

Harjiram Vs. Ghanshyam Das

LegalCrystal Citation : legalcrystal.com/751399

Court : Rajasthan

Decided On : Aug-05-1971

Reported in : AIR1972Raj62; 1971(4)WLN422

Judge : J.P. Jain, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 60(1)

Appeal No. : Second Appeal No. 12 of 1970

Appellant : Harjiram

Respondent : Ghanshyam Das

Advocate for Def. : Vipinchandra Goyal and; S.N. Bhargava, Adv.

Advocate for Pet/Ap. : P.C. Bhandari, Adv.

Disposition : Appeal allowed

Judgement :

J.P. Jain, J.

1. This is a second appeal by the judgment-debtor and is directed against the order of the District Judge, Alwar dated 18th April, 1970 by which he affirmed the order passed by the Civil Judge, Alwar dismissing the objection petition of the appellant under Section 47 of the Code of Civil Procedure.

2. Ghanshyam Das respondent obtained a decree for Rs. 5380/- on 6-5-1967 against Harjiram from the Court of Civil Judge, Alwar. The decretal amount including the cost and the interest came to Rs. 6622.38 paise. The decree-holder took out execution application on 27-7-1967 and sought the attachment of the following articles:--

(1) Lathe (Kharad) machine.

(2) Drilling (Barma) machine.

(3) Transformer welding machine.

(4) Electric motor of 3 Horse Power used for operating the above machines.

(5) Other miscellaneous articles like chisel, wrench, Sandasi, hammer, file etc.

The attachment was effected on 12-8-1967. On 22-12-1967 the judgment-debtor filed an objection under Section 47 Civil Procedure Code claiming that he is an artisan and the articles attached are tools of artisan and as such they are not liable to attachment and sale under proviso (b) of Section 60(1) of the Code of Civil Procedure. The decree-holder opposed the claim of the judgment-debtor. The executing court held an inquiry and found that the judgment-debtor is a mechanic and he is therefore an artisan. But the articles that have been attached being machines operated by electric power cannot be termed as tools of artisan. In the appeal by the judgment-debtor, the learned District Judge agreed with the view taken by the executing court and dismissed the appeal.

3. I have perused the evidence and heard learned counsel for the parties. The contention of the learned counsel for the appellant is that the judgment-debtor is a mechanic and he undertakes the repairs of motor vehicles, tractors and machines. He has a workshop to carry on his work as an artisan and has therefore put up a lathe machine, a drilling machine and a welding machine. All these machines, according to him, have been put up for the purpose of carrying on his work as a mechanic and he himself operates the machines and undertakes the repairs. On the other hand, learned counsel for the respondent submits that the judgment-debtor can work as a mechanic even if he does not have the lathe machine, the drilling machine and the welding machine. According to him, the articles mentioned under item No. 5 are sufficient to carry on his trade as an artisan. His submission in short is that proviso (b) to Section 60(1) of the Code of Civil Procedure afforded protection to the ordinary tools of artisan and implements of mechanised character are not contemplated.

4. I will reproduce the relevant part of Section 60(1) of the Code:--

'60. (1)

Provided that the following particulars shall not be liable to such attachment or sale, namely:--

(a)

(b) tools of artisans and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section:' The words 'tools of artisan' in Clause (b) of the proviso have not been defined in the Code. It is not therefore easy to define the exact scope of this expression. Arguments have been advanced as to the meaning of the word 'tools.' There is no dispute with regard to the fact that the judgment-debtor is a mechanic and, therefore, an artisan within the meaning of Section 60 Civil Procedure Code. The entire controversy is as to the meaning of the word 'tools'. In the Imperial Dictionary of the English Language (1969), the word 'tool' has been defined as follows:--

'Any implement used by a craftsman or labourer at his work; an instrument employed in the manual arts for facilitating mechanical operation by means of percussion, penetration, separation, abrasion, etc. of the substances operated upon; for all of which operations various motions are required to be given either to the tool or to the work. Such tools are hammers, punches, chisels, axes, adzes, planes, saws, drills, files

etc. Such machines as the lathe, planer, slotting-machine, and others employed in the manufacture of machinery are usually termed machine tools.'

In the Oxford English Dictionary (1933) Vol. XI, the word 'Tool' has been described to mean as follows:--

'Any instrument of manual operation; a mechanical implement for working upon something, as by cutting, striking, rubbing, or other process, in any manual art or industry; usually, one held in and operated directly by the hand (or fixed in position, as in a lathe), but also including certain simple machines as the lathe; sometimes extended to simple instruments of other kinds, as in quot.'

According to the dictionary meaning, 'tool' will include a mechanised implement as a lathe machine. As a mechanic, the judgment-debtor has to undertake numerous types of repairs. For some repairs he has to work on the drilling machine. If some parts are broken, a welding machine has to be brought into use. It cannot, therefore, be said that the machines like lathe machine, drilling machine or a welding machine are not needed by a mechanic to undertake repairs of the Motor Vehicles or machines like a chaff cutting machine or a tractor. Section 60(1)(b) reproduced above enacts that 'tools of artisan' shall not be liable to attachment. It does not say that only such tools shall not be liable to attachment as are necessary for the mere maintenance of the artisan. An artisan may be carrying on his trade on a small scale or he may be doing so on a large scale. All the tools that are required to carry on his trade as an artisan are covered by the provisions of Section 60(1)(b) Civil Procedure Code. I see no reason for holding that Clause (b) of the proviso to Section 60 Civil Procedure Code applies only to the cases 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. The courts below said that the three machines under attachment are operated by electric energy. In my opinion, it does not make any difference. In the present advancement of science, electric energy is availed of to carry on even small industries. If, therefore, a mechanic, who has a workshop and undertakes repairs of motor vehicles and makes use of machines which are run by electricity, it cannot be said that he is not an artisan and the machines that he is making use of to undertake the repairs are not tools of artisan. I have already noticed above that Section 60(1)(b) does not give any indication to restrict the meaning of the word 'tools' to ordinary tools.

5. In *Udharam Dalumal v. Rozi Shambe*, AIR 1939 Sind 96 a question arose whether a water pumping engine is liable to attachment. It was argued that the 'implements of husbandry' which are protected are those which are absolutely necessary for the livelihood of an agriculturist. Their lordships refused to accept this contention. It was held that the clause is not intended to force agriculturists back to primitive ways but to protect in their livelihood as agriculturists by preventing attachment of those mechanical means whereby they plough and irrigate and cultivate the soil and obtain their livelihood as agriculturists. An engine or a water pump is necessary for the agriculturist to irrigate and cultivate his field and earn his livelihood as an

agriculturist and, therefore, it comes within the term 'implements of husbandry.' Their lordships were of the opinion that Clause (b) to the proviso of Section 60(1) Civil Procedure Code must be interpreted in a fair and reasonable manner and it must not be read in a narrow and mean manner.

In *Dwarka Prasad v. Municipal Board, Meerut*, AIR 1958 All 561 a tractor was sought to be attached by the decree-holder. The question was whether tractor was protected under Section 60 of the Code of Civil Procedure. Their Lordships of the Allahabad High Court repelled the plea of the decree-holder that Section 60(1) proviso (b) was restricted to 'implements of husbandry' of small farmers. It was held that it was an implement of husbandry and was not liable to attachment. Their Lordships placed reliance on an earlier case of that Court *Bindeshari v. Banshilal*, AIR 1932 All 344 in which case the paraphernalia of a Soap Factory was held to be the tools of an artisan within the meaning of Section 60(1) proviso (b) of the Code.

6. In *Ahmad Sayeed v. Kanizak Zohra*, AIR 1941 All 157 a sewing machine in a tailor's shop was held to be 'tools of an artisan' and exempt from attachment. His Lordship relied upon *Vithoba v. Babulal*, AIR 1923 Nag 289 and he quoted with approval the following observation in the Nagpur case:--

'I can find no guidance on the point in reported rulings, but I consider that a sewing machine is a tool. It can hardly be denied that a simple machine such as a simple form of loom is a tool. I do not see how a line can be drawn shutting out a more complicated form of loom from the definition. A complicated loom or a sewing machine is certainly an instrument used by a craftsman or labourer at his work. Section 60, Civil Procedure Code, speaks of the tools of artisans and the implements of husbandry of an agriculturist. Implements of husbandry may be specialised and costly. I see no reason why a tool should be confined to primitive implements. I hold then that a sewing machine is a tool'

7. A similar type of question arose before the Madras High Court. In *T. R. Punnavanam Pillai v. Muthuswami Achari*, AIR 1962 Mad 444. His Lordship dealing with that case held that the judgment-debtor who was a goldsmith was an artisan and his machines which consisted of a cutting press, machine for processing plates and dies were tools of an artisan. His Lordship observed as follows:--

'The next question is whether the defendant in this case is an artisan and the articles attached were his tools. Mr. Natesan contended that the articles were machines and not tools and consequently they were not covered by the exemption from attachment contained in Section 60(1)(b). The three items in respect of which the District Judge set aside the order of attachment were a cutting press, a machine for processing plates and 150 pieces of dies. There is no dispute that these machines were being used in the trade of the defendant. The contention that they are not tools is based upon the notion that anything which is a complicated implement would not fall under the category of tools.

The Concise Oxford Dictionary defines 'tool' as a mechanical implement, machine used in making machinery. There is thus no warrant for limiting the connotation of the term to simple tools and not mechanical implements used in a trade. Indeed, a sewing machine, which is not a simple tool but a complicated machine, was held to be an artisan's tool by the Allahabad High Court in *AIR 1941 All 157*. That question had to be determined with reference to Section 60(1)(b). Civil P. C. Similarly a tractor

used by a farmer was held to be an implement of husbandry though it was not a simple tool of a farmer in *Dwarka Prasad v. Municipal Board, Meerut*, AIR 1958 All 561. I respectfully agree with these decisions and hold that there is no justification for restricting the connotation of the term 'tools' occurring in Section 60(1)(b) to simple implements used by artisans for purpose of their trade.'

8. The appellant in this case as AW .7 stated that his workshop is in a place 18 ft. x 10 ft. He has fixed up the machines under attachment to do the various types of repairs. The lathe machine, drilling machine and the welding machine were worked by electric energy. The lathe machine and the drilling machine can also be operated by hand. Whenever the electric energy fails, he works them by hand. Welding machine cannot operate without electricity. He has also stated that he works on all these machines himself whenever he is required to do a job on these machines. He does not have any employee to work them. It is not disputed that to work on a lathe machine alone is an artisan's job. Similarly, the work on a drilling and a welding machine is also that of an artisan. The fact that the judgment-debtor is a mechanic and, therefore, an artisan is not disputed before me. There is no dispute that a mechanic may require the help of one or all these machines to do the repairs of motor cars, tractors etc. and other machines. I am, therefore, of the opinion that the machines under attachment are tools of artisan and they are not liable to attachment under proviso (b) of Section 60(1) of the Code of Civil Procedure.

9. In the result, the appeal succeeds and the orders passed by the courts below are set aside. The claim of the judgment-debtor under Section 47, Civil P. C. is allowed. The articles under attachment shall be released. Having regard to the circumstances of the case there will be no order as to costs of this Court.

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