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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 7th March, 2018

+ CM(M) 494/2016 & CM Nos. 19155-57/2016

RAM BABU

..... Petitioner

Through: Petitioner in person.

Versus

AJAY KUMAR

..... Respondent

Through: Mr. Sunil Choudhari, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petition at hand was filed to challenge the legality of orders dated 29.05.2015 and 11.04.2016 passed by the additional district judge in execution proceedings (execution case no. 04/13) taken out by the respondent against the petitioner.

2. The respondent had instituted a suit (no.40/11/08) for recovery of money against the petitioner. The said suit was decreed by judgment dated 15.12.2011 of the court of additional district judge granting recovery of Rs.5,00,000/- (Rupees Five Lakhs) with interest at 12% per annum from the date of filing of the suit till realization of the decretal amount besides cost of Rs.7,233/-.

3. The petitioner (judgment debtor) had moved this Court in appeal (RFA no.174/2012). The said appeal came up for hearing before a learned single Judge on 24.05.2012 when the following consent order was passed:-

“1. During the course of arguments, it is agreed that the appellant/defendant will suffer a decree against him for a sum of Rs.2,50,000/- along with interest at 12% per annum simple from 4.4.2008 till the date of payment. It is agreed that the amount which has to be paid to the respondent/plaintiff will be treated as charge on the suit property, and in case the suit property is sold, out of the sale proceeds received, the amount which is payable to the respondent/plaintiff will first be paid.

2. Accordingly, the appeal and the application for stay are disposed of as compromised by passing a decree in favour of the respondent/plaintiff and against the appellant/defendant for a sum of Rs.2,50,000/- along with interest at 12% per annum simple from 4.4.2008 till the date of payment. Parties are left to bear their own costs. Trial Court record be sent back.”

4. It is clear from the averments, pleadings and orders which are on record that the property referred to in the aforementioned consent order dated 24.05.2012 in first appeal was property of the petitioner/judgment debtor described as property bearing no. B-63, forming part of *khasra* no.111/17, situate in revenue estate of village Palam, known as Madhu Vihar, Som Bazar Road, admeasuring 110 sq. yards (hereinafter referred to as the “*property of the judgment debtor*”).

5. The petitioner/judgment debtor did not abide by the consent decree passed at the stage of first appeal. The respondent/decreed

holder thus, took out the execution proceedings (execution case no.04/13). A warrant of attachment of movable property of the judgment debtor was issued but the same did not bear any fruit as no attachable articles could be located.

6. The decree holder thereafter moved an application under Order XXI Rule 13 of the Code of Civil Procedure, 1908 (CPC) seeking attachment of the aforementioned property of the judgment debtor. The judgment debtor resisted the said prayer by filing a reply, *inter alia*, pleading that his property was exempt from attachment and sale under the money decree in view of inhibition contained in Section 60 CPC. The executing court found no substance in the said submission and, thus, allowed the prayer of the decree-holder directing, by order dated 29.05.2015, attachment of the said immovable property issuing at the same time an injunction against the judgment debtor from transferring or creating a charge on the said property. By the said order, the judgment debtor was given opportunity to appear on the next date of hearing (10.07.2015) “*for settling the terms of the proclamation of sell*”.

7. The judgment debtor, in the wake of the said order, moved an application under Order XXI Rule 58 read with Sections 60 and 151 CPC again contending that the said property could not be subjected to sale or attachment in the course of execution of a money decree. The additional district judge, by his order dated 11.04.2016, dismissed the said application with costs of Rs.3000/-, *inter alia*, holding that it was part of delay tactics.

8. The prime focus of the contentions urged by the petition at hand is on certain restrictions against attachment or sale of immovable properties as provided in Section 60 CPC which, to the extent relevant – and that includes Punjab amendment which has been extended to Delhi – reads thus:-

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 the name of the judgment debtor or by another person in trust for him or on his behalf:

Provided that the following properties shall not be liable to such attachment or sale, namely:—

xxxx xxxx xxxx xxxx xxxx

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him;

xxxx xxxx xxxx xxxx xxxx

(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.

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(2) Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.”

9. The executing court, by the order dated 11.04.2016, has rejected the objection of the petitioner with reference to Section 60(1)(ccc), and rightly so, for the reason that it is clear from the afore-quoted judgment in first appeal that there was a charge executed on the property of the judgment debtor, the proviso to clause (ccc) itself coming in the way of the judgment debtor/petitioner from claiming any protection thereunder.

10. But it needs to be noted here that while raising the objections under Order XXI Rule 58 CPC, the petitioner had also claimed that he is a “labourer” registered with Delhi Labor Welfare Board. He, thus, would claim protection of the inhibition in clause (c) of the proviso to Section 60(1) CPC as quoted above. It is conceded by the counsel for the respondent/deGREE holder that the decree under execution is not for

recovery of money in the nature of rent for use of building, site or land within the meaning of sub-Section (2) to Section 60, as quoted above. On the issue involving the application of Section 60(1)(c), as quoted above, all that additional district judge has recorded in the order dated 11.04.2016 is as under:-

“Record further reveals that the judgment-debtor/defendant never raised a plea of his being a labourer either before this court or before the Hon’ble High Court. Now the judgment-debtor had produced a photocopy of an identity card claiming to be a labourer registered with the Delhi Labour Welfare Board. As per the identity card, the date of registration is 02.03.2015 whereas the suit of the plaintiff was decreed vide order dated 15.12.2011. A compromise decree dated 24.05.2012 was passed by the Hon’ble High Court in RFA no.174/12.”

11. Though the tone and tenor of above observations show disinclination to accept the objection, there is no conclusion drawn from the above facts by the executing court, nor articulation of reasons therefor. This can hardly be termed as an adjudication of the objection within the meaning of Order XXI Rule 58 CPC.

12. For the above reasons, the impugned order dated 11.04.2016 is set aside and the matter to the extent of objection under clause (c) of proviso to Section 60(1) CPC raised by the petitioner/judgment debtor is remitted to the executing court for proper inquiry and adjudication. The parties are directed to appear before the executing court on 4th April, 2018.

13. The petition and the pending applications stand disposed of in above terms.

14. Copy of order be given *dasti* under the signatures of Court Master.

R.K.GAUBA, J

MARCH 07, 2018

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HIGH COURT OF DELHI



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