

ALLAHABAD HIGH COURT

Dwarka Prasad

Vs.

Municipal Board, Meerut

Civil Revn. No. 355 of 1953. against order of City Munsiff, Meerut,

(R.N. Gurtu and D.N. Roy, JJ.)

17.01.1953. 29.01.1958

JUDGMENT

R.N. Gurtu, J

1. This is a civil revision under Section 25 of the Small Cause Courts Act brought by a judgment-debtor. The opposite party to this revision had obtained a money decree against the judgment-debtor in 1945. In or about the year 1951 he sought to execute this decree by attachment and sale of a tractor belonging to the judgment-debtor. The judgment-debtor sought protection from attachment of the tractor in question under Clause (b) of the Proviso to Section 60 (1) of the Code of Civil Procedure. The Small Cause Court refused to give him the protection and held that the tractor was not exempt from attachment. The Small Cause Court also held that the judgment-debtor was not an agriculturist. It rejected the objection of the Judgment-debtor with costs.

2. Hence the judgment-debtor has come up by way of civil revision under Section 25 of the Small Cause Courts Act. Before we quote sub-clause (b) of the proviso to Section 60 (1) of the Code we might state that it is admitted that the judgment-debtor was carrying on mechanised farming in a farm of roughly 1,200 bighas. It is also admitted that the principal source of livelihood of the judgment-debtor is now agriculture, though in the past the judgment-debtor had income from other sources. There is no reason therefore why he should not be considered an agriculturist. Now we will quote 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 seedgrains 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 used in sub-clause (b) have not been defined in the Code and since certain arguments have been advanced on the basis of the meaning of those words, it is necessary that we should give the meaning of those words as is found in an admittedly standard dictionary, namely, the Shorter Oxford English Dictionary, Second Edition, 1936:

"ARTISAN - One who practices or cultivates an art; one occupied in any industrial art; a mechanic, handicraftsman.

AGRICULTURIST - At first, a student of the science of agriculture; later, a farmer.

IMPLEMENT - Things that serve as equipment or outfit; the apparatus, instruments etc. employed in any trade or in executing any piece of work; as agricultural implements, flint implements, etc.

HUSBANDRY - The business of a husband-man, agriculture, farming, industrial occupation generally.

LIVELIHOOD - Manner of life; Means of living, Maintenance; Income, revenue, stipend." The contention which was advanced before us was that sub-clause (b) showed that the protection was only to be afforded to small agriculturists and to implements of a rudimentary character and that sub-clause (b) of the Proviso could not protect implements of husbandry of substantial farmers and implements of a mechanised character. We have already given the dictionary meaning of the principal words used in this clause. Upon the meaning which can be attached to the words we see no reason for holding that clause (b) of the Proviso applies only to the case of very small farmers and not to the case of larger farmers. It seems to us what this clause aims at is to protect the implements of every farmer so as to enable him to continue earning his livelihood in the same way as he has been earning previously. There is nothing to indicate that the clause is limited to small farmers. The further difficulty in holding that it was limited to small farmers would be that there would be no criterion for determining what a small farmer was.

3. In support of the contention that mechanized implements of husbandry are not protected by clause (b) of the Proviso, the case of *Sha-ligram Shriram v. Sheopratap Wallabhdas*¹, was cited. That was a case where a motor tractor was sought to be attached. It was held that a motor tractor was not an implement of husbandry. In that case, however, it appears that at the time of attachment the motor tractor was not being used for agriculture at all' but was being used for driving a flour-mill. In those circumstances, the tractor was clearly not exemptable and, therefore, it was not necessary to consider whether it could be an implement of husbandry. In that view of the matter we think that the expression of opinion that the motor tractor could not be an implement of husbandry was mere obiter.

4. On the other hand, in the case of *Udharam Delumal v. Rozi Shambe*², it has been laid down that the term "implements of husbandry" in clause (b) of the Proviso should be interpreted in a fair and reasonable and even a generous spirit and not in a narrow manner. In this case it was held that an engine or a water-pump was necessary for the

¹ IR 1939 Nag- 3

² AIR 1939 Sind 96

agriculturist to irrigate and cultivate his fields and earn his livelihood as an agriculturist. There too an argument was raised that clause (b) of the Proviso was intended to apply to poor agriculturists. That contention was rejected and the Court was of the view that it would be wrong to interpret clause (b) in such a manner as to limit its application only to primitive implements and that the needs of progressive agriculture require that a broader meaning should be given.

5. In the case of *Bindeshari v. Banshilal reported in*³ the paraphernalia of a Soap Factory was sought to be attached. An objection was raised that it could not be attached because the paraphernalia did not constitute the tools of an artisan within the meaning of clause (b) of the Proviso to Section 60 (1) of the Code. The Court was of the view that the entire paraphernalia of the Soap Factory should be considered as tools of an artisan within the meaning of Section 60 (1), Proviso (b) of the Code and exempted the paraphernalia. Its view was that the clause (b) had to be liberally construed.

6. Upon a reading of clause (b) of the Proviso to Section 60 (1) of the Code, we are of the view that a Court has to decide whether the particular implement sought to be attached is necessary to enable the judgment-debtor to earn his livelihood as such and if the Court is of the view that the particular implement is so necessary to enable the livelihood to be earned as such, then that implement of husbandry must be protected from attachment.

7. In this particular case it is evident that without the tractor it would not be possible to run the farm and it is evident that if the farm is not run the judgment-debtor will cease to earn his livelihood as an agriculturist. By the use of this tractor he is no doubt able to earn a substantial living but in our view the substantial nature of income derived does not affect the question because we think that the livelihood which the Court should enable the judgment-debtor to maintain, is the livelihood which he was maintaining as such at the time when the attachment was sought. We do not agree with the contention which was advanced that even if this tractor was attached, the judgment-debtor could carry on his livelihood as an agriculturist by other means though not on the same scale.

8. Learned counsel urges that even though this tractor is attached, the agriculturist judgment-debtor can still perform the necessary agricultural operations by substitute implements. We do not see why we should force this agriculturist to go in for substitute implements of an inferior

character when the law itself gives him the right to pursue his livelihood in the same manner as he was pursuing it before the attachment application was made with the help of his existing implements. We may note that it is not suggested that he has any other tractor. We think that we should not discourage the use of modern implements for agriculture. The view taken by the Court below of clause (b) of the Proviso to Section 60 (1) of the Code was far too restrictive in character and, in our view, erroneous.

³ AIR 1932 All 344

9. Accordingly we allow this revision and uphold the objection of the judgment-debtor to the attachment and sale of the tractor in question. The tractor should be released from attachment forthwith. Costs of this revision will be on the parties.

Revision allowed.