

### Garnishment

The concept of 'Garnishment' has been introduced in Civil Procedure Code by the amendment Act, 1976. This term has been derived from the French word 'garnir' which means to warn or to prepare and in simple words the garnishee is the person who is liable to pay a debt to a judgment debtor or to deliver any movable property to him. Garnishee means:

- a judgment-debtor's debtor.
- He is a person or institution that is indebted to another whose property has been subject to garnishment.
- He is a person who is liable to pay a debt to a judgment debtor or to deliver any movable property to him.
- A third person or party in whose hands money is attached by process of court; so called, because he had garnishment or warning, not to pay the money to the defendant, but to appear and answer to the plaintiff creditor's suit.

Besides Judgment Debtor and decree Holder, Garnishee is a third person in whose hands debt of the judgment debtor is kept. Prior to this amendment in 1976, there was no provision relating to garnishee order in the Code of Civil Procedure, 1908. After insertion of this amendment, a direct provision was added to the Code of Civil Procedure, which empowers the court to issue such an order on the application duly filed. It is the discretionary power of the court to issue a garnishee order and not a mandatory provision.

Garnishee Order is an order passed by an executing court directing or ordering a garnishee not to pay money to judgment debtor since the latter is indebted to the garnisher (decree holder). It is an Order of the court to attach money or Goods belonging to the judgment debtor in the hands of a third person. The third party is known as 'Garnishee' and the court's order is known as Garnishee Order. It is a remedy available to the Decree holder. This Order may be made by the Order of the court to holders of funds, i.e. a third party that no payments have to be made until the court authorizes them. The purpose of the Order is to protect the interest of the Decree holder. This is an Order served upon a garnishee requiring him not to pay or deliver the money or property of the debtor (defendant) to him and/or requiring him to appear in the court and answer to the suit of the plaintiff to the extent of the liability to defendant.

The garnishee proceedings are governed by Rules 46 and 46A to 46F of Order 21 of the Code of Civil Procedure. The power of the court enshrined under Rule 46A to issue court notice, is discretionary and the court may refuse to pass such Order if it is Inequitable and the court apprehends that it can cause prejudice to the garnishee, or that the grounds of the application seeking that remedy is not sufficient or if the affidavit is filed by decree holder is frivolous or ambiguous, etc. The discretion, however, must be exercised judicially.

Where the court finds that there is bona fide dispute against the claim and the dispute is not false or frivolous, it should not take action under this rule.

The executing Court has been given power to recover any of the amounts of the judgment debtor, which is in the hands of other. The rule of 46 A requires a notice to be issued to a garnishee before a garnishee order is passed against him. If such notice is not issued and an opportunity of hearing is not provided by the court, the order would be null and void. In the eyes of law, there is no existence of such an order and any step taken pursuant to or an in enforcement of such an order would also be void. The object of this rule is to render debt due by the debtor of the judgment debtor available in execution to the decree holder and not to drive him to a suit. It applies to a debt, other than a debt secured by a mortgage or a Charge, which has been attached under rule 46.

Garnishee proceedings are the proceedings in rem as well as in personam. It operates on the personam of the garnishee as on the debt. Therefore, it is classified as a proceeding quasi in rem. Cheques cannot be attached under Order XXI Rule 46. It is attached under O21 R46. It is attached under OXXI R51 relating to Negotiable Instrument Act. Similarly, contingent Debts can also not be attached. The court has to use this power with caution thinking properly and after being ensured that the case is prima facie and that no innocent is harassed, otherwise the very purpose of the legislation of providing the concerned remedy as discussed above shall come to be at a stake.