

CHAPTER XXIII

GARNISHEE PROCEEDINGS

345. Garnishee Notice.- Upon the application of the decree holder, the Prothonotary and Senior Master may, in the case of-

- (1) any debt (other than a debt secured by a mortgage or a charge or a negotiable instrument), which the Civil Courts are not precluded from adjudicating upon by any law for the time being in force and which has been attached under Order XXI rule 46 of the Code of Civil Procedure; or
- (2) any movable property not in the possession of the judgment-debtor which has been attached under Order XXI, rule 46 of the Code of Civil Procedure; or
- (3) any negotiable instrument which has been attached under Order XXI, rule 51 of the Code of Civil Procedure; or
- (4) any movable property of the nature referred to in Clauses (1) to (3) above in the custody of any public officer other than an officer of any Court, which has been attached under Order XXI, rule 52 of the Code of Civil Procedure;

issue a notice to any person liable to pay to the judgment-debtor such debt or the amount due under such negotiable instrument or liable to deliver such movable property or to account for it to the judgment-debtor (hereafter referred to as “the Garnishee”) calling upon him within the period specified in the notice either to pay into Court the said debt or amount payable under the said negotiable instrument or deliver into Court the said movable property, as the case may be, or so much thereof as may be sufficient to satisfy the decree or order and the cost of execution or to appear before the Judge in Chambers and show cause why he should not be ordered to do so. The notice shall be served on the Garnishee, and if the Judge so directs, on the judgment-debtor also,. The notice shall be in Form No. 47 and shall be served eight clear days before the returnable date thereof.

Provided that, if by any law for the time being in force, the jurisdiction to adjudicate upon the debt or claim relating to the negotiable instrument or movable property in respect of which the application aforesaid is made is conferred on a Civil Court other than the High Court, the Judge in Chambers shall send the execution case to such competent Court and on such transfer the Court to which the case is transferred will deal with it in the same manner as if it had been originally instituted in that Court.

346. Procedure when Garnishee does not pay into Court or fails to appear. – Where the Garnishee does not, within the time specified in the notice or within further such time as the Judge may allow, pay into Court the said debt or the amount payable under the said negotiable instrument or does not deliver into Court the Said property or so much of the debt or amount or property as is sufficient to satisfy the decree or order and the cost of execution or does not appear and show cause against the notice, the Judge may order the Garnishee to comply with the terms of such notice or pass such other order as he may deem fit.

347. Procedure when Garnishee disputes his liability. – If the Garnishee disputes his liability, the Judge instead of making such order may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit, and upon the determination of such issue shall pass such order upon the notice as he may think fit.

348. If notice is dismissed, attachment to stand raised. – If the Garnishee appears in answer to the Garnishee notice and shows cause to the satisfaction of the Judge, the notice shall be dismissed and upon such dismissal the attachment order under Order XXI rule 46,51 or 52 of the Code of Civil Procedure shall stand raised and the prohibitory order, if any, shall stand discharged.

349. Claim of third person.- Whenever in any proceedings under this Chapter, it is alleged or appears to the Judge to be probable that some person other than the judgment – debtor is or claims to be entitled to the debt attached or the amount payable under the negotiable instrument or the property attached or claims to have a charge or lien upon or interest in such debt or amount or property, the Judge may order such third person to appear before the Judge, state the nature of his claim with particular thereof and if necessary, prove the same.

350 Order to be made on hearing third person. - After hearing such third person and any other person who may subsequently be ordered to appear, or in the case of such third or other person not appearing when ordered, the Judge may pass such order as hereinbefore provided or such other order upon such terms, if any, with respect to the lien or charge or interest, if any, of such third person or other person as the Judge may deem fit and proper including an order that any question or issue necessary for determining the validity of the claim of such third or other person be tried as though it were an issue in a suit.

351. Order against Garnishee to be executable as a decree in favour of decree-holder. – (a) An Order made by the Judge under rules 346, 347 or 350 against the Garnishee shall be executable as if it were a decree of the Court in favour of the decree-holder.

(b) When money or amount under the negotiable instrument or property is received in Court as a result of an Order under rules 346,347 or 350 above, the money shall not be paid out and further steps in execution in respect of the negotiable instrument or property shall not be taken till the time for filing an appeal against the said order is over and where an appeal is filed, till further orders of the Appellate Court.

352. Discharge of Garnishee. – Any payment or delivery made by a Garnishee in compliance with a garnishee notice, or an order made against him under this Chapter or any money or property realised in execution of an order under this chapter shall be a valid discharge of the Garnishees' liability to the Judgment debtor and to any other person ordered to appear as aforesaid to the extent of the amount paid or property delivered or property realized in execution, although the decree or order in execution of which the application under rule 345 was made or the order passed in the proceedings on such application may be set aside or reversed.

353. Garnishee proceedings against a firm.- Where a debt due by a firm to the judgment debtor has been attached, the firm may be proceeded against under this Chapter in the same manner as in the case of an ordinary Garnishee and the provisions of Order XXX of the Code of Civil Procedure shall, so far as applicable, apply to such proceedings, although one or more partners of such firm may be resident outside the jurisdiction of the Court; provided that any person having the control or management of the partnership business or any partner of the firm who is within the jurisdiction

of the court is served with the Garnishee notice. An appearance by any partner pursuant to such notice shall be sufficient appearance by the firm.

354. Cost to be in the discretion of the Judge. – The cost of any application under this Chapter and of any proceedings arising therefrom or incidental thereto, and of any order made thereon, shall be in the discretion of the Judge.

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