

CR-2306-2014(O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2306-2014(O&M)
Date of decision: 10.01.2020

Gurmeet Kaur

.....Petitioner

Versus

Smt. Meena Kumari and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.G.K.Moudgil, Advocate for the petitioner

Mr.A.K.Goel, Advocate for respondents

ANIL KSHETARPAL, J. (ORAL)

Gurmeet Kaur (judgment debtor in the award passed by the Motor Accident Claims Tribunal dated 3.1.2008) is in revision against the order passed by learned Executing Court directing attachment and sale of the property owned by her.

Learned counsel for the petitioner submits that as per Section 60(ccc) of the Code of Civil Procedure the only self occupied residential house cannot be attached and sold in execution of a money decree.

On the other hand, learned counsel for the respondents while referring to the judgment passed by this Court in the case of '**Prem Chand vs. Akash Deep and another**' (CR-2000-2012 decided on 4.2.2013) has submitted that protection under Section 60(ccc) CPC shall not be applicable with respect to the award passed by the Motor

Accident Claims Tribunal. He, hence, submits that there is no force in the submission.

This Court has considered the submissions. In the judgment passed in the case of Prem Chand (supra), it has been held as under:-

“4. All this becomes only academic, for in respect of recovery of amount under the very same award, it appears that the same objection appears to have been taken before the Executing Court and the Court has rejected such a contention at an earlier point of time in execution petition No.13 dated 19.7.2004 decided on 3.10.2006. Explanation VII to Section 11 CPC enacts a rule of public policy that the principle of res judicata shall apply to proceeding for execution of decree and references made under Section 11 to any suit or former suit would apply such references to a proceeding for execution of a decree and the question arising in such proceeding and former proceeding for execution of that decree. Though I have stated that the provisions under Section 60 (ccc) is not applicable since there are express provisions under the Motor Vehicles Act itself, I still referred to Section 11 CPC, for the principle of res judicata as brought under Section 11 is to be applied even in cases where CPC is not applicable on grounds of public policy. I would, therefore, hold that an earlier adjudication made by

the Executing Court on the same matter that become final will conclude the issue for judgment debtor and bar him from taking up the very same defence in a subsequent stage at execution for realization of further sums in the very same decree. The issue of whether the exceptions provided under the CPC for properties that cannot be attached could be invoked in proceedings for recoveries under the Land Revenue Act has come for consideration before the Supreme Court itself in **State of Punjab Vs. Dina Nath 1986 RRR 490**. The point which was directly in issue was whether an attachment and sale of property for recovery of revenue due to State was barred in respect of building used for residential purpose and whether the provisions of Section 60(ccc) would be applicable was taken up and the Court held that exemption was only for properties specified under the Act. The Court held that Punjab Land Revenue Act was a complete Code providing for modes and machinery for recovery of arrears of revenue and the provisions of Civil Procedure Code are not applicable to attachment and sale in revenue recovery proceedings. The award which is passed by Tribunal, which obtains a status through a certificate issued by the Collector as land revenue payable ought to therefore obtain a different

treatment and the trappings of the Civil Procedure Code and limitations contained therein cannot, therefore, be attached. This point was also subsequently decided under the Motor Vehicles Act itself by a Division Bench of the Kerala High Court in **V.Varghese Vs. Sunny M.P and another 2009 AIR (Kerala) 133** where the Court held that execution of award by Tribunal after issuance of a certificate to the land recovery authority cannot avail to a judgment debtor to plead for the benefit of Section 60 (1) (c) of the Civil Procedure Code. The said provision contained a similar provision relating to certain exemptions.”

Keeping in view the aforesaid facts, there is no ground to interfere.

Hence, dismissed.

10.01.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No