

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 28.05.2010

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W.P.(C) 12640/2009

INDO FOREIGN COMMERCIAL AGENCY (PRODUCE) PVT. LTD
AND ORS

..... Petitioner

versus

PUNJAB AND SIND BANK

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Neeraj Kishan Kaul, Sr. Adv. with Mr Madan
Lal Sharma, Mr B.R. Ranjan and Mr Varun Nischal

For the Respondent : Mr Rajinder Wali

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

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| 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 Digest? | Yes |

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against order dated 28.04.2009 passed by the Debts Recovery Appellate Tribunal (DRAT). The appeal before the DRAT was, in turn, directed against the order dated 12.09.2008 passed by the Debts Recovery Tribunal (DRT) in IA No. 188/2008 in OA No. 443/1996 in which the appellants were defendants. By virtue of the order passed by the DRT, the appellants were restrained from selling, transferring, disposing of or creating any third party interest in respect of House No. 5 and 7, Hemkunt Colony, New Delhi. The DRAT has

confirmed this order of the DRT and that is why the petitioners are before us.

2. Petitioner No.2 (Mr Iqbal Singh) is the registered owner of House No.7, Hemkunt Colony, New Delhi. Similarly, the petitioner No. 4 (Mrs Amrita Sahni) is the registered owner of House No.5, Hemkunt Colony, New Delhi. The petitioner No.1 had taken a loan from the respondent bank (Punjab & Sind Bank) and the aforesaid petitioner Nos. 2 and 4 had given personal guarantees in view of the fact that they were Directors in the petitioner No.1 company. However, it is the case of the petitioners that the aforesaid properties were not the subject matter of any mortgage or any charge, etc. in connection with the said loan transaction.

3. The plea taken before us by the petitioners is that these properties were the only residential premises which the said two petitioners namely petitioner Nos. 2 and 4 owned, possessed and occupied, respectively. It was, therefore, contended that in view of the provisions of clause (ccc) of the proviso to Section 60(1) of the Code of Civil Procedure, 1908 (CPC) as applicable to Delhi, sole residential premises could not be the subject matter of any restraint or attachment order. Mr Kaul, the learned senior counsel appearing on behalf of the petitioner was candid enough to say that this plea was not taken before the authorities below, but in view of the fact that it is a legal plea he may be permitted to advance arguments before us on this aspect.

4. We permitted him to do so. The point taken by Mr Kaul is that

under Section 29¹ of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the DRT Act) the provisions of the Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time, apply, as far as possible with necessary modifications, as if the said provisions and the said rules referred to debts due under the DRT Act instead of recoveries under the Income Tax Act, 1961. The Second Schedule to the Income Tax Act, 1961 deals with the procedure for recovery of tax. Rule 10 of the said second schedule reads as under:

“Property exempt from attachment.

(1) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.

(2) The Tax Recovery Officer’s decision as to what property is so entitled to exemption shall be conclusive.”

5. It is clear from a reading of Rule 10 that all the properties which are exempted from attachment and sale in execution of a decree of a civil court by virtue of the Code of Civil Procedure, 1908 would also be exempted from attachment and sale under the Second Schedule. Meaning thereby that the said exemption would also apply to recovery proceedings under the DRT Act.

¹ 29. **Application of certain provisions of Income-tax Act.** – The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income-tax:

Provided that any reference under the said provisions and the rules to the “assessee” shall be construed as a reference to the defendant under this Act.

6. The proviso to Section 60(1) (CPC) lists a set of properties which are not be liable to attachment or sale. In so far as Delhi is concerned, clause (ccc) of the said proviso reads as under:-

“One main residential house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment belonging to a judgment-debtor other than an agriculturist and occupied by him.

Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered.”

7. Thus, one main residential house and other buildings attached to it and the land immediately appurtenant thereto and necessary for their enjoyment belonging to a judgment-debtor other than an agriculturist and occupied by him is excluded from the purview of attachment or sale in execution of a decree. Of course, clause (ccc) to the said proviso also contains a proviso that the protection afforded by the clause would not extend to any property specifically charged with the debt sought to be recovered. It is an admitted position that the properties in question have not been specifically charged with the debt sought to be recovered. Consequently, this proviso to clause (ccc) would not apply.

8. Hence, if the contention of the petitioners that the aforesaid properties are their main residential houses, respectively, and that the same are occupied by them, is correct, then, in view of the aforesaid provisions, the said properties would be exempt from attachment or sale in execution of any decree or in the present case recovery of a debt.

9. Section 19(12) of the DRT Act empowers the DRT to make an interim order whether by way of injunction or stay of attachment against the defendant debarring it from transferring, alienating or otherwise dealing with or disposing of any properties and assets belonging to him without the prior permission of the said Tribunal. It is obvious that this power of making an interim order which the Tribunal possesses will have to be read with the provisions of Section 29 of the DRT Act, which, in turn, would have to be read with provisions of Rule 10 of the second schedule of the Income Tax Act, 1961 and clause (ccc) of the proviso to Section 60(1) of the Code of Civil Procedure, 1908. We are in agreement with the submission made by Mr Kaul that what cannot be done at the stage of execution of a decree or recovery of debt after the debt is determined cannot also be done at the interim stage. Since the main residential house, which is occupied by a debtor, is exempt from attachment and sale in recovery of a debt, which has been finally determined by the Tribunal, it cannot also be made the subject matter of an interim order by way of restraint or injunction. Therefore, the reference to properties and assets in Section 19(12) of the DRT Act would have to be read as meaning only those properties and assets which have not been excluded from attachment or sale under the said provisions of CPC as applicable to Delhi.

10. As pointed out above, this plea had not been taken before the authorities below and, therefore, there is no factual determination as to whether the aforesaid two properties namely House No. 5 and House No. 7, Hemkunt Colony, New Delhi were the main residential houses occupied by

the petitioner Nos. 2 and 4, respectively. Thus, it would be necessary for us to remit the matter to the DRT to examine this issue on facts and then pass an order in view of the position in law explained by us.

11. The impugned order is set aside. The matter is remitted to the Tribunal as aforesaid. The consequence of this order is that IA No. 188/2008 in OA 443/1996 will get revived and will have to be heard for determining the factual position with regard to the said properties being the main residential houses and being occupied by petitioner Nos.2 and 4, respectively. In case they are held to be the main residential houses occupied by the said petitioners, then no attachment or restraint order can be passed in respect thereof.

12. Mr Kaul, learned senior counsel appearing on behalf of the petitioners makes a statement on instructions received by him that till such determination by the DRT, the said properties will not be sold, alienated, transferred or the possession be parted with. We hope that the DRT shall dispose of the said application as expeditiously as possible, preferably within three months. It is also understood that the parties shall not take adjournments.

The writ petition stands disposed of.

BADAR DURREZ AHMED, J

V.K. JAIN, J

MAY 28, 2010

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