***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Execution No.102/1987**

% **Date of decision: 8th January, 2010**

M/S MOTOR INDUSTRIES CO. LTD. ….Decree Holder

Through: Mr. S. Vaidialingam & A. Suman, Advocates for Decree Holder in Ex. P. No.102/1987.

Versus

M/S MEETCO (LONDON) LTD. & ORS. ... Judgment Debtors

Through: Mr. S.K. Sharma with Mr. Dhruv Kumar, Advocates for Bank of Baroda.

AND

Execution No.10/1988

USHA INTERNATIONAL LTD. ….Decree Holder

Through: Mr. T.K. Ganju, Sr. Advocate with Ms. Divya Kesar, Mr. Manmohit Puri, Mr. Gaurav Dudeja & Ms. Aradhana Kaura, Advocates.

Versus

MEETCO (LONDON) LTD. & ORS. ... Judgment Debtors

Through: Mr. S.K. Sharma with Mr. Dhruv Kumar, Advocates for applicant Bank of Baroda.

AND

CCP No.23/1994

SPECIAL ORGANIZING COMMITTEE ….Petitioner/Relator

Through: Mr. Davinder Singh, Sr. Advocate with Mr. Saurabh Tiwari, Advocate

Versus

CHAIRMAN & MANAGING DIRECTOR
BANK OF BARODA & ORS. ... Respondents/Alleged Contemnors

Through: Mr. S.K. Sharma with Mr. Dhruv Kumar, Advocates

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes

2. To be referred to the reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. The claim of each of the decree holders in the two executions and the petitioner/relator in the CCP, in these three matters taken up together, is for the monies, earlier in the bank account of M/s. Meetco (London) Ltd. (hereinafter called Meetco) with Bombay branch of Bank of Baroda, respondents/alleged contemnors in the CCP (hereinafter called Bank). The two decree holders and the petitioner/relator in the CCP claim preference to the said monies, in satisfaction of their respective claims against Meetco. What falls for adjudication is *inter alia*, the priority of their respective claims and the effect of attachment before judgment and axiomatically whether the same has any preference over attachment and/or payment in execution.

2. Proceeding chronologically, the Special Organizing Committee for the 9th Asian Games, 1982 (hereinafter called SOC) on or about 2nd November, 1982 instituted CS(OS) No.1475-A/1982 under Section 20 of the Arbitration Act, 1940 *inter alia* against Meetco, averring that disputes and differences had arisen between them with respect to an agreement containing an arbitration clause and for appointment of the arbitrator. It was the case of SOC that monies were due from Meetco to SOC. The suit was accompanied

with an application under Section 41 r/w Schedule II of the Arbitration Act, 1940 for the relief of attachment before judgment of the amounts held by Meetco in its bank accounts in India and for appointment of a receiver to take charge of the amounts lying in the bank accounts and/or for restraining Meetco from operating the said bank accounts. Vide *ex parte* order dated 2nd November, 1982 in the said suit, the order of attachment before judgment of the amounts lying in the bank accounts of Meetco was made and a receiver was also appointed to take charge of the said amounts and Meetco was restrained from operating the said bank accounts. The said suit was subsequently disposed of vide order dated 4th February, 1983 with the appointment of the arbitrators and the counsel for SOC and Meetco arrived at an arrangement qua interim relief during the pendency of arbitration proceedings. It was agreed that the amounts lying to the credit of Meetco in the Bank shall continue to remain attached before judgment and shall not be operated upon or withdrawn by Meetco and the said amounts shall be kept by the Bank in fixed deposit initially for a period of one year, to be renewed for each succeeding period of one year till the ultimate conclusion of arbitration proceedings and proceedings arising therefrom and to be not released except under orders of the court. Accordingly the Receiver earlier appointed was discharged though attachment before judgment was directed to continue. A direction was also given to the Bank to convert the amount in fixed deposit as agreed and the amounts were ordered to be held subject to further orders in the suit.

3. On or about 4th January, 1983 Usha International Ltd. (hereafter called UIL) instituted suit No.16/1983 in this court *inter alia* against Meetco for recovery of Rs.29,61,475/- with future interests and costs. SOC was also impleaded as defendant No.4 in the said suit in view of the orders of attachment before judgment in the suit No.1475A/1982 at the instance of SOC. It was the claim of UIL in the suit that it had advanced Rs. 14 lacs to Meetco in trust and the said amount was lying in account of Meetco with the Bank in trust of UIL. Vide *ex parte* order dated 5th January, 1983 in the said suit Meetco was restrained from operating the said bank account. It was further directed on 8th February, 2004 that the amount which had been directed to be kept in fixed deposit vide orders in CS(OS) No.1475A/1982 be continued to be kept so subject to

further orders of the court and Meetco will intimate to the court in the suit instituted by UIL the result of the arbitration proceedings as soon as the award, if any, is given by the arbitrator therein; Meetco was further restrained from making any agreement in relation to the amount with SOC without leave of the court. In the order dated 8th February, 1984 it is also noted that UIL had tried to intervene in CS(OS) No.1475A/1982 (supra) but had not been allowed to intervene. Though Meetco initially contested the said suit and issues were framed but subsequently was proceeded against *ex parte*. I may also mention that UIL, upon Meetco being proceeded ex parte, on 11th February, 1987 gave up the claim against SOC earlier impleaded as defendant No.4 and vide order dated 11th February, 1987 SOC was discharged as the defendant in the suit. The said suit was decreed vide judgment dated 27th October, 1987 for the sum of Rs.29,61,475/- with costs and pendente lite and future interest at the rate of 19.5% p.a. In the said judgment it was also held that the amount of Rs.14 lacs lying in the account aforesaid of Meetco with the Bank was the trust property for the benefit of UIL.

4. On or about 28th May, 1985 Motor Industries Co. Ltd. (hereinafter called MICO) instituted suit No.962/1985 *inter alia* against Meetco, under Order 37 of the CPC for recovery of Rs.3,26,250/-. Meetco failed to enter appearance in the said suit and vide order/judgment dated 7th May, 1986 the suit was decreed for Rs.3,26,250/- together with interest at 12%.

5. On or about 7th August, 1987 MICO applied for execution of decree in its favour in CS(OS) No.962/1985. The said execution was registered as execution No.102/1987 (supra). On 11th August, 1987 warrants of attachment in the sum of Rs.3,91,240/- out of amount lying to the credit of the Meetco in its account with the Bank were issued by this court. It is noted in the Order dated 14th April, 1988 in the said execution that the warrants of attachment had been received back duly executed and the Bank was directed to remit the amount of Rs.3,91,240/- to this court. In the order dated 26th October, 1988, it is recorded that a letter had been received from the Bank that an amount of Rs.26,18,821.92p lying in the said bank account had been remitted to the Parliament Street branch of the Bank for deposit in the court. In the order dated 3rd March, 1989 it is

recorded that the Manager of the Parliament Street branch had informed that the cheque for Rs.26,18,821.92p in favour of UIL had been handed over to their advocates. A show cause notice was issued to the Bank as to why the amount of Rs.3,91,240/- be not recovered from the Bank for its failure to remit pursuant to the attachment order of the court.

6. On or about 8th January, 1988 UIL applied for execution of the decree in suit No.16/1983 (supra) in its favour. The said execution was registered as execution No.10/1988 (supra). Vide order dated 13th January, 1988 in this execution, warrants of attachment of the amount lying in the account with the Bank were issued and it was further ordered that if the amount had been converted into a fixed deposit as directed vide orders in CS(OS) No.1475A/1982 and in CS(OS) No.16/1983, the amount due under the said FDR be remitted to the court. It is noted in the order dated 12th April, 1988 in the said execution that the warrants of attachment had been duly served. On 18th April, 1988 it was informed to the court that a sum of Rs.26,18,821.92p only was lying to the credit of the account in the Bank. This court directed the bank to issue a banker's cheque in favour of the decree holder UIL in the said amount. On the next date i.e. 25th April 1988 the representative of the Bank appeared before the court and handed over a cheque for Rs.26,18,821/- to UIL. The execution was disposed of. Subsequently, applications were moved by the Bank in the said execution for refund of the amount and which are now pending consideration.

7. On or about 31st November, 1993 SOC filed the CCP aforesaid averring that SOC had on 24th March, 1993 written to the Bank enquiring the status of the amounts which were directed to be kept in fixed deposit vide order dated 4th February, 1983 (supra) in CS(OS) No.1475A/1982; that in response thereto the Bank had informed of the payment of the amount to UIL as aforesaid. It was averred that the Bank in connivance with UIL had disobeyed the orders of the court in CS(OS) No.1475A/1982 and had also failed to inform the court in the execution No.10/1988 filed by UIL of the earlier orders in the execution filed by MICO. Notice of the CCP was issued to the Bank, which has been contesting the same. Though UIL was also initially impleaded as an alleged contemnor

in the CCP but was subsequently discharged. Also, as aforesaid, Bank filed application in disposed of Execution No.10/1988 (filed by UIL) for refund of the monies paid to UIL under Orders in that Execution Petition.

8. It is in the aforesaid background that the questions framed in the first paragraph herein above arise for consideration. The questions can be more specifically framed as under:-

A. Whether there is any error/mistake/illegality in payment by the bank to UIL and if so whether UIL is liable to refund the amounts paid to it in execution.

B. If the aforesaid amounts are liable to be refunded by UIL, who has a first preference with respect thereto, whether SOC or UIL or MICO.

C. Whether the bank has acted contumaciously.

9. The money having already been paid to UIL in execution filed by it and under orders of this court, the first question which arises is whether UIL is liable to refund the money. The said question leads to further two questions.

D. The effect of the attachment before judgment in favour of SOC.

E. The effect of the attachment in execution by MICO.

10. While the warrants for attachment in execution by MICO were issued on 11th August, 1987 and reported to have been served on 11th September, 1987, the warrants in execution by UIL were issued only on 13th January, 1988 and served on 19th April, 1988. An ancillary question which has arisen is of the validity of the attachment order issued in the execution by UIL. It is contended by the adversaries that the said attachment is contrary to Section 39 of the CPC; it is urged that this court could not have issued warrants of attachment with respect to monies lying in the bank account outside the territorial jurisdiction of this court and if at all execution was desired by attachment of the said monies, the only remedy of UIL was to apply for transfer of the decree for execution to the court within whose jurisdiction the monies sought to be attached and recovered in execution were situate. I may notice that this plea though taken against UIL only, equally applies to execution by MICO also. The senior counsel for UIL has met the

said plea by contending that the bank in response to the execution did not raise any such plea; on the contrary transferred the monies to its branch within the jurisdiction of this court at Parliament Street, New Delhi and which branch made the payment; that after payment no such objection can be raised. The senior counsel in this regard also relies upon ***Indoor Table Tennis Trust Vs. Kapil Khanna*** AIR 2003 Delhi 273 where this court has held that if a garnishee, as the bank in this case is, does not raise any objection on this ground before the garnished amount is paid into executing court, that would not be permitted to be raised later as the same would amount to allowing the garnishee to abuse the procedure of the court. This court had followed its earlier judgment in ***M/s S.N. Sunderson & Co. Vs. M/s Harbans Singh Sobti & Co.*** ILR (1972) 1 Delhi 263. In view of the said settled position, the plea now taken is not tenable. Reliance is also placed on ***Official Assignee vs. S.P. Dayabhoy*** AIR 1937 Rangoon 234 laying down that a garnishee paying money without objection cannot subsequently challenge the validity of the said payment and cannot recover back the money and ***Secretary of State Vs. Tatyasaheb Yeshwantrao Holker*** AIR 1932 Bombay 386 on the proposition that monies paid under compulsion of legal process subsequently discovered to have been not due cannot be recovered.

11. In so far as the preference of claim of SOC over that of UIL is concerned, I may at the outset state that though not urged by any of the counsels, in my view SOC cannot have any preference over UIL in view of the order dated 8th February, 2004 (supra) in the suit filed by UIL. SOC was a party to the said suit. SOC was impleaded as a party to the suit after the efforts of UIL to implead itself as a party in arbitration suit [CS(OS) 1475A/1982] filed by SOC had failed. SOC was impleaded as a party to the suit only for the reason of having first obtained the order of attachment before judgment in the arbitration suit filed by it and to ensure that the same does not come in the way of UIL recovering the monies in the Bank and of which at least Rs.14 lacs UIL claimed were held by the bank, in trust for UIL. The position was clarified by the court in the order dated 8th February, 2004 (supra) in the suit filed by UIL and which order was made in the presence of the counsel for SOC. It was clearly held that as on that date both the UIL &

SOC merely had orders of attachment before judgment of the same amount with neither having decree in its favour; the court thus left the amounts to be paid to whosoever succeeded in obtaining a decree first against Meetco. SOC was further directed to inform the court in the suit filed by UIL, if an award in its favour and against Meetco was made before the suit filed by UIL against Meetco was decreed. SOC has nowhere averred that it at any point of time before the payment of the amounts by the Bank to UIL, informed the court that any arbitration award had been made in its favour. Thus the order of attachment before judgment in favour of SOC, merged with the order aforesaid in the suit No.16/1983 in which both UIL and SOC were parties. Even though UIL subsequently discharged SOC from the said suit but the earlier order in the suit remained and SOC did not take any objection thereto. The decree in favour of UIL also, in so far as the sum of Rs 14 lacs is concerned, found the same to be lying in the bank account in trust for UIL. Thus SOC cannot be said to be having any preference over the said amount.

12. The grievance of SOC against the Bank and forming the subject matter of CCP is also found to be misconceived in the light of the said order. In view of the said order there was no obligation on the Bank to inform SOC of the orders in execution by UIL in as much as SOC was already aware of the said proceeding and failed to take any steps preventing UIL from, in the event of succeeding in its suit, recovering the said amounts in execution. In fact UIL gave up SOC as a party to the suit only after Meetco had been proceeded against *ex parte*. SOC ought to have known that upon Meetco having been proceeded against *ex parte* the suit in favour of UIL was likely to be decreed and the claim of UIL to the monies of which attachment before judgment had been sought by SOC will have preference over the amounts if any found in favour of SOC.

13. Though in view of the aforesaid position, there is no need to enter into the legal question of effect of attachment before judgment, on attachment in execution, but I may notice that the senior counsel for UIL has placed reliance on –

(i). ***V.S. Thiru Venkita Reddiar Vs. S. Noordeen*** AIR 1978 Kerala 11 holding that in view of Order 21 Rule 54 r/w Appendix E, Form No.24 of the CPC, the only effect of attachment before judgment is to prevent

alienation and not to confer title by way of charge or otherwise on the person seeking attachment before judgment; it is only aimed at private alienations and does not prevent involuntary alienations; such being the effect of an attachment, whether before or after decree, it does not bar a court sale in execution of another decree and with the court sale the interest of the judgment debtor passes to the auction purchaser and there is nothing left to be sold later at the instance of the party who had earlier in point of time obtained attachment before judgment;

(ii). ***Durga Prasad Vs. Seetla Prasad Tewari*** AIR 1940 Oudh 80 laying down that a person attaching a sum of money before judgment cannot claim priority over another attaching it after decree;

(iii). ***Profulla Nath Tagore Vs. Asia Khatun*** AIR 1934 Calcutta 426 laying down that an attachment before judgment does not bar any person holding a decree against the defendant from applying for sale of property under attachment in execution of such decree; attachment before judgment does not confer any priority of title on the attaching creditor.

(iv). ***Punjab Industrial Agency Ltd. Vs. Mercantile Bank of India Ltd.*** AIR 1930 Lahore 852 laying down that the bank making payment through mistake in respect of a cheque countermanded by the drawer is not entitled to refund of amount from the payee. On the basis thereof, it was contended that even if the bank had committed any mistake in paying the monies to UIL in execution filed by it, that did not entitle to bank to claim refund from UIL;

(v). ***China & Southern Bank Ltd. Vs. Te Thoe Seng*** AIR 1926 Rangoon 14 also laying down that money paid under mistake of fact with which the payee has nothing to do cannot be recovered.

14. The attachment in favour of SOC was before judgment. The position with respect to such attachment does not admit of any ambiguity. Rule 10 of Order 38 dealing with attachment before judgment itself provides that such attachment does not bar any person holding a decree against the defendant from applying for sale of property under

attachment in execution of such decree. The principle would also apply where instead of sale, property under attachment being money, is paid in execution of decree. Form No.5 7 and 7A prescribed in appendix F of CPC, of attachment before judgment also indicate that the same is only a restraint on the defendant or on some other person holding the property of the defendant and does not come in the way of another person holding decree against such defendant from satisfying his decree from such property. I therefore respectfully concern with the view taken by the Kerala, Oudh and Calcutta High Courts in the judgments (supra) to the effect that attachment before judgment does not come in the way of another decree holder satisfying his decree from attached property. I also find the Allahabad High Court in ***Banta Singh Vs Dy. Director of Consolidation*** AIR 1973 All 455 and the Bombay High Court in ***Rango Ramchandra Kulkarni Vs Gurlingappa Chinappa Muthal*** AIR 1941 Bombay 198 to have taken the same view. The effect of attachment before judgment is only to prevent private alienations; if the goods/property attached disappears before the claim of the party attaching before judgment fructifies the attachment before judgment would be of no avail. Since, the defendant ceases to have any rights in the property which was attached in the hands of the garnishee, the party attaching before judgment cannot have any claim against the garnishee also.

15. The attachment at the instance of MICO in execution of its decree was definitely before the attachment at the instance of UIL. What falls for consideration is whether attachment post decree, in execution is different from attachment before judgment. Whether the decree holder attaching first has any preferential rights.

16. Order 21 Rule 43 provides for attachment of moveable property in hands of judgment debtor by actual seizure. Order 21 Rule 46 provides for attachment of money, not in possession of judgment debtor, by prohibiting the person in possession of the same, from giving it over to the judgment debtor. This is the only effect of such attachment. Thus the language of attachment in execution is same as of attachment before judgment. Besides the judgment in ***V.S. Thiru Venkita Reddiar*** (supra) earlier the Full Bench in ***Govt. of the United State of Travancore and Cochin Vs Bank of Cochin Ltd.*** AIR 1954 Trav-Co. 243 had also held that an attachment under Order 21 Rule 46

has merely the effect of preventing private alienation of the property; it does not create any security, charge or lien in favour of attaching creditor. I respectfully concur, also for the reasons following– Under Sections 270 & 271 of the Code of 1859, the creditor who first attached the property had a statutory priority to have his claim satisfied in full, to the exclusion of other creditors; the superior position so assigned to the first attaching creditor, led to scrambles and malpractices among attaching creditors and with a view to put an end to the same, the Section was changed by the Code of 1877 so as to place all decree holders on an equal footing regardless of any priority in attachment.

17. What cannot also be lost sight of is that the attachment at the instance of UIL was at the stage of the suit itself and which was much prior to the attachment in execution by MICO. That being the position, even if there is to be any priority of earlier attachment, the attachment by UIL was before the attachment at the instance of MICO. The fact remains that notwithstanding the attachment, the monies were not paid to MICO and before the stage for payment to MICO could be reached, were paid to UIL. Thus MICO cannot have any preference for the said reason.

18. The counsel for the MICO has also contended that the court, in execution by UIL, erred in directing the payment by Bank directly to UIL; if the money had been directed to be deposited in this court, it would have been rateably distributed in accordance with Sections 63 & 73 of the CPC.

19. Section 63 of the CPC only provides the fora in which the claims qua property under attachment are to be adjudicated. The said fora has to be of the court of the highest grade and if there is no difference in grades between the courts then the court under whose decree the property was first attached. It does not provide that the payment has to be made to the decree holder attaching first. The fact remains that in the present case though the attachment in execution by MICO was before the attachment in execution by UIL but the payment was directed to be made to UIL before it was directed to be made to MICO. Section 63 (2) itself provides that nothing in sub Section (1) shall be deemed to invalidate any proceedings taken by a court executing one of such decrees. Thus merely because in execution by UIL, the money, instead of being directed to be deposited in

court, was directed to be paid by the Bank directly to UIL, will not render such procedure invalid.

20. It is true that had the Bank, in pursuance to attachment at the instance of MICO or UIL, deposited the money in this Court, it could have been the subject of rateable distribution at least between UIL and MICO. However, the hard reality is, it has not so happened. The question is, what is the effect of payment to UIL. Firstly, as per decree in favour of UIL, out of Rs.26,18,821/- with the Bank, Rs.14,00,000/- was in trust for UIL. Thus only the remaining could be for rateable distribution. Secondly, even if Section 73 were to be held to apply, the remedy of MICO against wrongful payment, if any, of entire amount to UIL, under Section 73 (2) is by way of separate suit for refund / recovery of its dues. No such action has been taken by MICO. MICO is not entitled to any relief in these proceedings.

21. It is further contended that owing to failure of the Bank to disclose to the court in execution by UIL of the earlier attachment at the instance of MICO, MICO has been deprived of the right of prorata distribution; such non disclosure cannot be without consequences and it is urged that the consequences have to be the same as provided in Order 21 Rule 46 B. The said argument however does not prevail with me for the reason of the legislature in Section 73 (2) having provided the remedy of suit against person wrongfully receiving payment. No remedy has been provided against garnishee in such situation. It is not as if MICO was left with no remedy. It could have instituted a suit under Section 73 (2) against UIL. Thus the arguments of the counsel for MICO that the bank has acted in a slip shod manner and the explanation for non disclosure is unbelievable and that MICO as a decree holder cannot be left high and dry do not find favour with me. On the contrary, I find that the decree holder which is most agile and vigilant will certainly have advantage over a decree holder which has been lax and which does not give effect to the orders in its favour.

22. The counsel for the Bank has contended that the Bank could not distinguish between the different orders of attachment and addressed the letter dated 11th March,

1988 to the Registrar General of this court. Attention is invited to para 3 of the said letter where reference is made to the attachment at the instance of SOC.

23. The counsel for MICO has also argued that had the bank complied with the orders in the suit filed by SOC as well as the suit filed by UIL i.e. of keeping the monies in fixed deposit, the amount in the account would have been more than Rs.50 lacs and which could have easily satisfied the decrees in favour of UIL as well as MICO in entirety. It is further urged that the Bank has in any case availed of and used the monies and ought to be made to pay to MICO.

24. Aforesaid pleas do not fall for adjudication in these proceedings. This court is concerned only with the execution of the decree in its favour by MICO. MICO sought to execute the decree by attachment of the monies of the judgment debtor Meetco lying with the Bank. However before the said monies could be paid to MICO, they were paid to another decree holder namely UIL. UIL was satisfied with the execution and the execution preferred by it was disposed of as satisfied on payment approximately of Rs.26 lacs as aforesaid. The order for keeping the monies in fixed deposit was at the instance of SOC or UIL; UIL having made no grievance with respect thereto, MICO has no locus to make a claim against the bank on that basis. Of course SOC can in its contempt make a claim against the Bank on that basis but no such claim has been made out in the CCP. No grievance has been made of the Bank having not kept the monies in fixed deposit. The only grievance is of payment to UIL without disclosing the earlier orders in favour of SOC; that claim has been found to be not tenable. In the entirety of the facts, this court is not inclined to of its own take any action after such a long lapse of time against the Bank for having not kept the monies in fixed deposit.

25. The counsel for the MICO has made elaborate arguments on the shifting stand of the Bank. It is contended that the Bank has in successive replies purported to expand the stand. It is contended that the first opportunity to the bank to explain was in the show cause notice issued on 3rd March, 1989 in execution by MICO; no reply was given by the Bank thereto; that in the reply filed to the contempt the Bank did not state that it was not served with the orders or that it was confused. It is also argued that the Bank has

concealed the truth and has not produced any records. However, I am in these proceedings not inclined to direct any enquiry as aforesaid, having found the payment to UIL to be in order.

26. The counsel for SOC on enquiry informed that a monetary arbitration award in favour of SOC was made rule of the court only on 4th October, 1996. Thus the decree in favour of SOC came into existence much after the payment of the monies by the Bank to UIL and for this reason also SOC cannot have any preferential right vis-à-vis UIL. Prior to 4th October, 1996, SOC was merely a potential decree holder.

27. The counsel for the Bank of Baroda has contended that there is no allegation of malafidies against the Bank or any of its officials; that since the judgment debtor in all the three proceedings was the same, the officials of the Bank dealing from time to time were confused. He relies upon ***Union of India Vs. Chauthi Prosad Gupta*** AIR 1961 Assam 121 where a Division Bench has held that Section 145 r/w Order 21 Rule 46 of the CPC only gives a right to a decree holder to execute the decree against the surety by means of execution petition but does not give any right to the decree holder to execute his original decree as against the third party who had been served with a prohibitory order under Order 21 Rule 46 and has disposed of the property in a breach of that prohibitory order. It is argued that the said view was reaffirmed by the Supreme Court in ***Chauthi Prosad Gupta Vs Union of India*** AIR 1967 SC 1080. However, the same relates to the position as existing prior to the 1976 Amendment of CPC. After the said amendment, Rule 46 B makes provision for execution of a decree against a garnishee as if against the garnishee itself, if the requirements thereof are satisfied. The counsel also relies upon ***Global Trust Bank Ltd. Vs. Fargo Freight Ltd.*** 2001 VI AD (Delhi) 920 where a Division Bench of this court held that the method and manner in which a third party can be compelled to make payment under a decree would be akin to the principles as laid down in the CPC for enforcing recovery against the garnishee. However, it having been held above that payment by the Bank to UIL, also as a garnishee, discharges the Bank vis-à-vis MICO, the question of adjudication of claim of MICO against the Bank does not arise.

28. In view of the aforesaid position:

(i) CCP No. 23/1994 is dismissed and the notice earlier issued of contempt is discharged.

(ii) The applications filed by the Bank for refund of the monies paid to UIL in Execution No.10/1988 are also dismissed.

(iii) The show cause notice issued to the Bank in Execution No.102/1987 is discharged. The counsel for the decree holder in Execution No.102/1987 having stated that there are no other properties of judgment debtor Meetco from which the decree can be executed, the Execution No.102/1987 is also disposed of as unsatisfied.

29. The result is that the monies paid to UIL shall remain with the UIL. In the aforesaid facts, no order as to costs.

RAJIV SAHAI ENDLAW
(JUDGE)

January 08, 2010
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