

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

CR No.4611 of 2019
Date of Decision: 19.8.2019

Gurdeep Singh

.....Petitioner

Versus

Harwinder Singh

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

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

Mr. Navjot Singh, Advocate, for the respondent.

NIRMALJIT KAUR, J. (ORAL)

The present revision petition has been filed against the order dated 2.7.2019, vide which, the residential property of the petitioner is sought to be attached and thereafter to be auctioned for the purpose of satisfying the decree against the present petitioner.

Reliance has been placed on the judgment of this Court rendered in the case of Mehtab Singh Malik vs. S.R. Buildcon India (P) Ltd. and others, 2010(5) RCR (Civil) 274 to contend that the order of attachment cannot be passed without deciding the question as to whether the sole residential property of the petitioner can be attached or not in view of the protection granted under Section 60 (i) (ccc) CPC.

Learned counsel for the respondent while opposing the present petition submitted that the petitioner in fact is not entitled to the relief claimed in view of the finding recorded by the trial Court in its order dated 7.8.2018 that there appears to be tempering of the record and that the plea of the residential house was raised for the first time before the Appellate Court and the same did not find mention in the application filed by the petitioner.

Heard.

A perusal of the order dated 7.8.2018 shows that the Appellate Court had directed to the Executing Court to look into the matter and to take all necessary steps on administrative side to reach at the logical conclusion and thereafter, to proceed further as per law qua the allegations of tempering alleged by the respondent. It appears that the Court has proceeded to order of attachment of the property without holding an enquiry to the said effect. This Court is faced with two questions. The first question is with respect to the tempering of the record, if any. The second question still remains as to whether the property sought to be attached is the only residential house owned by the petitioner or his family.

Learned counsel for the parties agreed that the matter can be remanded back to the trial Court for the purpose of holding an enquiry in both the two above questions. In view of the same, the order dated 7.8.2018 is set aside with the following directions:-

(a) The trial Court shall hold an enquiry with respect to the observations made by the Additional District Judge in its order dated 7.8.2018. Both the parties will be allowed to lead their respective evidence qua the same. In case, the petitioner is found guilty of the said tempering, the trial Court shall proceed to order of registration of FIR.

(b) Since the finding, if any, in the above enquiry is independent of the right of the petitioner to protect his residential property from attachment in view of the protection granted under Section 60 (i) (ccc) CPC, the Executing Court shall simultaneously record finding qua the residential house

and in case, the petitioner is able to show that the residential house, which is being sought to be attached now by the impugned order, is the only residential house available with him as on date, the Court shall thereafter, proceed to decide the right of the petitioner in terms of the Section 60 (i) (ccc) CPC afresh after hearing both the sides.

Needful shall be done within two months from today.

(NIRMALJIT KAUR)
JUDGE

19.8.2019
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No