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

**1. CR-6329-2019
Reserved on: 20.10.2023
Date of decision: 03.11.2023**

RULIA SINGH ..Petitioner

Versus

MUNSHA SINGH ..Respondent

2. CR-6376 of 2019(O&M)

RULIA SINGH ..Petitioner

Versus

MUNSHA SINGH ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Hardip Singh, Advocate
for the petitioner.

Mr. Ashutosh Hoshiarpuri, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

1. This judgment shall dispose of two connected revision petitions filed under Article 227 of the Constitution of India. In CR-6329-2019, the petitioner assails the correctness of the order passed by the Executing Court on 17.12.2018 while dismissing the petitioner's objection petition. The aforesaid order has been affirmed in the appeal by the First Appellate Court. In CR-6376-2019, the challenge is to the correctness of the order passed by the Executing Court on 04.10.2018 whereby the objection filed by the petitioner on the ground that the matter is pending in the High Court, has been dismissed.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. The petitioner (Sh. Rulia Singh) executed an agreement to mortgage with possession his house constructed over 6 marla of land comprised of three rooms, kitchen, latrine, bathroom, courtyard, verandah, staircase and a shop on the front portion of the said house. Sh. Munsha Singh (decree holder) filed a suit for specific performance of the agreement dated 18.07.2008. The aforesaid suit was decreed by the trial Court on 19.08.2014. The relief given was only the alternative relief of recovery of Rs.2,30,000/-, the principle amount along with interest at the rate of 8% per annum from the date of execution of the agreement dated 18.07.2008 till realization of that amount. Since, the payment of the awarded amount was not done, hence, the execution petition was filed by the decree holder i.e. Sh. Munsha Singh.

4. The petitioner (judgment debtor) claims that his one main residential house cannot be attached and sold as it is exempted in view of Section 60(1)(ccc) of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'), as applicable to the States of Punjab and Haryana exempts the property. The Executing Court has dismissed the objection filed by the petitioner (judgment debtor).

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbooks.

6. The learned counsel representing the petitioner while relying upon the judgment passed in ***CR-3547-2017, titled as "Amarjit Kaur Vs. Gurjant Singh", decided on 07.03.2018***, submits that the exemption lies only with respect to the residential house and hence, the same is not liable to be sold in execution of the decree as the Court while passing the decree has

found that it was a loan transaction. He submits that Section 60(1)(ccc) of the CPC comes to the rescue of the petitioner.

7. On the other hand, the learned counsel representing the respondent relies upon the judgments passed in ***Sikandar Singh Vs. Harjeet Pal Singh, 2005 (1) PLR 591, Bikram Singh Vs. Surjit Singh and another, 2004 (3) PLR 129, Sher Singh Vs. State Bank of Patiala, 2002 (3) PLR 730, Gurdeep Singh Vs. Balbir Singh and another 2010 (4) PLR 518, Mahender Kumar Vs. Mangal Singh, 2013 (2) PLR 678*** and ***Gurdarshan Singh VS. Jaswant Singh, AIR 2019 P&H 1***.

8. This Court has analyzed the arguments of the learned counsel representing the parties and examined the judgments relied by them.

9. At this stage, it would be appropriate to extract relevant part of Section 60(1)(ccc) of the CPC as applicable to States of Punjab and Haryana at Chandigarh:-

> *"60. Property liable to attachment and sale in execution of decree.- (1) The following property is liable to attachment and sale in execution of a decree, namely land, house of other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor or over which or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:*
> *Provided that the following particulars shall not be liable to such attachment to sale, namely:-*
> *(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to agriculturist or a labourer or a domestic servant and occupied by him;*

> *(ccc) one main residential house and other buildings attached to it (with the material and sites thereof and the land immediately appurtenant thereto and necessary for this enjoyment) belonging to a judgment debtor other than a agriculturist and occupied by him:*
> *Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered."*

10. It is evident that as per the proviso attached to Section 60(1) (ccc) of the CPC, it is clearly provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered. However, in the peculiar facts of the present case, the property was specially charged with the debt sought to be recovered because the agreement to mortgage the property was the subject matter of suit for specific performance. Moreover, it is evident from the reading of the agreement and the judgments passed by the Court on 19.08.2014 that not only the residential house but also a shop in front of the house was agreed to be mortgaged. The aforesaid exemption is not applicable to the area of the shop, which is separate. In fact, this aspect of the matter has been clarified by a Full Bench of this Court in ***Brij Mohan Lal Vs. Bakshi Ram Etc., AIR 1975 P&H 214***.

11. On a careful reading of the judgment passed in ***Amarjit Kaur's case (supra)***, it is evident that in that case agreement to sell was found to be executed for the purpose of security and there was no intention to sell/purchase the house. Moreover, in that case some part of the property was not commercial. Hence, the aforesaid judgment is not applicable.

12. In ***Sikandar Singh's case (supra)***, this Court has held that once the suit is not a simple suit for recovery but a suit for specific performance

of sale of the house, the exemption under Section 60(1)(ccc) of the CPC cannot be claimed because the property is itself the subject matter of lien or charge as per the terms of the agreement.

13. Similarly, in ***Vikram Singh's case (supra)***, the Court has held that once the property is itself the subject matter of the agreement and a decree for specific performance is sought to be executed, the exemption shall not be applicable.

14. Similar view was taken in ***Sher Singh's case (supra)***, ***Gurdeep Singh's case (supra)***, ***Mahender Kumar's case (supra)*** and ***Gurdarshan Singh's case (supra)***.

15. Keeping in view the aforesaid consistent line of judgments, this Court does not find any merit in these revision petitions.

16. Hence, both the revision petitions are dismissed.

17. All the pending miscellaneous applications, if any, are also disposed of.

November 03rd, 2023 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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