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v.
Election Com-
mission of India,
and others
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indicative of the limitation that must be placed on other-
wise wide language of the opening part of section 88. If
under section 88, any place outside the State could be
fixed then the words "any other place" would not have
been used in the proviso. The words "any other place in
the State" mean a place other than a place in the State
appointed by the Election Commission. The learned
counsel relies in this connection on *Hari Vishnu v. Ahmad
Syed* (1), where it was held that "the argument of the
learned counsel ignores from consideration the proviso to
section 88. In my opinion the main section and the proviso
have to be read together and after they are so read, it is
clear that the place of the trial must be situate within the
State from which the petition arises." It is well establish-
ed that terms of an intelligible proviso may throw consider-
able light on the ambiguous import of the statutory words
and a proviso may in certain cases be a useful guide in
the selection of one or other of two possible constructions
of the words in an enactment. We are in respectful
agreement with the view expressed in the said Nagpur
decision.

The order of the election Commission, respondent No. 1,
dated the 29th of May, 1964, is, therefore, outside the scope
of its authority under section 88 and has to be struck down.
The order, dated the 6th August, 1964, is merely consequen-
tial and would fall with the order, dated the 29th May,
1964. In the result the petition is allowed, and the orders,
dated the 29th May, 1964, and 6th August, 1964, of respon-
dent No. 1, quashed. There will, however, be no order as to
costs.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.
B.R.T.

APPELLATE CIVIL

Before *Daya Krishan Mahajan and S. K. Kapur, JJ.*

MESSRS FANCY NETS LTD.,—*Appellants.*

versus

MESSRS KISHAN DASS KHIA RAM AND OTHERS,—*Respondents.*

Execution First Appeal No. 39-D of 1961.

1965
February, 9th

*Provincial Insolvency Act (V of 1920)—Ss. 20 and 52—Receiver
appointed under S. 20—Whether representative of the insolvent—
Order passed under S. 52—Whether appealable—Code of Civil*

(1) A.I.R. 1954 Nagpur 166 (182).

Procedure (V of 1908)—Order 21 Rule 46—Debt due to judgment-debtor—Whether saleable in execution of decree.

Held, that the Receiver appointed under section 20 of the Provincial Insolvency Act, 1920, cannot be termed as a representative of the party within the meaning of section 47 of the Code of Civil Procedure, 1908. An order passed by the executing Court under section 52 of the Provincial Insolvency Act is not appealable under section 75, thereof, as it is not an order made in the exercise of insolvency jurisdiction, nor is such an order appealable under Order 43 rule 1 of the Code of Civil Procedure.

Held, that debt is a chose-in-action and, therefore, a saleable property. Debt like any other property can be attached and sold; only the mode of attachment is different. Whereas attachment in case of movable property is effected by actual seizure, a debt is attached by a prohibitory order as provided in Order 21 rule 46 of the Code of Civil Procedure.

Execution First Appeal under section 96 of the Code of Civil Procedure, 1908, from the order of Shri Dalip Singh, Sub-Judge, First Class, Delhi, dated 22nd March, 1961, staying the execution proceedings and directing the Hindustan Mercantile Association to deliver the amount under the attachment to the Official Receiver.

SULTAN SINGH, ADVOCATE, for the Petitioner.

H. R. SAWHNEY, ADVOCATE, for the Respondent.

ORDER

KAPUR, J.—This Execution First Appeal was referred to a Division Bench in view of the importance of certain questions involved therein.

Kapur, J.

Briefly the facts are that Fancy Nets Ltd., filed a suit for recovery of Rs. 15,000 against Messrs, Kishan Das-Khia Ram, and obtained an order for attachment before judgment of money belonging to the said Messrs. Kishan Das-Khia Ram, and lying with Delhi Hindustani Mercantile Association, respondent No. 2. The appellant succeeded in the suit and a decree for a sum of Rs. 15,743.65 Paise against Messrs Kishan Das-Khia Ram, was passed by the Bombay Court. An application was made for the transfer of this decree to Delhi which was allowed. The order of attachment before judgment was served on respondent No. 2, on the 20th of January, 1961, while the suit was decreed on 2nd

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February, 1961. After the transfer of the decree to Delhi the appellant filed an execution application for realisation of the attached amount on 16th February, 1961, and notices were served on respondent No. 2, on the 20th of February, 1961. On 25th February, 1961, the respondent filed objections which were rejected by order, dated the 8th of March, 1961, and respondent No. 2 was directed to deposit the amount with the executing Court. On 21st of January, 1961, a petition was filed at Delhi for adjudging the judgment-debtor as an insolvent and the said petition was admitted by the Insolvency Judge on 16th February, 1961. On 22nd February, 1961, the Insolvency court appointed an interim receiver to take into possession all the assets of the debtor with the Delhi Hindustani Mercantile Association, respondent No. 2, and shop No. 5464, Chandni Chowk, Delhi. This appointment was made under section 20 of the Provincial Insolvency Act. On 15th March, 1961, the interim receiver made an application under section 52 of the Act, that the property of the judgment-debtor be delivered to him and on 22nd March, 1961, the executing Court stayed the execution proceedings against the judgment-debtor and directed respondent No. 2, to pay the attached amount to the interim receiver. It is against this order, that the present appeal is directed.

Mr. Sahni, learned counsel for the respondent, has taken a preliminary objection regarding the competency of the appeal. He submits that the competency of the appeal is to be determined on the basis of the provisions in the Civil Procedure Code since the impugned order, is not one passed by an Insolvency Court. He submits that a receiver appointed under section 20 of the Provincial Insolvency Act, does not represent the insolvent and he has only such of the powers as are conferable on a receiver appointed under the Code of Civil Procedure 1908, as the Court may direct. Since such a receiver does not represent the judgment-debtor, it cannot be said that the order determined the questions arising between the parties to the suit in which the decree was passed or their representatives within the meaning of section 47 and consequently an appeal under section 96 of the Civil Procedure Code will not be competent. Mr. Sahni, draws our attention to *Satyanarayan Banerji v. Kalyani Prosad* (1), wherein it was held that a receiver appointed

(1) A.I.R. 1945 Cal. 387.

under Order 40, Rule 1, is not the representative of any party within the meaning of section 47. According to the learned counsel an interim receiver appointed under section 20, merely operates to change the possession, but does not affect the title of the property, which continues to vest in those in whom it was vested when the appointment was made. It is well established that the receiver appointed under Order 40, rule 1, of the Civil Procedure Code cannot be termed as a representative of the party to the suit. In *Ajodhya Roy v. Hardwar Roy* (2), Mukerjee J., laid down two tests in order to determine whether a particular person is a representative of a party to the suit. They are—

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“first, whether any portion of the interest of the decree-holder or of the judgment-debtor, which was originally vested in one of the parties to the suit, has, by act of parties or by operation of law, vested in the person, who is sought to be treated as a representative, and secondly if there has been a devolution of interest whether so far as such interest is concerned that person is bound by the decree.”

Having regard to the above we are of the view that the Receiver appointed under section 20 of the Provincial Insolvency Act, cannot be termed as a representative of the party within the meaning of section 47. The impugned order was passed by the executing Court, under section 52 of the Provincial Insolvency Act, which provides, “where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an insolvency petition by or against the debtor has been admitted, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered, to the Receiver, but the costs of the suit in which the decree was made and of the execution shall be a first charge on the property so delivered and the Receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.” An order under section 52 of the Provincial Insolvency Act would not be appealable under section 75, thereof as it would not be an order made in the exercise of insolvency jurisdiction, nor is an order under section 52 appealable under order 43, rule 1.

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In the result no appeal would be competent either under section 96 or Order 43, rule 1, Civil Procedure Code. It was contended by the learned counsel for the appellant that the order under section 52, was itself without jurisdiction and, therefore, even if the appeal is not competent it can be treated as a revision. The learned counsel submits that order under section 52 could be made only where execution of a decree is issued against any property of a debtor which is saleable in execution and that the money lying with respondent No. 2, was not property saleable in execution. We are unable to agree to this submission. Debt is a chose-in-action and, therefore, a saleable property. Debt like any other property can be attached and sold. Only the mode of attachment may be different. Whereas attachment in case of movable property is effected by actual seizure, a debt is attached by a prohibitory order. Reference in this connection may be made to Order 21, rule 46, Civil Procedure Code. In our opinion there is no force in this contention. In the result the appeal fails and is dismissed. There will, however, be no order as to costs.

Mahajan, J. D. K. MAHAJAN, J.—I agree.
 B.R.T.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and Mehar Singh, J.

THE DELHI CLOTH & GENERAL MILLS CO., LTD.,—*Petitioner.*
versus

THE CHIEF COMMISSIONER, DELHI AND OTHERS,—*Respondents.*

Civil Writ No. 3-D of 1963.

1965
 February, 11th. *Factories Act (LXIII of 1948)—S. 112—Rules framed under—Delhi Factories Rules (1950)—Rules 5 and 7 and Schedule—Whether valid—Levy of Licence fees and renewal fees—Whether valid,*

Held, that the object of the Factories Act, 1948, is to ensure the safety, health and welfare of persons employed in Factories which are required to be approved, licensed and registered under section 6 of the Act. To carry out the objects of the Act, rules are