

stated that under Order-21 Rule-46 of Civil Procedure Code, the order of attachment is already passed. The warrant is executed and hence, it is necessary to give direction to the KDCC Bank to deposit the said amount in the Court.

4] The say to the application at Exhibit-38, as filed by the Petitioner-KDCC Bank, the copy of which is produced in this case at Exhibit-E, on page No.29, clearly goes to show that the KDCC Bank, in its capacity as alleged Garnishee has, in paragraph No.8 disputed its liability for payment of such amount. In such situation, the Executing Court should have considered and dealt with the said dispute under the provisions of Order-21 Rule-46C of C.P.C., which provides as follows:

“46C. Trial of disputed questions.- Where the garnishee disputes liability, the court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit:

Provided that if the debt in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the court, the court shall send the execution case to the court of the District Judge to which the said court is subordinate, and thereupon the court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that court.”

5] The impugned order passed by the Executing Court is silent about the said aspect. The Executing Court has not at all decided the question, in the manner laid down in Order-21 Rule-46C of C.P.C. about the liability of the Petitioner-Garnishee to pay this amount.

6] In view thereof, it becomes necessary to remand the matter back to the Executing Court for considering afresh the application filed at Exhibit-38 by the Respondent-Decree Holder along with the say filed thereto by the present Petitioner-the Garnishee.

7] Hence, the Writ Petition is allowed. The impugned order passed by the trial Court is set-aside. The matter is remanded back to the trial Court for deciding afresh the application filed at Exhibit-38.

8] In view of the specific contentions raised by the Petitioner-the Garnishee disputing its liability and having regard to the provisions of Order-21 Rule-46C of C.P.C., the Executing Court to decide the application as expeditiously as possible and within six months from the receipt of the order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]