a Garnishee order attaching funds at the bank standing to the credit of A. In this e.g., A, is the garnishee and B is the Garnisher (Person who initiates action).

Order 21 Rule 46 A to 46 I have been newly inserted in the Code of Civil Procedure by the Amendment Act, 1976. They lay down the procedure in garnishee cases. Prior to amendment, opinion expressed by various Courts were that the Court had no power to compel a garnishee to pay debt in Court and in case a garnishee on appearance denied the debt, it was duty of the Court to enquire that if debt was due and when garnishee was held liable to pay, except on certain contingencies, it was not permissible to call upon him to pay the amount into Court⁷. The object of newly inserted Rule 46A is to render the debt due by the debtor of the judgment debtor available in execution to the decree holder and not to drive him to a suit. The primary object of a garnishee order is to make the debt due by the debtor of the judgment debtor available to the decree holder in execution without driving him to the suit. The court may, in the case of debt (other than a debt secured by a mortgage or charge) which has been attached under Rule 46, upon the application of the attaching creditor, issue a notice to garnishee liable to pay such debt, calling upon him either to pay into court the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

The order contemplated by Rule 46 A is discretionary and the court may refuse to pass such order if it is inequitable. The discretion, however, must be exercised judicially. Where the court finds that there is *bona fide* dispute against the claim and the dispute is not false or frivolous, it should not take action under this rule.

If money is payable to the judgment debtor on certain contingencies, the garnishee cannot be asked to make payment unless those contingencies have taken place. Similarly, garnishee proceedings cannot be taken in respect of a debt which cannot be attached under the code.⁹ Where the garnishee disputes his liability, the court must raise an issue, and determine the liability of the garnishee.

Some property is exempt from garnishment. Exemptions are created by statutes to avoid leaving a debtor with no means of support. For example, only a certain amount of work income may be garnished. Under 15 U.S.C.A.

The payment made by the garnishee into the court pursuant to the notice shall be treated as a valid discharge to him as against the judgment debtor. The court may direct that such amount may be paid to the decree holder.

CHAPTER 2

Order 21 Rule 46 A to Rule 46 I of Code of Civil Procedure, 1908 deals with Garnishee orders. It was inserted in the code by the Amendment Act, 1976.

Rule 46-A: Notice to garnishee, *“(1) The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so. (2) An application under sub-rule (1) shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent, the garnishee is indebted to the judgment-debtor. (3) Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree-holder towards satisfaction of the decree and costs of the execution.”*

Rule 46-B: Order against garnishee, *“Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.”*

Rule 46-C: Trial of disputed questions, *“Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit and*

upon the determination of such issue shall make such order or orders as it deems fit. Provided that if the debt in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court.”

Rule 46-D: Procedure where debt belongs to third person, *“Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same”*

Rule 46-E: Order as regards third person, *“After hearing such third person and any person or persons who any subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.”*

Rule 46-F: Payment by garnishee to be valid discharge, *“Payment made by the garnishee on notice under rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application may be set aside or reversed.”*

Rule 46-G: Costs, *“The costs of any application made under rule 46 A and any of the proceeding arising therefrom or incidental thereto shall be in the discretion of the court.”*

Rule 46-H: Appeals, *“An Order made under rule 46 B, 46 C or 56 E shall be appealable as a decree.”*

Rule 46-I: Application to negotiable Instruments, *“The provisions of Rules 46 A to 46 H shall, so far as may be, apply in relation to negotiable instruments attached under rule 51 as they apply in relation to debts.”*

Judicial trends:- In *KazimJawaz Jung v. Mir Mohamad Ali Jaferi and Anr*,⁴⁸ the Appellant is the debtor of judgment debtor. He was directed to deposit in Court amount payable to judgment debtor as required by decree holder. The appellant disputed his liability with regard to amount due to judgment debtor. He contended that the final decree with regard to liability amount has not been passed yet and therefore the impugned amount becomes payable only when judgment debtor allots land to appellant. Thus, the appellant is not liable to pay any amount before allotment of land by judgment debtor. The Hon'ble Andhra Pradesh High Court held that where the judgment debtor himself is not entitled to recover amount from appellant then decree holder has no right to recover amount from appellant. In *Mackinnon Mackenzie and Company Pvt. Ltd. v. Anil Kumar Sen and Anr*,⁴⁹ the question which came up for consideration is that if the garnishee denies that any sum of money is due to the judgment-debtor whether it is open to the court to hold the garnishee liable for the claim made by the judgment-debtor without raising and trying an issue on the question of such liability. The Hon'ble Calcutta High Court held that the Judge has a discretion under the Rule to, make an order summarily or to settle an issue and try the same on evidence. No doubt the order contemplated by the Rule is a discretionary one, but such discretion must be judicially exercised. Where a Judge finds that a claim is bona fide disputed and the dispute is not frivolous, he should not rush to a conclusion on the affidavit evidence having regard to the requirement of the Rule. A garnishee order which enables a judgment-creditor to obtain satisfaction of his claim in a summary

References

1. Thakker C. K. (2009). Code of Civil Procedure, Lucknow: Eastern Book Company.
2. Takwani C. K. (2003) Civil Procedure, Lucknow: Eastern Book Company.