

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101

CR No.1220 of 2018 (O&M)

Date of Decision: 24.01.2023

State Bank of Patiala

....Petitioner

Versus

Mohan Lal

....Respondent

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Deepak Aggarwal, Advocate
for the petitioner.

None for the respondent.

Harsimran Singh Sethi, J. (Oral)

On the last date of hearing, the following order was passed:

“Since there is no representation on behalf of the respondent,
in the interest of justice, adjourned to 24.01.2023.

It is made clear that in case no one appears on behalf of the
respondents on the adjourned date, an appropriate order on the
prayer of the petitioner will be passed.

To be shown in urgent list.”

Even today, no one appears on behalf of the respondent to
contest the present petition despite service hence, the respondent is
proceeded against ex parte.

In the present petition, the challenge is to the order passed by
the Executing Court dated 12.07.2017 by which, the objection raised by

the judgment debtor to the effect that his residential house has been

attached to satisfy the decree, is liable to be reviewed especially keeping in view the fact that the judgment debtor was employee of the petitioner herein and had retired after rendering about 17 years of service and his provident fund, gratuity and other dues are still lying with the decree holder and decree can be satisfied from the said amount.

Keeping in view the said objection taken vide order dated 12.07.2017, the objection raised by the judgment debtor with regard to the attachment of his house was accepted and house was ordered to be released from attachment and decree holder was directed to give fresh list of the properties in one month so that fresh warrant of attachment could be issued to the judgment debtor.

Learned counsel for the petitioner argues that the judgment debtor has already taken the service benefits, which objection had been taken by him before the Executing Court hence, as of now, the house on which charge has already been created cannot be released from attachment.

I have heard learned counsel for the petitioner and have gone through the record of the case with his able assistance.

As per the facts, it transpires from the decree sought to be executed that the respondent being employee of the State Bank of Patiala had taken loan while in service against the property in question. The said loan was defaulted and was never paid back and decree was issued for payment of loan wherein, the said house was kept as a security. These facts have not been taken into consideration by the Executing Court while passing the order dated 12.07.2017 and house in question has been ordered to be released from attachment.

Even otherwise, the said house was taken out of the

attachment on the ground that the decree holder had service benefits with them so as to release the decretal amount. The said objections of the judgment debtor are found to be incorrect as he has already taken the service benefits keeping in view the statement made by learned counsel for the petitioner, which has gone unrebutted.

Further as per the settled principle of law settled by a Coordinate Bench of this Court while passing order in Execution Second Appeal No.982 of 1972 decided on 07.02.1973, titled as **Amar Singh Vs. Puran Chand**, the residential house can be sold in a contingency where the charge has been created specifically on that house regarding the debt sought to be recovered. In the present case, a charge was created on the said house keeping in view the loan facility availed by the respondent. Keeping in view the above, order dated 12.07.2017 is set aside with a direction to the Executing Court to proceed in accordance with law with regard to the execution filed by the petitioner.

Petition stands allowed.

CM No.3794-CII of 2018

In view of above order, application is disposed of as such.

January 24, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*