IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-2497-2017
Date of decision : 13.11.2018

Gurdarshan Singh

... Petitioner

Versus

Jaswant Singh

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Gurcharan Dass, Advocate,
for the petitioner.

Mr. S. S. Rangi, Advocate,
for the respondent.

AMOL RATTAN SINGH, J.

By this petition, the petitioner, who is the judgment debtor in a suit filed by the respondent herein, (with the decree holder having sought a decree of specific performance of an agreement of sale), challenges the order of the learned execution Court, by which his objections against the execution proceedings stand dismissed.

Very briefly, the suit of the respondent-plaintiff had been decreed in his favour, holding that the agreement of sale executed by the petitioner herein, in favour of the respondent-plaintiff-decree holder, dated 20.04.2005, qua a residential house measuring 210 sq. yards [fully described in the plaint and the judgment of the trial Court (copy Annexure P-1)], was a proved document, pursuant to which he was bound to execute a sale deed qua the house in favour of the plaintiff, upon the plaintiff fulfilling the terms and conditions of the said agreement. The petitioner had also been restrained from alienating the suit property in any manner.

That judgment became final upto this Court after Regular

Second Appeal no.4126 of 2016, filed by the petitioner, was dismissed on 16.08.2016.

Hence, upon execution proceedings having been initiated by the respondent-decree holder, the petitioner had filed objections, essentially stating that he was more than 60 yeas old, with no source of earning and livelihood, and if the property, which was his sole residential house, was also sold to the decree holder, he would have no place to live in.

The learned execution Court, upon hearing arguments of the parties, held that the said objection, if it were to be taken, should have been taken in proceedings in the suit itself, and not at the stage of execution, where the execution court cannot go beyond the decree issued.

2. When this petition was filed on 12.05.2017 the following order was recorded by this Court:-

> "Learned counsel for the petitioner submits that suit property is the only residential house of the petitioner and if the decree is executed, petitioner would come on road. Referring to the duly sworn affidavit dated 17.04.2017 filed by the petitioner in compliance of the order dated 6.4.2017 passed by this Court, learned counsel for the petitioner submits that petitioner is ready to pay back an amount of Rs.10,50,000/- along with interest @ 9% from 20th April, 2005, till the date of actual payment, and not @ 6%, as pointed out in para 3 of the affidavit.
>
> Notice of motion for 30.08.2017.
>
> Process dasti as well as through the counsel for the respondent before the learned executing court, in addition to ordinary process.
>
> In the meanwhile, dispossession of the petitioner from his residential house shall remain stayed."

3. Thus, notice of motion had been issued on the statement of learned counsel for the petitioner that the petitioner would be ready to pay

back Rs.10,50,000/- alongwith interest @ 9% per annum, running from the date of the agreement of sale.

The matter thereafter kept getting adjourned, and when it came up for arguments, Mr. Gurcharan Dass, learned counsel for the petitioner, had argued that the suit property being the sole residential house of the petitioner, sale thereof, even to satisfy the decree, would be barred in terms of Section 60(1)(ccc) of the Code of Civil Procedure, 1908 (as applicable to Punjab).

Though this Court even at that stage had observed that the said provision would not be applicable where the residential house was the subject matter of the decree itself, the provision being applicable only if such a house is sought to be attached/sold to satisfy a decree other than that in which the house was the suit property, learned counsel had sought time to address arguments on that point.

In fact, at that stage, this Court had not noticed the order dated 12.05.2017, wherein, in fact, notice had been issued on the petitioners' contention that the petitioner would pay back Rs.10,50,000/- with interest.

4. Be that as it may, in support of the aforesaid argument, Mr. Gurcharan Dass has relied upon judgments of co-ordinate Benches of this Court in **Amar Singh v. Puran Chand** 1973 PLJ 337, and **Amarjit Kaur v. Gurjant Singh** (Civil Revision no.3547 of 2017), as also a Full Bench (of this Court) in **Brij Mohan Lal v. Bakhsai Ram etc.** AIR 1975 P&H 214.

5. Countering the aforesaid argument, Mr.S.S.Rangi, learned counsel for the respondent-decree holder, has reiterated the observation of this Court on Section 60(1) (ccc) not being applicable to such a case and has relied upon two judgments of, also co-ordinate Benches, in **Gurdeep Singh v. Balbir Singh others** 2012 (4) RCR (Civil) 195 and **Bikram Singh v.**

Surjit Singh and others 2004 (4) RCR (Civil) 422, in support of his argument.

6. The aforesaid contentions having been considered, coming first to the judgment of the Full Bench in *Brij Mohans'* case (supra), it is seen that the Full Bench had formulated the following two questions of law, for adjudication thereupon:-

> "(1) Whether an independent and well demarcated portion of a residential building used and occupied by a debtor for business purposes would be exempt from attachment and sale in terms of provisions of Section 60(1)(ccc) of the Civil Procedure Code and consequently exempt from vesting under Section 28(2) of the Provincial Insolvency Act (V of 1920)- hereinafter referred to as the Act;
>
> (2) As to whether or not a main residential house of an insolvent subject to a charge of debt would vest under Section 28 (2) of the Act in the insolvency Court."

Thus, though the issue directly before the Full Bench was in the context of a part of a residential house being used for business purposes, however, it would be seen that their Lordships held that the exemption from attachment or sale [as stipulated in the proviso to sub-section (1) of Section 60 of the CPC], would 'stand lifted' when the exempted property itself was charged with a mortgage.

After considering the provision itself and the law on the subject, then prevailing, it was held by their Lordships that after the amendment in clause (ccc) of the proviso to sub-section 1 of Section 60 of the Code (as applicable to the States of Punjab and Haryana and the UT of Chandigarh), in fact, no other conclusion could be drawn that "while now after the said amendment the exemption from attachment or sale in execution of a decree stood lifted not only when such exempted property carried a charge of mortgage, but also when such a charge happened to be even other than that of a mortgage debt."

(Emphasis applied in the present judgment only)

However, while deciding on the issue of exemption applicable to a property attached under Section 28 (5) of the Insolvency Act, it was held that the main residential house of a person was exempt from vesting in the insolvency Court.

7. Undoubtedly, the property in question in the present case, is not stated to be mortgaged, for the Insolvency Act to apply, but the principle contained in the judgment, in the opinion of this Court, would be that once the property that is sought to be attached or mortgaged, in execution of a decree, was itself subject matter of the decree, the exemption contained in the proviso to Section 60 (1), would cease to apply.

8. In fact, in my opinion, the ratio of the judgment in *Amar Singh v. Puran Chand* case (supra), cited by learned counsel for the petitioner, is also to that effect only, *viz.* that a residential house can be sold only in one contingency, i.e. if the charge is created specifically upon that house, for the purpose of recovery of the debt sought to be recovered. It was observed by his Lordship (reference paragraph 4 of that judgment, Law Finder citation, DocId # 75074), that a residential house can be sold only in one contingency, i.e. if the charge has been created specifically on that house regarding debt sought to be recovered. However, subsequently, in the circumstances of that case, wherein in fact a decree for recovery of Rs. 7,050/- was passed in favour of the decree-holder, it was eventually held in paragraph 6 that the judgment-debtor can claim exemption of the sole residential house if a charge

is created on the property by a decree.

Obviously, the charge created on the residential house of the judgment-debtor in that case, was pursuant to a decree for the recovery of the aforesaid amount.

9. That being so, let's now look at the provision itself, which reads as follows:-

> "**60. Property liable to attachment and sale in execution of decree.-**(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, *hundis*, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in he name of the judgment-debtor or by another person in trust for him or on his behalf:
>
> Provided that the following particulars shall not be liable to such attachment or sale, namely:-"
>
> xxxxx xxxxx xxxxx
>
> (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."

Hence, the proviso to clause (ccc) itself stipulates that the protection afforded from exemption of one residential house from attachment/sale, would not extend to any property specifically charged with the debt sought to be recovered.

10. The above interpretation was also accepted/given by two co-ordinate Benches of this Court, in **Bikram Singh** and **Gurdeep Singh** (both cases supra).

11. Undoubtedly, Section 20 of the Specific Relief Act, 1963, confers discretion on the Court to grant or not to grant a decree of specific performance, with sub-section (2) of the said provision giving instances of cases where the Court may exercise such discretion against the plaintiff.

Clause (b) of sub-section (2) in fact postulates exercise of such discretion where performance of the contract would involve hardship on the defendant, which he did not foresee (at the time of entering into the contract), whereas on the other hand, non-performance of the contract would not put the plaintiff to such hardship.

Yet, even keeping that statutory provision in mind in the present case, and if indeed the suit property is the sole residential house of the petitioner (judgment-debtor), obviously this Court would have complete sympathy with him; but unfortunately, that plea (of hardship) not having been taken by him in his defence in the suit, or if taken, it having been rejected right up-to the stage of the second appeal before this Court, in execution proceedings, I would not be able to interfere with the reasoning correctly given by the learned execution Court, to the effect that the decree having become final, directing specific performance of the contract entered into by the petitioner with the respondent, the execution Court would not be able to go beyond the scope of decree.

In fact, as this revision petition arises out of execution proceedings, and is thus an 'extension' of such proceedings, even this Court would not be able to go into that question, with the decree for specific performance having become final.

12. As regards the judgment in **Amarjit Kaurs'** case (supra), cited by Mr. Gurcharan Dass (learned counsel for the petitioner), it is seen that in that case, though it was a case of a suit seeking specific performance of an agreement of sale, in which execution proceedings were initiated by the decree-holder, however, the decree in that case was not one directing execution of a sale deed of the suit property, but was one by which the alternative relief of recovery of the money paid by the plaintiff to the defendant, was issued. Hence, it eventually being a decree for recovery of money, even though in a suit seeking specific performance of a contract (with that prayer in fact disallowed/dismissed), attachment of the sole residential house of the judgment-debtor for recovery of the money, was disallowed by this Court.

Hence, that judgment, in my opinion, would have no application to the facts at hand.

13. In the opinion of this Court, once the decree issued in favour of a decree-holder is one for specific performance of an agreement, in which a specific property is the subject matter of sale/purchase between the parties, a charge would stand created upon the property itself, unlike where a decree of recovery of money is issued, towards the satisfaction of which a residential house of a judgment-debtor is sought to be attached/sold.

14. That being so, there is no option but to dismiss the present petition, thereby upholding the impugned order, though for the additional reason given, that the protection provided in clause (ccc) to the proviso to Section 60 (1) of the CPC, does not extend to a house as is subject matter of

the suit itself, if the decree issued in that suit is one directing execution of an agreement of sale qua the said house.

This is of course other than the fact that at the time when notice was issued in this petition, it was on the ground that the petitioner was ready to pay back Rs.10,50,000/-, alongwith the interest @ 9% per annum, to the decree holder, which he has not been able to pay even almost one and half years thereafter.

Consequently, this petition is dismissed.

(AMOL RATTAN SINGH)
JUDGE

November 13, 2018.
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Whether speaking / reasoned	Yes
Whether reportable	Yes