

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 7029 of 2016

Date of decision : 21.10.2016

Rekha & anr.

....Petitioners

V/s

State Bank of India & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Diwan S. Adlakha, Advocate for the petitioners.

RAJAN GUPTA J.

Present revision petition has been filed by petitioners (Judgment debtors no. 3 & 6) against order dated 03.08.2016 passed by Civil Judge (Senior Division), Yamuna Nagar at Jagadhri whereby objections filed by them were dismissed and warrants of attachment of property qua petitioners & respondents no. 4 & 5 have been issued.

Learned counsel for the petitioners has assailed the order. He submits that order passed by court below is prima facie wrong and unsustainable in the eyes of law. According to him, court below had not appreciated the fact that residential house is exempted from attachment in view of section 60(1) proviso (ccc) (As in P&H) of CPC. Thus, same needs to be set-aside. He has relied upon judgment reported as *Saroj Bala & anr. vs. United Commercial Bank & ors. 2014(1) CivCC 768*.

I have heard learned counsel for the petitioners.

Brief facts of the case are that respondent no. 1-plaintiff filed a suit for recovery of ₹5,12,463/- alongwith interest. Decree for recovery of money has been passed in favour of respondent no. 1-Bank against

petitioners and performa respondents 2 to 5. Respondent no. 1-Bank has filed execution petition for recovery of decretal amount with interest by sale of moveable and immoveable properties of the petitioners and respondents no. 4 & 5. Petitioners-JDs filed objections alleging that property in question which has been attached was already in dispute and thus, same cannot be attached or sold. Decree Holder-Bank filed reply controverting the objections filed by the JD's. After considering the rival contentions, executing court vide impugned order, Annexure P-4 dismissed the objections filed by petitioners, operative part whereof reads as under:-

“Even if it is presumed that some of relatives of JDs no. 3, 5 & 6 have challenged the Will by way of which they had obtained property in question which was mortgaged with the bank while giving guarantee and even if it is presumed that court had restrained the parties therein from alienating the property, right of DH bank cannot be defeated unless it is shown that the DH bank is also a party in that suit. As such this objection of the JD is also discarded. Accordingly, objections filed by JDs are dismissed. Warrants of attachment of property enlisted in the application for execution be issued for 28.10.2016.”

I find no infirmity with the order passed by court below. When property is mortgage with the bank, benefit of proviso (ccc) (Punjab Amendment) cannot be availed of. Thus, judgment in *Saroj Bala's* case (supra) cannot help the case of the petitioners. Petition is without any merit and is hereby dismissed.

October 21, 2016

Ajay

(RAJAN GUPTA)
JUDGE

Whether reportable:	Yes/No
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