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

CR No. 6668 of 2017

Date of Decision: 29.04.2019

Kanta Rani

-Petitioner

Vs

Rama Rani

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Surinder Sharma, Advocate,
for the petitioner.

Mr. Tarun Sharma, Advocate, for
Mr. R.S. Bajaj, Advocate,
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

1. Petitioner has challenged the order dated 11.08.2017 passed by Additional District Judge, Jalandhar vide which the objections filed by the judgment debtor-respondent were allowed in appeal by setting aside the order dated 20.09.2014 vide which objections of the judgment debtor were dismissed by the Executing Court.

2. Plaintiff-petitioner filed a suit for possession by way of specific performance of agreement to sell dated 21.06.2000 executed by defendant-judgment debtor in respect of House bearing No.FM-254 measuring 2 Marlas situated at Model House, Jalandhar on payment of balance sale consideration of

Rs.2,25,000/-. In alternative, suit for recovery along with interest was filed.

3. The trial Court decreed the suit vide judgment and decree dated 28.03.2008 granting alternative decree of recovery of Rs.2,25,000/- along with interest @ 12% per annum from the date of filing of suit till the date of judgment and future interest @ 6% from the date of judgment and decree till final realization of the amount.

4. Against the aforesaid judgment and decree, defendant-judgment debtor remained unsuccessful when her appeal was dismissed by the trial Court on 15.09.2011. In the execution filed by the petitioner-decree holder, objections were filed by the judgment debtor-respondent that the house in question is the only dwelling unit of the judgment debtor and is protected in terms of Section 60 (1) (ccc) CPC. The objections were dismissed by the Executing Court on 20.09.2014, however in appeal filed against the said order, the same was accepted by Additional District Judge, Jalandhar vide order dated 11.08.2017.

5. In view of **Bikram Singh vs Surjit Singh and others, 2004(4) RCR (Civil) 422, Mahender Kumar vs Mangal Singh, 2013(4) RCR (Civil) 342 and Sheela Rani vs Punjab and Sind Bank Limited, 1994(1) PLR 583**, it can be noticed that what is

exempted under Section 60 (1) (ccc) is the sale and attachment of a residential house in occupation of the judgment debtor. The decree is for specific performance of agreement to sell of the house, therefore, the residential house is not being attached or sold in execution of the decree, but the decree for specific performance is being executed. The suit for specific performance at the instance of the decree holder was in relation to residential house agreed to be sold by the defendant to the plaintiff. The parties to the agreement entered into the same and the suit was decreed though for alternative relief of recovery.

6. The decree holder seeks to enforce the decree by way of execution. The judgment debtor cannot be permitted to take the plea of Section 60 (1) (ccc) CPC particularly when the house in question was the subject matter of agreement to sell and alternative decree was passed. The conduct of the judgment debtor cannot be appreciated as on the one hand, she is reluctant to honour the decree despite losing the case before both the Courts below and on the other hand, seeks to protect the house in question without paying anything to the decree holder.

7. After passing of the impugned order, since nothing survived before the Executing Court, therefore, order dated 27.07.2018 passed by the Executing Court dismissing the

execution in default will not advance the case in favour of the judgment debtor.

8. For the reasons recorded hereinabove, impugned order dated 11.08.2017 passed by Additional District Judge, Jalandhar is set aside. This revision petition is allowed. As a consequence of acceptance of this revision petition, rigor of order dated 27.07.2018 passed by the Executing Court would be eliminated and the execution to its original number be restored.

9. The Executing Court shall proceed to dispose off the same in accordance with law.

29.04.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No