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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: July 25, 2016

+ **EX.F.A. 34/2014 & C.M.No.21032/2014, 1800/2016**

PREM GUPTA Appellant
Through: Mr. Rajiv K. Garg, Mr. Ashish
Garg, Mr. Sanjay Gupta and Ms.
Kavita Rawat, Advocates

versus

M/S CIMMCO LIMITED & ORS Respondents
Through: Mr. K. Datta and Mr. Rahul
Malhotra, Advocates for
respondents No.1 and 2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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On an application of respondent-decree holder, attachment of property No.36, Anupam Apartment, MB Road, Saket, New Delhi has been ordered. Challenge to the impugned order in this appeal is on the ground that appellant is a judgment debtor as the decree has been passed against the appellant and in the execution petition also, appellant is shown to be a judgment debtor. Attention of this Court is drawn by learned counsel for appellant to the copy of decree (Annexure P-2). Reliance is placed upon a Division Bench of this Court in *V.P. Arora v. Punjab &*

National Bank 48 (1992) DLT 367 (DB) to submit that the underlying object of Section 60 (ccc) of CPC is not to displace judgment debtor from the main residential house in execution of a money decree and it hardly matters whether the judgment debtor owns the house when the decree was passed or the judgment debtor came in the house at the time when the decree was sought to be executed. Reliance is also placed upon a Supreme Court's decision in *Kiran Bala v. Surinder Kumar* AIR 1996 SC 2094 and a Single Bench decision of Punjab and Haryana High Court in *Saroj Bala and Another v. United Commercial Bank and Others* VOL. CLXXII-(2013-4) Punjab Law Reporter 791 and a Single Bench decision of this Court in *Satpal Singh (Shri) v. Shri Girja Shanker Shukla* 2014 VI AD (Delhi) 218 in support of the above submissions.

Lastly, it is submitted by appellant's counsel that the impugned order erroneously relies upon a Single Bench decision of this Court in *Yogesh Sharma and Others v. Devi Dayal Jain and Others* AIR 1977 Delhi 270 which no longer holds good in view of the Division Bench decision in *V.P. Arora (supra)*.

Learned counsel for appellant submits that respondents No.3 and 4 are *pro forma* parties. None appears on their behalf.

To controvert the afore-noted stand of the appellant, learned counsel for contesting respondents No.1 and 2 submits that the ratio of the Division Bench decision in *V.P. Arora (supra)* does not apply to the instant case because *V.P. Arora* was a defendant/judgment debtor and was in possession of the residential house and was not a legal heir of the judgment debtor. Thus, it is submitted that the impugned order does not suffer from any infirmity and so the appeal deserves to be dismissed.

After having heard learned counsel for the parties and on perusal of the impugned order, the material on record and the decisions cited, this Court finds that it is necessary to advert to Section 60 (ccc) of the Code of Civil Procedure which reads as under: -

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

*.....
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 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.”*

No doubt, there is reference to judgment debtor in the afore-referred provision of law and the defendant had died during the pendency of the suit and his legal heirs were substituted in his place, but the definition of ‘legal heirs’ as provided in Section 2 (11) of CPC has to be considered. The aforesaid definition of ‘legal representative’ as in CPC reads as under: -

“2(11) “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles 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;”

This Court in *Yogesh Sharma (supra)* has ruled as under: -

“It, therefore, comes to this. The sons are the legal representatives of Manohar Lal deceased. They cannot be called judgment-debtors. If they are not the judgment-debtors they are not entitled to exemption under cl. (ccc). Their liability is limited to the estate of the deceased in their hands. The house in question was the property of the judgment-debtor Manohar Lal. It has devolved on the legal representatives. It can be attached and sold. This is my conclusion.”

A striking feature which distinguishes the Division Bench decision in *V.P. Arora (supra)* is that *V.P. Arora* was a defendant, who had not died and after the decree, he acquired the status of a judgment debtor and so, it was held that he gets the benefit of Section 60 (ccc) of CPC. Such is not the situation in the instant case. Appellant was not the original defendant, as she had stepped into the shoes of the defendant as a legal heir after the death of the defendant during the pendency of the suit. This clearly distinguishes the case of appellant from that of *V.P. Arora (supra)*.

Reliance placed upon Supreme Court's decision in *Kiran Bala (supra)* is also misplaced because a principal borrower and the guarantor had died before filing of the suit and the judgment debtor was the initial defendant and so, Section 60 (ccc) CPC was clearly attracted. It is not so in the instant case. In *Saroj Bala (supra)* and *Satpal Singh (supra)*, the question of defendant/legal heir being the judgment debtor was not in issue and so, these decisions are of no avail to the case of the appellant. The facts of the instant case are quite akin to the case of *Yogesh Sharma (supra)*.

Consequentially, this Court is of the considered view that the trial court has rightly relied upon the decision in *Yogesh Sharma (supra)* and, so the impugned order cannot be faulted with as the decisions dealt with in preceding paragraph and in *V.P. Arora (supra)* are distinguishable and has no application to the facts of the instant case. Thus, finding no infirmity or illegality in the impugned order, this appeal and the pending applications are dismissed while leaving the parties to bear their own costs.

JULY 25, 2016

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**(SUNIL GAUR)
JUDGE**