

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(112)

CR No.3099 of 2023
Date of Decision:21.07.2023.**Sunita Rani**

.....Petitioner

Versus**Ramesh Chand @ Romesh Chand and others**

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWALPresent: Mr. Sunny K. Singla, Advocate
for the petitioner.

VIKRAM AGGARWAL, J. (ORAL)

1. The present revision petition, preferred under Article 227 of the Constitution of India lays challenge to the order dated 20.04.2023 (Annexure P-4) passed by the Civil Judge (Jr. Divn.), Malerkotla, vide which the objections filed by the present petitioner in the execution application filed by respondent No.1 were dismissed.

2. Respondent No.1 filed a suit for recovery of ₹3,72,350/- (₹2,75,000/- being the principal amount and ₹97,350/- being interest). The suit was decreed vide judgment and decree dated 03.07.2019 passed by the Civil Judge (Jr. Divn.), Malerkotla (Annexure P-1). An execution application was preferred by respondent No.1-decree Holder (Annexure P-2). A sum of ₹440305/- was claimed. The amount was sought to be recovered by way of attachment and sale of the house of the judgment-debtors, which, as per the execution application, had been inherited by them from their father. Objections were filed by the present petitioner, who was

personally liable for the decretal amount but their liability was limited to the extent of the properties inherited by them from Narinder Kumar who was the husband of the present petitioner-Sunita Rani. It was averred that respondent No.1-decree Holder had got their house attached after concealing true and material facts from the Court. It was averred that the judgment-debtors were not the owners of the house in dispute and it was not owned by Narinder Kumar either. It was averred that the petitioner judgment-debtor No.1 was residing in one room of the house on the first floor on an oral agreement and the house was owned by the brother of Narinder Kumar. It was averred that the site plan produced by respondent No.1-decree Holder was false as no draftsman had visited the spot. Some other objections were also taken. It was also averred that the house in question was exempted from attachment and sale as per the provisions of Section 60(1) proviso (CCC) CPC (as applicable to Punjab). Dismissal of the execution application was prayed for.

3. The Executing Court dismissed the objections while holding that no title deed of the house in dispute had been placed on record by the petitioner-judgment debtor No.1 to prove that the same belonged to the brother of Narinder Kumar. In fact some documents had been placed on record by respondent No.1-decree Holder that Narinder Kumar was the owner of the house. The Executing Court also did not agree with the bar of Section 60(1) proviso (CCC) CPC (as applicable to Punjab) stating that since the judgment-debtors were the legal heirs of Narinder Kumar and had inherited the house from him, the same was not exempted from attachment.

4. Aggrieved by the order passed by the Executing Court, the present revision petition has been preferred.

5. I have heard learned counsel for the petition and have perused the record.

6. Learned counsel has contended that the Executing Court gravely erred in dismissing the objection petition. Reliance has been placed upon the provisions of Section 60(1) proviso (CCC) CPC (as applicable to Punjab) and it has been contended that since the house in dispute was the only residential house of the judgment debtors, it was exempt from attachment. The findings of the trial Court have been assailed on the ground that they are factually also incorrect.

7. I have considered the submissions made by learned counsel for the petitioner but find the same to be devoid of merit. The judgment and decree dated 03.07.2019 was passed against the present petitioner and her children. The present petitioner is the widow of Narinder Kumar and she has two sons namely Dinesh Gupta and Amit Gupta and one daughter namely Sonia. All were defendants in the Civil Suit. The judgment and decree for recovery of a sum of ₹3,72,350/- was passed on 03.07.2019. An execution application was filed seeking recovery of the said amount by way of attachment of the house in dispute. An objection petition was filed in which contradictory stands were taken. It was the clear-cut stand of the judgment debtors that they were not the owners of the house and were only in occupation of one room under an oral agreement. Then a plea was taken that since it was their only residential house, the bar laid down under Section 60(1) proviso (CCC) CPC (as applicable to Punjab) would apply and the house would not be liable to be attached. They however did not produce on record any document worth its name to prove any of their assertions. They could not prove that if they were the owners of the house, it was their only house and that they were residing in the same, which could have given them the benefit of Section 60(1) proviso

(CCC) CPC (as applicable to Punjab). They took a stand that the house belonged to the brother of Narinder Kumar and to prove this fact also, no document was produced. They simply stated that the site plan produced by the decree Holder was false and made no attempt to disprove it apart from the bald assertions in the objection petition. It is, therefore, clear that the judgment debtors were only making an attempt to delay the execution proceedings. The reasoning given by the trial Court that since the judgment-debtors were the legal heirs of Narinder Kumar, the provisions of Section 60(1) proviso (CCC) CPC (as applicable to Punjab) would not apply is erroneous as the judgment debtors i.e., Sunita and her children were defendants in the Civil Suit and they had suffered a judgment and decree. However, apart from this, the overall decision of the Executing Court does not suffer from any infirmity in so far as it dismissed the objection petition. For the reasons aforementioned, I do not find any reason to interfere in the execution proceedings.

In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed.

July 21st, 2023

Rekha

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned : *Yes/No.*
Whether reportable : *Yes/No.*