

Short notes

ATTACHMENT & ARREST

Ch. 7.1 Properties which cannot be attached

A suit in a civil court concerning any right to any property may be decreed in favour of the plaintiff or may be dismissed. If the suit is decreed, the person in whose favour the decree is passed is called the decree-holder and a person against whom it is given is called the judgment-debtor. The decree-holder can resort to execution to realise the amount, by way of attachment of the property of the judgment debtor, or by ways of arrest of the judgment debtor or by both.

Attachment is an order of the court prohibiting the judgment-debtor from dealing with the property attached. It is only after attachment that it will be ordered to be sold by the court by court auction. Those properties which may be attached are mentioned in Sn.60 subject to certain exceptions.

Property liable for attachment:

Lands, Houses, other buildings, goods, moneys, cheque, Government Securities, debts, shares etc. as per Sn.60.

The following are not liable for attachment:

i) Necessary wearing apparel, cooking vessels, beds and beddings of the debtor, of his wife and children. Personal ornaments which should be with a woman by religion. (Eg.Mangala Sutra etc.)

ii) Tools of artisans, Agricultural implements including cattle and seed grain and agricultural produce as are necessary for livelihood.

iii) Books of account, a mere right to sue for damages, any right of personal services, etc.

iv) Stipends and gratuities and political pensions.

v) Wages of laborers and domestic servants payable in

kind or in money.

vi) Salary to the first Rs.400/- and two thirds of the remainder,

vii) A right to future maintenance etc. as per Sn.60 of C.P.C.

viii) Houses and buildings belonging to agriculturist, laborer or a domestic servant,

ix) L.I.C. Policies, Provident Fund Contributions.

Where the property is immovable the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in anyway. All persons are prohibited from taking any benefit from such transfer or charge..

The order shall be proclaimed at some place on the property or adjacent to the property by beat of drum or other customary mode. A copy of the order shall be affixed on a conspicuous part of the property or of the Court house (or in the office of the collector if it is land).

Ch.7.2 Arrest before Judgment

A plaintiff in a suit may at any stage of the suit pray for the arrest of the deft before judgment or for the attachment of property before judgment.

He must make an application after the plaint is admitted. It is not just to arrest a person or attach his property before a decree. But, in only certain specified cases such an action is allowed.

. Order 38 Rules 1 to 4 provide for arrest before judgment.

If the court is satisfied that the deft has an intention to delay or obstruct the execution of a decree that may be passed against him:

i) has absconded or is about to abscond or had left or is about to leave the local limits of its jurisdiction.

ii) has disposed of his property or has removed from the local limits, or

iii) he is about to leave India, the court may issue a warrant to arrest the deft, and to bring him before the court. The court may ask him to furnish security for his appearance.

The Warrant should specify the amounts claimed by the plaintiff. If the amount is paid, the deft, should not be arrested. If not so paid the court may ask him to deposit sufficient money or property or to furnish security for his appearance. If he fails to do so, he may be committed to the civil prison. He should not be detained for more

than 6 months. If the value of the subject matter is below Rs.50/- he should not be arrested for more than 6 weeks.

Attachment before judgment

If the deft is about to dispose of the property or to remove it from the local jurisdiction, with a view to delaying or obstructing the execution of a decree, then the court may direct the deft, to furnish security. The court may order for conditional attachment of the said property..

Compensation: If the arrest before judgments or attachment is made on insufficient grounds the court may award upto Rs.1,000/- compensation to the deft. The plaintiff should pay this compensation.

