

In the High Court of Punjab and Haryana at Chandigarh

CR-1348 of 2015(O&M)
Date of Decision: 30.10.2017

Ramesh Chander

---Petitioner

versus

Bhag Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Malkeet Singh, Advocate
for the petitioner**

**Mr. M.S.Dhami, Advocate,
for the respondent**

Rekha Mittal, J.

CM No. 21976-CII of 2017
CM No. 7391-CII of 2016

Heard.

Allowed as prayed for. Annexures P-7 and R-1 are taken on
record subject to just exceptions.

Applications stand disposed of.

C.R.No. 1348 of 2015

The present petition directs challenge against order dated
31.1.2015 (Annexure P-5) passed by the Additional Civil Judge (Senior
Division), Balachaur (hereinafter to be referred to as “the Executing Court”)
whereby application of the petitioner/judgment debtor claiming exemption
from sale of the attached property has been dismissed.

Counsel for the petitioner has submitted that Bhag Singh respondent filed a suit for recovery of Rs. 3 lakhs alongwith interest on the basis of pronote and receipt. The suit was decreed by the trial court vide judgment and decree dated 19.8.2011. The appeal preferred by the petitioner was dismissed by the First Appellate Court and so also the Regular Second Appeal filed before this Court was dismissed. The respondent-decree holder filed an application for execution on 19.11.2012. It is argued that the only residential house of the petitioner was attached and ordered to put to sale for realization of the decretal amount. It is argued with vehemence that the only residential house of the judgment debtor is exempted from attachment and sale for satisfaction of a money decree in view of Section 60 (1) Clause (ii) proviso (ccc) of the Code, therefore, the Executing Court has seriously erred in dismissing the application filed by the petitioner. It is further argued that in case the property attached in execution is put to sale, the petitioner and his family consisting of his wife, two sons and three daughters would be rendered homeless.

Counsel has further submitted that the documents Annexures P-7 to P-12 substantiate plea of the petitioner that the property in question is a residential house built on 5 ¼ marlas i.e. 1/3rd share of khasra No. 325//2/1 (0-9) and 3/8th share of khasra No. 323//2(0-6). It is further argued that the suit property is now a part of municipal area as reflected in remarks column of jamabandi for the year 2005-06 (annexure P-12).

Counsel for the respondent-decree holder, on the contrary, has supported the impugned order with the submission that after the property in question was attached, the respondent filed an application under Order 21 Rule 66 read with Section 151 of the Code for proclamation of sale of

attached property by public auction. The petitioner filed objections against sale of the property and objection petition was dismissed by the Executing Court vide order dated 14.8.2014(Annexure P1). It is argued with vehemence that in the objection petition that culminated in order dated 14.8.2014, plea of the petitioner is absolutely contrary to what has been sought to be pleaded in the instant objection petition. It is further argued that the Executing Court has rightly taken note of the earlier pleadings for recording a finding that the property in question is not a residential house as claimed by the petitioner.

Another submission made by counsel is that during pendency of the suit seeking recovery on the basis of pronote and receipt, the petitioner with a dishonest and mala fide intention to deceive his creditor (respondent herein) sold his land vide sale deed dated 30.8.2010 (Annexure R-1). According to counsel, judgment debtor who started alienating his assets with an intent to frustrate the decree that may be passed against him, is not entitled to any relief on equitable consideration. In addition, it is argued that the petitioner who sold his property for Rs. 14 lakhs vide sale deed dated 30.8.2010 and is now running away from his obligation created under the decree that has attained finality upto High Court, he cannot be permitted to create obstacle in the way of execution proceedings reaching fruition by filing successive objection petitions.

I have heard counsel for the parties, perused the paper book particularly the various annexures available on record.

Indisputably, after the property in question was attached by the Executing Court, the petitioner in response to the application under Order 21 Rule 66 of the Code filed objections Annexure P-7. A relevant

extract from paras 3 and 4 of the objections reads as follows:-

“3. That as the judgment/order under execution has not attained finality, thus the said judgment/order cannot be executed and the property of the objector/J.D. cannot be put to sale by way of public auction till the final decision of the appeal. If, the said property of the objector/J.D. is sold, then it will be a great destruction of civil as well as constitutional rights of the objector/J.D.

4. That application under Order 21 Rule 66 read with Section 151 CPC, filed by the DH/plaintiff is not maintainable. The property of objector/J.D. is very much valuable and precious. The said property of objector/J.D. is sole source of income of objector/J.D.”

After reply to the said objection petition was filed by the decree holder, the same was decided by the Executing Court on 14.8.2014 vide order (Annexure P1). There is nothing on record suggestive of the fact that the petitioner challenged order dated 14.8.2014 in appropriate proceedings. However, he filed the instant application dated 28.8.2014 (Annexure P-2) under Section 60(1)(c) and (ccc) read with Section 151 of the Code seeking exemption from attachment and sale of the attached property on the premise that the same is the only residential house of the judgment debtor in which he is residing alongwith his family. Nothing has been mentioned in the

application to explain as to how there is serious contradiction in stand of the petitioner in the earlier objections dated 17.2.2014 viz-a-viz his plea raised in the application dated 28.8.2014(Annexure P-2). In the first version brought forth by the petitioner by filing objections dated 17.2.2014 (Annexure P-7) it has been categorically pleaded that the property is valuable and precious and sole source of income of the objector/judgment debtor. In absence of the petitioner explaining his position with regard to his stand in the first objection petition, petitioner cannot derive any advantage to his contentions from documents Annexures P-7 to P-12 for contending that the property in question is a residential house used for the purpose of residence by the petitioner and his family. In this view of the matter, I do not find any error much less illegality in findings of the Executing Court whereby the court has refused to accept plea of the petitioner that the property in question is a residential house used for the purpose of residence of the petitioner and his family.

Counsel for the petitioner has not made any submissions to counter plea of the respondent/decree holder that during pendency of the suit, contested by the petitioner, he sold his land vide sale deed dated 30.8.2010 (Annexure R1) for a sale consideration of Rs. 14 lakhs. It appears to the Court that the petitioner knowing that a money decree may be passed against him in the pending suit and with an intent to defraud his creditor sold his land vide sale deed Annexure R1. A

litigant who tries to play with proceedings of the Court with a clear intent to frustrate the decree likely to be passed against him is not entitled to indulgence of the Court on equitable considerations. In this view of the matter, I find myself unable to accept plea of the petitioner that the property in question is liable to be released from attachment. I would hasten to add that had the petitioner been fair to the proceedings pending before the Executing Court, he should have given an offer to satisfy the decree by making payment in easy instalments even if he was not in a position to pay the amount in lumpsum.

For the foregoing reasons, the petition fails and is accordingly dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

30.10.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No