

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

CWP-5409-2020

Date of Decision:- 11.12.2020

Arun Bakshi

... Petitioner

Versus

Industrial Development Bank of India Ltd. and Ors.

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Uday Gupta, Advocate
for the petitioner.

Mr. Tajender K. Joshi, Advocate
for respondent No.1.

Mr. R.S. Bhatia, Advocate
for respondent No.2.

Er. Sandeep Suri, Advocate
for respondent No.3.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The petitioner has prayed for the issuance of writ in the nature
of Certiorari for quashing the impugned order dated 25.2.2019
(Annexure P-1) passed by the Recovery Officer-I, DRT-II, New Delhi
(hereinafter to be called as "R.O. New Delhi") with all consequential
proceedings arising therefrom with further direction that the main residential

house of the petitioner i.e. W-10/8, DLF, Phase-III, Gurgaon (Haryana) is exempted from attachment under Section 60(1) (ccc) of CPC.

The case of the petitioner is that the aforesaid residential house was purchased by him and his wife on 11.12.1989. The petitioner become director of M/s Classic Rugs Private Limited in 1991. The company took loan from different banks and thereafter it went into liquidation in 1999.

Respondent No.1-Bank being secured creditor initiated proceedings under Securitization and Reconstruction of financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter be called 'the Act') against the petitioner and other debtors. The R.O., New Delhi issued attachment notice with regard to aforesaid residential house of the petitioner, while ignoring the provisions of Section 60(1) (ccc) of CPC. The said order (Annexure P-1) is under challenge in the present writ petition.

Notice of motion returnable for 14.5.2020 was issued.

Respondent No.1-Bank filed reply contesting the claim of the petitioner. The preliminary objection was raised by respondent No.1 that writ petition against the impugned order passed by the R.O., New Delhi is not maintainable before this Court. In the written reply, it was also pleaded that the petitioner has already filed objections against the order of attachment and the same are pending before the R.O., New Delhi. It was prayed that the writ petition be dismissed.

We have heard the counsel for the parties.

The counsel for the petitioner submitted that the similar matter titled **Ms. Sujata Kapoor vs. Union Bank of India and Ors.** having W.P.

(c) **No.2404-2019** was decided by the Division Bench of Delhi High Court on 12.12.2019. In the said writ petition the plea taken by the borrower/judgment debtor to the effect that the property No.3, Racquet Court Road, Civil Lines, Delhi being her only residential house is exempted from attachment and sale in execution of a decree of Civil Court, under Section 60(1) (ccc) of CPC, was rejected. The counsel for the petitioner further contended that the aforesaid decision of the Delhi High Court is contrary to the Full Bench decision of this Court in **Ude Bhan vs. Kapoor Chand & Ors., AIR 1967 (P&H) 53**. The counsel for the petitioner further contended that the petitioner would have pursued the proceedings before the R.O. New Delhi, but for the fact that there is apprehension in his mind that the said authority will follow the dictum passed in **Ms. Sujata Kapoor's** case (supra), resulting in attachment and auction of his main residential house. With this in mind, the petitioner filed SLP No.4550/2020 challenging the judgment passed by Delhi High Court in **Ms. Sujata Kapoor's** case (supra), before the Hon'ble Apex Court. The counsel for the petitioner further argued that the said SLP was later on withdrawn, with liberty to the petitioner to pursue other remedies. Consequently, the present writ petition is filed in Punjab & Haryana High Court. The counsel for the petitioner further argued that no useful purpose would have been served even by approaching the Delhi High Court which has already passed the judgment in similar matter i.e. **Ms. Sujata Kapoor's** case (supra).

On the other hand, the counsel for respondent No.1-Bank submitted that the present writ petition is not maintainable. It is further

contended that the efficacious remedy has already been availed by the petitioner by filing objections before the R.O., New Delhi.

We have considered submissions made by the counsel for the parties.

The arguments raised by the counsel for the petitioner are totally unconvincing and implausible. The Courts/Tribunal exist for rendering justice and to secure the ends of justice. The impugned order (Annexure P-1) was passed by R.O., New Delhi. In the instant case, this Court is not empowered to examine the validity of the said order passed by the R.O., New Delhi, which is beyond the jurisdiction of this Court. Undisputedly, the petitioner has availed the efficacious remedy by filing objections before the R.O., New Delhi which are to be considered by the said authority, on its own merits including the fact that in the present case, the property in question is situated in Haryana. The each case is to be decided on the basis of its own facts and circumstances and the judgment in **Ms. Sujata Kapoor's** case (supra), will not act as a fetters, in imparting justice by the R.O., New Delhi.

In the light of the aforesaid, we are of the firm view that the present writ petition is totally misconceived. Consequently, the same is hereby dismissed being not maintainable before this Court.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

11.12.2020
Gaurav Sorot

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No