

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 182 OF 2019

Shri Sunil M. Tendolkar,
 50 years of age,
 R/o. Torla, Shiroda, Ponda-Goa. ... Petitioner

V e r s u s

1. Lokmanya Co-operative Credit Society Ltd,
 A Multi State Co-operative Society,
 Registered under "Multi State"
 Co-operative Societies Act 1984,
 Having its Head Office at Vasco da Gama
 Through its Branch Manager,
 Mr. Vasu Amonkar,
 R/o. Of Vaddem, Vasco.
2. Mrs. Sneha S. Tendolkar
 Major of age,
 R/o. H.No. 1610,
 Torla Shiroda, Ponda, Goa.
3. Mr. Kamalakant M. Tendolkar,
 Major of age,
 R/o. H. No.1610,
 Torla Shiroda, Ponda-Goa.
4. Shri Mohan Tendolkar
 Major of age, R/o. 1611,
 Torla Shiroda, Ponda-Goa. ... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Mr. U. R. Timble and Ms. Yadika Mandrekar, Advocates for the Respondent no.1.

Coram : C. V. BHADANG, J.
Reserved for Order on : 19th June 2019
Order Pronounced on : 1st July 2019

ORDER

1. The challenge in this petition at the instance of the petitioner, who is judgment debtor no.4, is to the order dated 20.12.2018 (below exhibit 69) passed by the Executing Court in Execution Application no.65/2010.

2. By the impugned Order, the Executing Court has refused to uphold the objection filed by the petitioner to the attachment of his property being flat No.G-4, Diana Apartments, Dwarkamai Co-operative Housing Society, St. Cruz, Ponda, Goa. The petitioner had sought exemption from attachment, on the basis of Section 60(1)(c) of the Civil Procedure Code (CPC, for short), on the ground that the petitioner is an agriculturist by profession.

3. The brief facts are that the aforesaid execution application has been filed by the first respondent against the petitioner and the respondent nos.1 to 3 for execution of an arbitral award. It appears that the Executing Court by an order dated 07.04.2018, attached the aforesaid flat belonging to the petitioner under Order XXI Rule 54 of CPC. The petitioner filed an application, exhibit -69, claiming exemption from attachment of the said flat on the ground that he is an

agriculturist, holding a Krishi Card issued by the Government of Goa.

4. The application was opposed on behalf of the first respondent. It was contended that the petitioner appears to have “embraced the profession of agriculture” in the year 2013 only for the purpose of obtaining the Krishi Card. It is submitted that the Deed of Sale by which the aforesaid flat has been purchased mentions that the petitioner is a businessman. The petitioner has also sworn an affidavit that he is a businessman in support of his reply dated 18.12.2015. It was contended that the flat is situated in municipal area and it is not situated in or close to any agricultural land owned by the petitioner. It was contended that the object of Section 60(1)(c) of CPC is to protect the interest of agriculturists as regards farm houses, farming implements, etc. and the aforesaid flat cannot be said to be exempt from attachment.

5. The learned District Judge by the impugned order found that in the verification of the reply filed by the petitioner at exhibit 51, he has disclosed that he is a businessman and although he is possessing a Krishi Card issued by the Government of Goa, he is not “only an agriculturist or a farmer”, but he is a businessman. The Executing Court has

also found that there is nothing on record to show that the aforesaid flat which is attached was purchased out of the income generated from agriculture. In that view of the matter, the application came to be rejected.

6. I have heard Mr. Costa Frias, the learned counsel for the petitioner and Mr. Timble, the learned Counsel for the contesting respondent no.1. There is no appearance on behalf of the respondent nos.2 to 4. With the assistance of the learned Counsel for the parties, I have perused record.

7. It is submitted by Mr. Costa Frias, the learned Counsel appearing for the petitioner, that the impugned order is contrary to the provisions of Section 60(1)(c) of the CPC, which clearly stipulates that houses and other buildings and land appurtenant thereto, belonging to an agriculturist, are not liable for attachment or sale in execution of a Decree. It is submitted that the petitioner is an agriculturist having ancestral agricultural properties at Village Torla, Shiroda, Ponda. It is contended that the refusal by the Executing Court to extend the benefit of Section 60(1)(c) of the CPC on the ground that the said flat is not shown to have been purchased out of agricultural income, is beyond the scope of Section 60(1)(c) of the CPC. It is submitted that the said

Section does provide for any such condition precedent, for applicability of the section. It is submitted that the petitioner is holding a Krishi Card and derives his income from agriculture and thus the residential property of the petitioner is not liable to attachment. On behalf of the petitioner, reliance is placed on the decision of the Karnataka High Court in the case of **Gouri vs. N.K.D.P.T.C.C.T.S., 1988 SCC Online Kar 298** and the decision of the Andhra Pradesh High Court in the case of **Komarti Ramu vs. Bhupathiraju Anasuyamma 2011 SCC Online AP 27.**

8. Mr. Timble, the learned Counsel for the first respondent has supported the impugned order. It is submitted that admittedly, the suit property is situated in a municipal area away from the agricultural land. It is submitted that mere holding of some agricultural land or a Krishi Card would not be sufficient for Section 60(1)(c) of the CPC being attracted. It is submitted that the petitioner has failed to show that he is covered by explanation V annexed to Section 60 of the CPC. It is pointed out that it is only where the judgment debtor cultivates the land personally and who depends for his livelihood mainly on the income of agricultural, whether as owner or otherwise, is only covered by Section 60(1)(c) of the CPC. The learned Counsel has pointed out to a letter dated

05.10.2012 from the petitioner, addressed to the first respondent in which he has stated that their business of petrol pump has gone into litigation and therefore he is facing financial crisis and is unable to pay the amount as claimed by the first respondent. The learned Counsel has also pointed out to a loan application dated 04.06.2004, of the petitioner in which he had applied for a loan of Rs.10,00,000/- as a personal loan for the purpose of expansion of business. He, therefore, submits that even on facts, the petitioner is not an agriculturist, within the meaning of explanation V to Section 60(1)(c) of CPC.

On behalf of the first respondent, reliance is placed on the decision of this Court in the case of **Hanmantrao Annarao vs. Dhruvaraj Pandurangrao, 1946 SCC Online Bom 62** and the decision of the Madras High Court in the case of **K. Rajasekar vs. Indian Bank, 2006 SCC Online Mad 1462**

9. I have considered the submissions made on behalf of the parties. Section 60(1)(c) of the CPC which is relevant for the purpose along with Explanation V reads thus :

“Section 60(1)(c) : 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 particulars shall not be liable to such attachment or sale, namely:-

(a) ...

(b) ...

(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.

Explanation V : For the purposes of this proviso, the expression “agriculturist” means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural

land, whereas owner, tenant, partner or agricultural labourer.”

It can thus clearly be seen that under Section 60(1)(c) of the CPC, houses and other buildings (with 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 are exempt from attachment, Explanation V to Section 60(1)(c) of the CPC which was introduced by virtue of an amendment in 1976 provides that for the purposes of the said proviso, the expression “agriculturist” means a person who cultivates land personally and who depends for his livelihood mainly from the income of agricultural land whether as owner, tenant, partner or agricultural labourer. Thus, in order to claim an exemption under Section 60(1)(c) of the CPC, the person must be an agriculturist within the meaning of explanation V and for the said purpose, he should be dependant for his livelihood mainly on income from agricultural land. In the present case, there is not even a whisper in the application, exhibit 69, that the petitioner is depending mainly on the agricultural income for the purpose of his livelihood. Merely because a person has agricultural land and can be said to be an agriculturist holding a Krishi Card, is

not sufficient to attract Section 60(1)(c) of the CPC. In a given case, the person may be an agriculturist and may also be carrying on other business and may have a source of income which may not be exclusively from his profession as an agriculturist. The object of Section 60(1)(c) of the CPC read with explanation V is clear, namely, to extend the benefit of the exemption only to those persons who are dependant for their livelihood mainly on income from agricultural land. Apart from the fact there is no such averment made in the application, the documents produced indicate to the contrary. The petitioner had written to the first respondent on 05.10.2012 that his business of petrol pump has gone into litigation and he is unable to generate any income from the same. That apart, the petitioner had obtained a personal loan for expansion of his business in the year 2004. There is an affidavit in evidence before the Arbitrator dated 17.06.2010, in which the petitioner claims to be a businessman and claims that he has suffered financial loss in his business.

10. There was some debate during the course of the arguments at bar whether the business of 'Uma Service Centre' which is a Petrol/Diesel Dealer ship from the Hindustan Petroleum Corporation Limited, is a business of the petitioner as a partner.

11. In my considered view, it is not necessary to go into this aspect as there is enough material to show that the petitioner is a businessman and, at any rate, there is nothing on record not even an averment to show that the petitioner depends mainly on the agricultural income for his livelihood which is the requirement for applicability of Section 60(1)(c) of the CPC.

12. In the case of **Komarti Ramu** (supra), on fact it was proved that the petitioner was an agriculturist and therefore was found to be exempt from attachment of his property. Even in the case of **Gouri** (supra) on fact it was found that the house in question was indeed used for agricultural purposes but was converted for residential use subsequently. In Para 11 of the judgment, the High Court has noted that nowhere in the Civil Procedure Code or in the agrarian law, there is scope for construing that an agriculturist ceases to be an agriculturist if he has income from other sources than agriculture. There cannot be any dispute with the said proposition, inasmuch as explanation V, to Section 60(1)(c) of the CPC would envisage that in a given case, the judgment debtor may have an income other than from agricultural business. However, the test is whether the judgment debtor who seeks exemption is dependant for his livelihood "mainly on his agricultural

income", which is *sine qua non* for applicability of Section 60(1)(c) of the CPC.

13. It is true that there is no requirement under Section 60(1)(c) of the CPC that the property which is sought to be attached, is purchased or acquired out of the agricultural income as observed by the learned District Judge. However, in the absence of an averment or proof that the petitioner is mainly dependant on agricultural income for his livelihood, the protection under Section 60(1)(c) of the CPC from exemption cannot be extended to the petitioner.

14. Similar view is taken by the Madras High Court in the case of **K. Rajasekar** (*supra*) where it has, *inter alia*, held that to attract Section 60(1)(c) of the CPC, the petitioner must be in possession of the house for agricultural purposes and must show that his main source of income is only from agriculture. None of these conditions are satisfied in this case.

15. The petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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