

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.440 of 2002.
Decided on:-February 05, 2015.

Smt. Daljit Kaur.

.....Petitioner.

Versus

Upkar Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. Prateek Mahajan, Advocate
for the petitioner.

None for the respondents.

Dr. Bharat Bhushan Parsoon, J.

In execution of the Award dated 5.6.1999 of the Motor Accidents Claims Tribunal (hereinafter mentioned as the Tribunal) for recovery of Rs.1,34,400/- with interest @ 12% per annum from the date of application i.e. 17.8.1994 with costs, after the death of Jagir Singh (for short, the JD), his house is sought to be attached. Legal heirs of JD Jagir Singh tooth and nail opposed the application of decree-holder Smt. Daljit Kaur (for short, the DH) for attachment of the property i.e. house of JD Jagir Singh.

2. To decide the rival claims of the parties, issues which were framed by the Executing Court are given on the next page:

1. Whether the house in dispute is liable to be attached?
OPD
2. Whether the JDs are residing in the house in dispute?
OPD
3. Relief.

3. After receiving oral as well as documentary evidence from the parties, deciding both the issues in favour of the objectors, LR of the JD, application of the DH for attachment of the house of the JD was dismissed. It is against this order that the DH has come in this civil revision petition by invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

4. In this revision petition, it has been claimed by the DH that the protection under Section 60(1) (ccc) of CPC whereby the residential house is not attachable, is available to the JD alone and not to his legal heirs. It is, thus, claimed that the order suffers from inherent defect and is legally untenable. Counsel for the DH has claimed that since protection of Section 60(1) (ccc) of CPC is not available to the legal heirs of the JD and thus, reversing the impugned order, this revision petition is liable to be accepted.

6. Though respondents No.1 to 4 i.e. legal representatives of the JD were duly represented by a counsel but none appeared on behalf of them continuously for many dates as also on the day of addressing of arguments. Consequently, taking them as having been proceeded against ex-parte, arguments were heard. Respondent No.5 was also proceeded against ex-parte vide order dated 16.1.2003.

7. Rajvinder Singh, only son of the DH had died on 16.2.1994 in a motor vehicular accident caused by rash and negligent driving of the JD, predecessor-in-interest of respondents No.1 to 4 herein. The DH alongwith

her husband filed a claim petition before the Tribunal for grant of compensation for untimely death of their son brought about by negligent driving of the JD. The Tribunal vide Award dated 5.6.1999 awarded a compensation of Rs.1,34,400/- with costs and interest @ 12% per annum from the date of the petition. Concedingly, owner of the offending vehicle was Jagjit Singh, respondent No.5 herein.

8. Section 60(1) (ccc) of CPC for ready reference is appended as below:

“60. Property liable to attachment and sale in execution decree-

(1) x x x

Provided that the following particulars shall not be liable to such attachment or sale, namely,

(ccc) one main residential house and other buildings attached to it (with the material and the sites there of and the land immediately appurtenant there to and necessary for there 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.”

9. Perusal of this provision makes it clear that the protection available against attachment of one residential house is available to a JD and this exemption is personal in nature meaning thereby that it does not flow to the benefit of the legal heirs of the JD who have inherited the said house from their deceased father and are also living therein. The matter is no more debatable. There are number of authorities clearly holding that the word JD appearing in Section 61 (1) (ccc) does not include his legal representatives

meaning thereby that LR's of the JD are not entitled to the benefit under this clause. Reference in this regard may be made to ***Yogesh Sharma and others Versus Devi Dayal Jain and others AIR 1977 Delhi 270***. This issue came up for adjudication before a coordinate Bench of this Court as well i.e. in ***K.L. Bawa (deceased by L.R.) Versus M/s Basant Textiles, Abu Lane, Meerut AIR 1982 Punjab and Haryana 275*** wherein it was clearly held that the protection available under Section 60(1) (ccc) of CPC is available only to the JD in person and could not pass on to his legal representatives. Para 7 of this judgment is relevant and for ready reference is appended as below:

“7. K.L. Bawa deceased was the judgment-debtor against whom the money decree was passed. The protection from attachment of one main residential house under cl.(ccc) was available to him in person. His widow Jagdish Rani being not a judgment-debtor cannot avail of the protection under cl. (ccc). The protection under cl.(ccc) which was available to K.L. Bawa, judgment debtor (now deceased), therefore, came to an end with his death on Oct. 14, 1981. The protection under cl.(ccc) being available to the deceased in person would not pass on to his widow as his legal representative. Under these circumstances, there is no escape from the conclusion that the death of the judgment-debtor on Oct. 14, 1981, has rendered the present revision infructuous.

10. This matter again came up for adjudication in yet another case judgment whereof is reported in ***Sheela Rani Versus The Punjab and Sind Bank Limited 1995(2) Civil Court Cases 0113*** decided by a coordinate Bench of this Court wherein it was specifically held that even a widow of a JD cannot avail protection of Section 60(1)(ccc) of CPC. Relevant portion of para 6 of this judgment for consideration and for beneficial use is appended as below:

“6. It may also be noticed that clause (c) of sub-section (1) of Section 60 of the Code provides protection from attachment and sale of houses and other buildings (with the materials and the

sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him. This shows that exemption is available not only to the judgment-debtor but to any person who may be in possession of this property and is an agriculturist. The word 'judgment-debtor' is conspicuously missing in clause (c) of sub-section (1) of Section 60 whereas clause (ccc) of sub-section (1) of Section 60 provides protection against attachment and sale of one main residential house belonging to a judgment-debtor. Thus, there is a clear distinction between the two clauses of sub-section (1) of Section 60 of the Code. The former provides protection to an agriculturist in respect of houses and other buildings belonging to and occupied by him whereas the latter clause provides protection to a judgment-debtor only in respect of the main residential house occupied by him."

11. Yet another judgment of a coordinate Bench of this Court titled ***Balbir Kaur and others Versus Darshan Singh 1979(1) ILR (Punjab) 295*** also holds the field. Para 4 of the judgment for ready reference is reproduced as below:

"4. I have given a thoughtful consideration to the argument of the learned counsel, but regret my inability to accept it. Clause (ccc) of proviso to Section 60(1) provides that one main residential house and other buildings attached to it belonging to a judgment-debtor other than an agriculturist and occupied by him, shall not be liable to attachment or sale provided the property is not specifically charged with the debt sought to be recovered. Sections 2(10) and 2(11) of the Code define the terms 'judgment-debtor' and 'legal representative'. These are reproduced below:

'Judgment-debtor' means any person against whom a decree has been passed or an order capable of execution has been made. 'Legal representative' means a person, who in law represents the estate of a deceased person, and includes any person who inter-meddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

*From the Ist definition, it would be seen that judgment-debtor is a person against whom a decree has been passed or an order capable of execution has been made. It does not include the legal representative of such person. No inference can be drawn from these definitions that 'legal representative' of a deceased judgment-debtor is entitled to the benefits provided in clause (ccc). A reading of Section 50 further fortifies my view. It provides that if a judgment-debtor dies before the decree has been fully satisfied, the decree-holder may apply to the executing Court to execute the decree against the legal representative of the deceased, who shall be liable to the extent of the property of the deceased which has come to his hands. From the aforesaid language, it is evident that the legal representative is not personally liable to pay the amount of the decree, but it is the property of the deceased in his hands from which recovery can be made by the decree-holder. After taking into consideration the abovesaid provisions of the Code, I am of the opinion that the words 'judgment-debtor' in clause (ccc) of proviso to Section 60(1) of the Code does not include his legal representative and therefore, the legal representative is not entitled to the protection of the said clause. In this view I am fortified by the observations of the Delhi High Court in **Yogesh Sharma and others Versus Devi Dayal Jain and others 1978 P.L.R. (Delhi) 1**, wherein it is held that the sons, being the legal representatives, are not entitled to the protection of clause (ccc) which extends only to the judgment-debtor and not to his legal representatives. The learned Judge has further observed that the words 'judgment-debtor' as used in clause (ccc) do not include his legal representatives. The contention of Mr. Khaira is, therefore, rejected."*

12. This matter was agitated again before a coordinate Bench of this Court and was resolved vide judgment dated 22.7.2010 reported as **Gurdeep Singh Versus Balbir Singh and others 2012(4) RCR (Civil) 195** which is in tune with the law laid down in the earlier judgments. Recently, in a judgment pronounced on 4.2.2013 reported as **Prem Chand Versus Akashdeep and another 2014 ACJ 1467**, a coordinate Bench of this Court has discussed this aspect at a sufficient length and its adjudication is in line and tune with the decisions rendered by the earlier coordinate Benches. This decision goes a

step further and decided that Section 60(1) (ccc) of CPC is not applicable to the cases under the Motor Vehicles Act, 1988. In this regard, para 3 of this authority is reproduced as under:

“3. Learned counsel seeks to contend that a procedure prescribed for enforcement of process against land must be understood as a procedure that causes an interdict against attachment through enforcement provided under the Civil Procedure Code. This argument, in my view, is fallacious, for there is no means by which the provisions of Civil Procedure Code could be incorporated in a procedure, which is independently prescribed under the Land Revenue Act. They operate in two distinct fields and certain special privileges which Civil Procedure Code provides for enforcement of decrees cannot be applied to enforcement of awards. The Motor Vehicles Act itself is a complete Code and the extent to which Civil Procedure Code provisions are applicable are brought through the Motor Vehicles Act itself. Such procedure and powers are set out under Section 169 of the Motor Vehicles Act. The references to Civil and Criminal Procedures are available only in so far as taking of evidence on oath, enforcement of attendance of witnesses and compelling the party for production of documents. Power under Section 174 is independent of any power to recover under the Civil Procedure Code itself by attachment of the property of the judgment debtor. If the decree-holder seeks to resort to attachment of the property enforcing the award as a decree of Civil Court, he shall be perfectly at liberty to do so but if the recovery of money is sought from any person under an award after securing a certificate for amount from the Collector then the procedure that the Collector will follow shall only be what is provided under the Land Revenue Act itself.”

13. Keeping in view the totality of facts and circumstances as discussed earlier, when neither the protection available under Section 60(1) (ccc) of CPC is available to the legal heirs of the JD nor Section 60(1) (ccc) of CPC as such applies to the execution of the Award rendered by the Tribunal, the impugned order suffers from inherent legal defect and thus, is set aside.

14. Sequelly, the application of the DH is accepted and this revision petition is allowed. The Executing Court is ordered to proceed with the matter of attachment of the property of legal heirs of the JD and proceed further to execute the decree so that the DH is able to get discharge, execution and satisfaction of the decree under execution with the Executing Court.

15. Since the matter is pending since long, the Executing Court would finalise the execution of the decree within three months from the date of receipt of certified copy of this order.

February 05, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes