

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5752 of 2017

Date of Decision: 28.08.2017

Shashi Bala

.....Petitioner

Vs.

Anita Rani and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.D.S.Adalakha, Advocate, for the petitioner.

RITU BAHRI, J. (ORAL)

The present revision has been filed against the order dated 31.07.2017(Annexure P-4) whereby, objections filed the petitioner/objector was dismissed and sale warrants qua her attached property has been issued.

The brief facts of the case are that the Motor Accident Claims Tribunal, Ropar vide its judgment dated 11.04.2016 (Annexure P-1) had allowed the claim petition filed under Section 166 of the Motor Vehicles Act and awarded Rs.10,17,000/- along with interest at the rate of 6% against the respondents No.1 and 2 who were driver and owner of offending motorcycle No.PB-16-B-6195.

After the Award of the learned Tribunal (P-1), respondent No.1 and 2/claimants filed an application dated 26.07.2016 for execution of the abovesaid Award dated 11.04.2016 under Order 21 Rule 11 CPC. The Objections were filed by Shashi Bala (Annexure P-3), taking the plea that property bearing khasra No.169(0-5), 170(0-5) situated in village Mojowal (Naya Nangal) HB No.532 Tehsil Nangal Distt. Rupnagar, regarding the share of Shashi Bala objector was attached and later on it was ordered to be put on auction. The objection has been dismissed vide order dated 31.07.2017 (Annexure P-4) by referring to the judgment passed by Hon'ble Supreme Court in the case f **State of Punjab vs. Dina Nath 1984(1) SCC Page 37,** whereby, objection has been dismissed by holding that exemption of residential house is applicable only in a case where there is a decree of Civil Court is to be executed. With regard to an Award to be passed under

Motor Vehicles Act, which was a special stature and the Collector was otherwise competent to make recovery under Section 174 of the Motor Vehicles Act. The reference was made in the case of **Prem Chand vs. Akash Deep Civil Revision No.2000 of 2012 decided on 04.02.2013,** whereby, the provisions under Section 60 (cc) is not applicable since there are express provisions under Motor Vehicles Act itself and the revision was dismissed.

After hearing counsel for the petitioner and going through the judgment of Hon'ble Supreme Court in the case of **State of Punjab vs. Dina Nath 1984(1) SCC Page 137,** the question for consideration was whether attachment of a property could be made for recovery of land revenue and for this purpose having used for residence is exempted or not? In the paragraph No.4 it has been observed as under:-

“Section 60 of the Code thus applies only to execution of the decrees of civil courts and declares what properties are liable to be attached and sold in execution of such a decree and the proviso to sub-section (1) of Section 60 sets out the properties which are not liable to such attachment or sale, The opening words of the said proviso are "Provided that the following particulars shall not be liable to such attachment or, sale, namely":- The expression "such attachment or sale" in the said proviso refers to the attachment and sale mentioned in sub section (1) of Section 60, that is, to attachment and sale in execution of a a decree. On a plain reading of the said Section 60, it is clear that section has no application to attachment and sale in any proceedings other than in execution of a decree of a civil court., The provisions of section 60 of the Code do not apply to an attachment and sale under any of her statute made expressly applicable thereto. So far as the said Act is concerned, it contains a complete code providing for the modes and machinery for recovery of arrears of revenue. The attachment in a question was levied under the provisions of the said Act and the sale which was notified

was also under the provisions of the said Act. The attachment levied on, and the auction sale notified in respect of, the Respondent's half share in the said property were not in execution of any decree of a civil court but were in pursuance of the order made by an officer authorized to adopt proceedings under the said Act for recovery of revenue due to the State. There is no provision in the said Act which makes the provisions of section 60 of the Code applicable to attachment and sale for recovery of revenue under the said Act. The properties, if any, which are exempt from attachment and sale in revenue recovery proceedings under the said Act would be only such properties as are so exempted by the said Act. There is no provision in the said Act corresponding to cl. (ccc) of the proviso to sub-section (1) of Section 60 of, the Code, and the half share of the Respondent in the said property was, therefore, not exempt from attachment and sale in revenue recovery proceedings adopted under the said Act. Consequently, the Respondents suit was liable to be dismissed on this ground alone.”

Learned counsel for the respondents has referred to the judgment in the case of Gursewak Singh and others Vs. Ram Chand 1993(2) RRR 180 and Bhajan Singh Vs. Teja Singh 1974 PLR 498 would not be applicable in the facts of the present case, as this judgment only considered the aspect that in terms of the Order 41 Rule 5 of the Code of Civil Procedure which deals with the question of stay by appellate Court expressly lays down that execution of a decree shall not be stayed by reason only of an appeal having been preferred from the decree but the appellate Court may for sufficient cause order stay of such decree but the appellate Court may for sufficient cause order stay of such decree. It further provides that no order for stay of execution shall be made unless the Court making it is satisfied that substantial loss may result to the party applying for stay of execution unless the order is made; (b) that the application has been made without unreasonable delay; © that security has been given by the applicant for the

due performance of such decree or order as many ultimately be binding upon him.

The Division Bench of this Court in the case of Gursewak Singh and others Vs.Ram Chand 1993(2) RRR 180 has held that procedure cannot be read in a manner as to decline be used to produce unjust results. Object of the procedural law is to provide speedy justice and not to result in keeping the litigation alive allowing the sword of uncertainty hanging on the right of the parties and no order can be reversed for technicalities unless it results in injustice or affects the jurisdiction of the Court.

In the fact of the present case, under the provisions of Motor Vehicle act, there is no provision or a bar to sell a residential house for recovery of the awarded amount. Since, as per judgment of Prem Chand (supra), the provision of Section 60(c) are not applicable and there are express provision in the Motor Vehicles Act itself for executing the decree, the objection was rightly dismissed by the trial Court.

So in the light of the references and discussion, the orders of the Courts below do not reflect any material irregularity or perversity which warrant interference. Hence the present revision stands dismissed.

(RITU BAHRI)
JUDGE

28.08.2017
anil

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No

