

**CR No. 5837 of 2018 (O&M) and
CR No. 6369 of 2018 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No. 5837 of 2018 (O&M)
Date of Decision: 13.05.2019**

Sona Devi

.....Petitioner

Vs.

National Insurance Co. Ltd. and others

.....Respondents

CR No. 6369 of 2018 (O&M)

Raj Kumar

.....Petitioner

vs.

National Insurance Company Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

**Present: Mr. Deepak Sharma, Advocate,
for the petitioner (in CR No. 5837 of 2018).**

**Mr. J.S. Khattar, Advocate,
for the petitioner (in CR No. 6369 of 2018).**

**Mr. Asseem Aggarwal, Advocate, for
Mr. Harsh Aggarwal, Advocate,
for respondent no. 1 (in both cases).**

AMOL RATTAN SINGH, J. (ORAL)

By these petitions, the petitioners challenge the order passed by the learned execution Court on an application seeking execution of a part of the Award passed by the Motor Accidents Claims Tribunal, Jagadhiri, dated

23.07.2011, by which recovery rights of the compensation awarded to the claimants in the claim petition, were granted to the respondent-insurance company (respondent no. 1 herein), qua the owner and driver of the vehicle involved in the accident, i.e. the late Dharam Pal (brother of the petitioner in CR No. 5837 of 2018 and the father of the petitioner in CR No. 6369 of 2018).

Vide the impugned order, the objections filed by the petitioners in these two petitions, against the sale of the house of Dharam Pal have been dismissed, the plea taken by the petitioners being that it being their sole residential house, it was protected from being sold, in terms of sub-clause (ii) of clause (ccc) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure, 1908, (as applicable to the States of Punjab, Haryana and U.T., Chandigarh), by operation of which “one main residential house and other building attached to it”, belonging to a judgment-debtor other than an agriculturalist, and occupied by him is protected from sale to satisfy a decree passed against the judgment-debtor.

As regards petitioner Sona Devi (in CR No. 5837 of 2018), it has already been recorded earlier by this Court, that she being a married sister of judgment-debtor Dharam Pal (paternal aunt of Raj Kumar, petitioner in the accompanying petition, i.e. CR No. 6369 of 2018), with her husband being alive (as per Mr. Aggarwal, learned counsel for respondent no. 1), it would not be normally expected that she would be living in her parental home, so as to hold that the house of Dharam Pal that her late brother, was her sole residential house.

However, learned counsel for the said petitioner (in CR No. 5837 of 2018), submits that her objection to the sale of the house is not on the ground that it is her sole residential house but on the ground that she is a co-sharer in the house and therefore, to satisfy a debt incurred by Dharam Pal, the house in which she has

a share cannot be sold.

As regards Raj Kumar, i.e. the son of the late Dharam Pal, of course the contention remains that the property in question being the sole residential house of Raj Kumar and other LRs of Dharam Pal, the protection provided in Section 60 is very much available to them.

Another issue that has been raised by Mr. Aggarwal, learned counsel appearing for respondent no. 1 (insurance company), is on the applicability of execution proceedings before the execution Court in the face of Section 174 of the Motor Vehicles Act, 1988, read with Rule 220 of the Haryana Motor Vehicles Rules, 1993. His contention is that eventually recovery is to be made through the Collector as arrears of land revenue.

How the insurance company benefits from that argument I fail to understand, because it is the company itself (decree-holder to the extent of the rights of recovery granted to it by the Tribunal), that has invoked the jurisdiction of that court, and in any case, any recovery to be made is only in terms of what is settled by the civil court in such execution proceedings.

Hence, whether such recovery is to be made directly by the execution court, which obviously would be to the advantage of the decree-holder, or it is to be made through the Collector, by a longer process, as arrears of land revenue, the certificate for the amount to be recovered is to be issued (even to the Collector) by the execution Court.

Be that as it may, since learned counsel is insistent that even protection of Section 60 is not available, that contention has to be rejected (subject of course to the petitioner Raj Kumar proving that the house in question is actually his sole residential house; and petitioner Sona Devi proving that she has any share

in it), because even if for the sake of arguments it is to be taken that recovery is to be made through the aegis of the Collector, the Collector cannot go beyond the substantive provision of the statute, i.e. Section 60 of the Code of Civil Procedure, 1908.

The grievance of learned counsel for the petitioners is that they were not given an opportunity to lead evidence before the execution Court that it was the sole residential house of the LRs of Dharam Pal, or that petitioner Sona Devi has any share in it.

Learned counsel for the parties are therefore *ad idem* at least on one issue, i.e. that if opportunity is to be granted to the petitioners to lead such evidence, naturally the respondent-insurance company would have the right to lead its own evidence to disprove the fact that the house is the sole residential house of the LRs of Dharam Pal, or that Sona Devi has any share in it.

That being so, the issue being whether Section 60 is applicable at all or not to the property on the ground of it being the sole residential house of the LRs of Dharam Pal, the impugned order is set aside, with the execution Court directed to frame specific issues as follows:-

- (i) Whether the property in question is the sole residential house of the LRs of the late Dharam Pal; and
- (ii) Whether objector Sona Devi has any share in the said house.

Upon evidence being led on the aforesaid two issues by both sides, the trial Court would come to a conclusion as to whether or not the house can be sold to satisfy the debt owed by the late Dharam Pal (judgment-debtor), to the respondent-insurance company or not.

The petitions are thus, allowed in the aforesaid terms.

Learned counsel for the parties are also *ad idem* that CR No. 8123 of 2014 may actually have been rendered infructuous by virtue of this order having been passed in these two petitions.

However, since counsel for the petitioners in that petition is different, that petition is ordered to be listed for hearing on 22.05.2019.

To be shown in the urgent motion list.

It is to be noticed that the order impugned in that petition (the case file of which was ordered to be put up along with these petitions), is one by which conditional warrants have been issued for the arrest of the LR's of judgment-debtor Dharam Pal, in case they failed to discharge the debt.

The Registry would inform Mr. N.C. Kinra, learned counsel for the petitioners in that case, of the advancement of the date of hearing, with the case to be listed as per roster.

May 13, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes