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

+ CM(M) 390/2017

DILBAGH SINGH

..... Petitioner

Through Mr.Abhik Kumar and Mr.Siddhartha
Shankar Ray, Advocates

versus

TATA MOTORS FINANCE LTD.& ANR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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12.04.2017

CM Nos.13732-13733/2017

Exemption allowed, subject to all just exceptions.

CM(M) 390/2017

1. Advance copy of the petition has been served on the respondent. However, none is present for the respondent.
2. Limited grievance of the petitioner in the present case is that in the execution proceedings which are going on against the petitioner he was a guarantor for a motor vehicle loan, the executing court has attached his sole residential house situated over Khautni No.429/2015 Min in Khasra No.787, Min situated in village Tikri Kalan, Delhi. He submits that in an application filed under section 60(1) CCC of the CPC the trial court has only issued notice on the application but has not stayed the sale proceedings. It is urged that this being the sole residential house is exempt from sale in the present execution proceedings and irreparable loss and injury would be caused in case the sale is effected.

3. A perusal of the impugned order dated 20.3.2017 would show that the trial court dismissed the stay application filed by the petitioner noting a clear lack of bona fide on the part of the petitioner. It noted that the execution is pending for the last seven years and the Judgment Debtor/Petitioner has been avoiding payment of the decretal amount.

4. Clause (ccc) to proviso to sub-section (1) of S. 60, C.P.C., reads as follows:-

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

(a), (b), (c) and (cc).....

(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; provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered."

5. Hence, one residential house belonging to the Judgment Debtor which is occupied by him would be exempt from the attachment/sale.

6. In view of the above, in my opinion, what has been ignored by the executing court is that irreparable loss and injury would be caused to the petitioner in case the sale of the attached property is effected. Such a sale would also be contrary to the statutory provisions. Accordingly, in my opinion, the order suffers from material irregularity.

7. Accordingly, I direct that there shall be stay of sale of the said property till disposal of the application filed by the petitioner under section 60(1) (ccc) of CPC which is pending adjudication before the executing

court. It is, however, made clear that the petitioner shall remain present in person in all the hearings when this application under section 60(1) (ccc) of CPC is fixed in court for hearing.

8. Needless to add that the trial court shall deal with the application uninfluenced by any of the observations made by this court in the present matter.

9. In view of the above, as nothing further survives in the present petition, same is disposed of. All pending applications, if any, also stand disposed of accordingly.

Dasti.

JAYANT NATH, J

APRIL 12, 2017

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