

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No.5546 of 2015
Date of decision : 30.09.2015**

Kailash Chander (since deceased) through his legal representatives

...Petitioners

versus

Raman Shahi

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Tribhawan Singla, Advocate for the petitioners.

RITU BAHRI, J

The petitioners have come up in revision petition against the order dated 31.07.2015 passed by the Civil Judge, Jr. Division, Nakodar, dismissing the objections filed by the petitioners against the attachment of their single residential house being exempted under Section 60 (ccc) of CPC.

The respondent/plaintiff Raman Shahi had filed a suit for specific performance on the basis of the agreement to sell dated 02.03.2007 against Kailash Chander, father of the present petitioners. During pendency of the above mentioned suit in the trial Court, the aforesaid Kailash Chander had died and the present petitioners were impleaded as legal representatives of Kailash Chander. The trial Court, vide judgment and decree dated 03.02.2012, decreed the suit of the respondent/plaintiff for an amount of Rs.7,00,000/- and the suit for specific performance was rejected as the agreement was not proved. The appeal filed by the present petitioners against the aforesaid judgment and decree was also dismissed by the Additional District

Judge, Jalandhar, vide judgment and decree dated 08.08.2014. The respondent/plaintiff filed an execution application before the trial Court for recovery of an amount of Rs.11,38,359/- along with future interest on 01.10.2014. A copy of the execution application is at Annexure P-1. The petitioners/judgment debtors filed objections to the attachment of their single residential house in execution of the above mentioned decree on the ground that they are residing in that house and being judgment debtors, they are protected under Section 60 (ccc) of CPC. Copy of the objections dated 13.01.2015 is at Annexure P-2. The respondent/plaintiff filed reply to the above mentioned objection petition on 13.01.2015 itself (Annexure P-3), thereafter, impugned order has been passed.

Counsel for the petitioners has referred to a judgment passed by a Coordinate Bench of this Court in the case of **Saroj Bala & anr. Vs. United Commercial Bank & ors., 2014 (1) CivCC 768**, to contend that the benefit of Section 60 (1) (ccc) was available to a judgment debtor if their single residential house was put to attachment for execution of a decree. In the facts of the above stated attachment, the principal borrower and the guarantor had died before filing of the suit. The suit has been filed against the legal heirs of the principal borrower. Since the suit has been filed against the legal heirs, they were themselves the judgment debtors and they were not legal heirs of the judgment debtor. The executing Court, vide order dated 13.05.2008 had dismissed the objections/applications, for release of their house from attachment. The revision petition was allowed and the impugned

order was set aside and observations were made in paragraph 8 as under:-

“I have carefully considered the matter. Principal borrower and guarantor had died before the filing of the suit. The suit was filed against petitioners and proforma respondents 2 to 11 and was decreed against them. Consequently, petitioners and proforma respondents No.2 to 11 themselves are Judgment Debtors (JDs) and they are not legal heirs of JDs. In view Vandana 2013.08.14 10:42 I attest to the accuracy and integrity of this document thereof, judgments in the cases of K. L. Bawa (supra) and Sheela Rani (supra) are not attracted to the instant case. In those cases, Judgment Debtors against whom the decrees had been passed had died and consequently, residential houses of their legal heirs were held liable for attachment. In the instant case, however, petitioners and proforma respondents No.2 to 11 themselves are JDs and they are not legal heirs of the deceased JDs. Mere fact that they are legal heirs of borrower and guarantor would not deprive them of the benefit of Proviso (ccc) to Section 60 (1) CPC because they cannot be said to be legal heirs of deceased Judgment Debtors. On the other hand, petitioners and proforma respondents No.2 to 11 themselves are JDs and are, therefore, entitled to benefit of Proviso (ccc) to Section 60 (1) CPC, according to which one residential house of JD is exempted from attachment subject to conditions specified therein. In the instant case, petitioners have alleged that they are separate owners of one residential house each in question and consequently, the said houses are exempted from attachment in view of Proviso (ccc) to Section 60 (1) CPC. The Executing Court committed error and illegality in holding that petitioners are not entitled to the benefit of the said provision being legal heirs of deceased JDs although petitioners themselves are JDs and consequently said benefit could not be denied to them.”

Hence, the facts of the Saroj Bala's case (supra) will not be applicable in the facts of the present case. In the present case, initially, the suit was filed for specific performance against Kailash Chander, father of the present petitioners. During pendency of the trial, he died

and his legal heirs were impleaded as parties. The petitioner, being heirs of Kailash Chander were not the original judgment debtor. They had merely stepped into the shoes of Kailash Chander. After stepping into the shoes of the judgment debtor, they would not acquire the status of a judgment debtor.

At this stage reference can be made to a judgment of this Court in the case of **K.L.Bawa Vs. M/s Basant Textiles 1982 (84) PLR 258** and **Sheela Rani Vs. Punjab & Sind Bank Ltd. 1995 (2) CCC 113**. The ratio of these cases would be directly applicable to the facts of the present case. In the above said case, the applications filed by the judgment debtors had been dismissed by the executing Court. The trial Court while dismissing the objections of the judgment debtors had referred to a judgment of a Coordinate Bench of this Court in **Gurdeep Singh Vs. Balbir Singh & ors. 2011 (1) CCC 23**, whereby the Court had upheld the decision of the executing Court in dismissing the objections filed by the legal heirs of the judgment debtor seeking benefit of Section 60 (1) (ccc) of CPC and release of their sole residential house from attachment.

In view of the consistent view of this Court that the legal heirs of the judgement debtors cannot seek release of their sole residential house from attachment by seeking protection under Section 60 (1) (ccc) of CPC, order of the trial Court does not suffer from any infirmity or interpretation of law.

Dismissed.

30.09.2015
Vinay

(RITU BAHRI)
JUDGE