



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ESA-5-2021 (O&M)
Reserved on: 05.08.2024
Pronounced on: 12.08.2024

DALJIT KAUR AND OTHERS

. . . . APPELLANTS

Vs.

STATE OF PUNJAB

. . . . RESPONDENT

CORAM: HON’BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. S.S. Swaich, Advocate, for the appellants.

Mr. Eklavya Darshi, DAG, Punjab for the respondents.

DEEPAK GUPTA, J.

Under Challenge is the order dated 25.02.2000 passed by the Appellate Court of Id. Additional District Judge, SAS Nagar, Mohali in Civil Appeal No.6 of 2018, dismissing the appeal against the order dated 27.09.2018 of Id. Executing Court, whereby the objections filed by the Judgement Debtors (*petitioners herein*) in execution case No.183 of 2014, were dismissed.

2. The facts in brief, relevant for the purpose of disposal of this appeal, are that *Civil Suit No.1041 of 2004* titled ‘*State of Punjab through Executive Engineer Vs. Smt. Daljit Kaur Sodhi and others*’ for recovery of ₹4,42,389/- with interest was decreed by the Court of Id. Additional Civil Judge (Sr. Division), Patiala vide judgment & decree dated 24.07.2007 (*Annexure A-1*), although it was made clear that recovery of the decretal amount shall be effected from the estate of deceased Harbhajan Singh Sodhi (*husband of defendant No. 1 and father of defendants No.2 & 3 - petitioners-JDs herein*). In order to realize the decretal amount, execution petition was filed by the decree holder -State of Punjab, during which House No.1790, Phase V, Mohali owned by JD No.1/petitioner Smt. Daljit Kaur Sodhi was attached and the same was sought to be put to auction.

3. The Judgment Debtors filed objections claiming that the house in question was not inherited by them from the estate of late Harbhajan Singh Sodhi and rather, it was the personal property of JD No.1 /objector, having been purchased

by her vide registered sale deed dated 21.08.2001. However, the objections were initially dismissed on 18.11.2016. In the appeal filed by the Judgment debtors, the Additional District Judge vide his order dated 27.03.2017 set aside the order and remanded the case after framing issues to the effect that *as to whether house in question was purchased by objector-Daljit Kaur Sodhi from her own funds; as to whether it was purchased from the money inherited by her from late Harbhajan Singh Sodhi; and as to whether the said house can be attached or sold in the execution of decree in question.* After taking evidence produced by the parties, the Executing Court dismissed the objections vide order dated 27.09.2018 and the Appellate Court vide impugned order dated 25.02.2020 upheld the said order of the Executing Court.

4. The short submission made by Id. counsel for the appellants-judgment debtors is that Harbhajan Singh Sodhi, from whose estate the recovery could be effected, had died on 09.03.2001, whereas house in question was purchased by Smt. Daljit Kaur Sodhi vide registered sale deed dated 21.08.2001 for an amount of ₹4,95,300/- and that the ownership was ultimately transferred in her name on 19.10.2001. Id. counsel has also drawn attention towards the fact that as per the evidence brought on record, an amount of ₹4,10,630/- was received by Daljit Kaur Sodhi on account of death claim benefit from the Life Insurance Company, after the death of her husband Harbhajan Singh Sodhi and that in case, said amount has been utilized for purchasing the house on 21.08.2001, the same cannot be put on attachment/sale in view of the bar contained in Section 60(kb) of the Code of Civil Procedure.

5. Refuting the aforesaid contention, Id. State counsel for the respondents contends that amount of ₹4,10,630/- was received by Smt. Daljit Kaur Sodhi on account of death claim of Harbhajan Singh Sodhi, in whose name the policy existed and so, the same shall be considered to be the estate of the deceased and so, the decretal amount can be realized from the house purchased from that amount.

6. Having considered submissions of both the sides, this Court is of the view that appeal deserves to succeed and the impugned orders passed by the Courts below cannot be sustained.

7. It is not in dispute that as per the decree dated 24.07.2007, the recovery could have been effected by the decree-holder-respondent State from the estate of the deceased Harbhajan Singh Sodhi i.e. predecessor-in-interest of the petitioners/ judgment debtors. In these facts and circumstances, it was required for the decree-holder to show that the house in question, which has been got attached,

belonged to Harbhajan Singh Sodhi at the time of his death and that the same was inherited by the judgment-debtors after his death.

8. It is undisputed that Harbhajan Singh Sodhi had expired on 09.03.2001, whereas attached house in dispute had been purchased by the petitioner-judgment debtor No.1-Daljit Kaur Sodhi by virtue of a sale deed dated 21.08.2001 i.e. more than five months after the death of her husband Harbhajan Singh Sodhi and later on, the ownership was transferred in her name on 19.10.2001. It has also come in evidence that the sale consideration for purchasing the house was ₹4,95,300/- and that an amount of ₹4,10,630/- had been received by Daljit Kaur Sodhi from the Life Insurance Corporation of India as death claim on account of the death of her husband Harbhajan Singh Sodhi.

9. Ld. Appellate Court has referred about the entries in the bank statement of the judgment debtor to that effect that an amount of ₹4,10,630/- was deposited therein on 26.06.2001 and the amount of ₹4,95,300/- was withdrawn by way of demand draft on 13.08.2001, thus, corroborating the stand of JD.

10. In view of the aforesaid facts and circumstances, it could not be said that the house in question was owned by Harbhajan Singh Sodhi or that the same has been inherited by the judgment debtor after the death of Harbhajan Singh Sodhi, simply because the major portion of the sale consideration was paid out of the benefits received by the widow of deceased-Harbhajan Singh Sodhi out of death claim of the assured of policy holder.

11. Further, Section 60 (kb) of the CPC specifically provides that all monies payable under a policy of insurance on the life of a judgment debtor shall not be liable to attachment or sale.

12. Here itself, distinction is liable to be made as to when the policy matures. In case, the policy matures during the lifetime of policy holder, he will get the benefits accruing therefrom and not his nominee. However, position will be different, when policy matures on the death of policy holder. In this eventuality, it is the nominee, who will get the benefits accruing from the policy for the benefit of all the legal heirs of the deceased. Said amount is exempted from attachment as the monies payable under a policy of insurance on the life of the judgement-debtor is meant to give some security to the heirs and legal representatives of the deceased. Same view has also been taken by Bombay High Court (Goa Bench) in ***Federal Bank Ltd. vs. Indiradevi Kunjamma (1984) 10 BOM CK 0001***, wherein it was observed as under:

7. In [Raja Ram v. Mata Prasad](#) (supra), a Full Bench of the Allahabad High Court held the view that the policy-holder continues to hold interest in the policy till the moment of his death and if the policy matures during his lifetime, then, the benefit arising thereunder shall be his and not of his nominee. It further held that as the benefit secured by the policy forms part of the estate of the deceased policy-holder, his creditors can realize their loans from the money paid to the nominee. The nominees, in such circumstances, would be the legal representatives of the deceased policy-holder. This view was approved by the Supreme Court in [Smt. Sarbati Devi v. Smt. Usha Devi](#) (above). The Supreme Court observed that the summary of the relevant provisions of [Sec. 39](#) of the Insurance Act established clearly that the policy-holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy-holder. If that is so, the Supreme Court further observed, on the death of the policy-holder, the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate, and there is no warrant for the position that [Sec. 39](#) of the Act operates as a third kind of succession which is styled as a "statutory testament". It was also observed that the provision in sub-sec. (6) of [Sec. 39](#) which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees and that the language of [Sec. 39](#) is not capable of altering the course of succession under the law. Specifically, while disapproving the view of the Delhi High Court in 'Mrs. [Uma Sehgal v. Dwarka Dass Sehgal](#)', the Supreme Court observed that the Delhi High Court had committed an error in placing reliance on the effect of the amendment of [Sec. 60\(1\)\(kb\)](#) of the Code of Civil Procedure which provides that all monies payable under a Policy of Insurance on the life of the judgment-debtor shall be exempt from attachment from his creditors. It was observed that the High Court has equated a nominee to the heirs and legatees of the assured and had proceeded to hold that the nominee succeeded to the estate with all 'plus and minus points'. After having observed this much, the Supreme Court added that it is difficult to treat a nominee as being equivalent to an heir or legatee having to the clear provisions of [Sec. 39](#) of the Act and that the exemption of the money payable under a Life Insurance Policy under the amended [Sec. 60](#) of the C.P.C. instead of 'devaluing' the earlier decisions which upheld the right of a creditor of the estate of the assured to attach the amount payable under the Life Insurance Policy, recognizes such right in such creditor which he could have exercised, but for the amendment. Therefore, the Court observed in addition that it is because the amount payable under the Life Insurance Policy was attachable that [the Code of Civil](#)

[Procedure](#) exempts it from attachment in furtherance of the policy of Parliament in making the amendment.

8. In view of [the above decision](#) of the Supreme Court in [Sarbatı Devi](#)'s case, it is no more possible to hold the view that monies payable under an Insurance Policy do not become a part of the estate of the deceased. However, the question before me is not whether or not the said monies become part and parcel of the estate of the deceased, since the question is whether such monies are liable to be attached for payment of a decree. [Sec. 60](#) C.P.C. deals with the property which is liable to attachment and sale in execution of a decree and its proviso lays down that some items are not liable to such attachment and sale. Clause (kb) speaks of all monies payable under a policy of insurance on the life of the judgment-debtor and exempts such monies from attachment and sale. Now, as already said, Mr. Peres Cardozo argued that since such monies are part and parcel of the estate of the assured person, the exemption in Cl. (kb) of [Sec. 60\(1\)](#) is not attracted. The reason behind this submission is that, according to the learned counsel, once the assured died, the monies payable under the policy come to his estate, and therefore his heirs and legal representatives are appropriating the said monies and as such, the said monies are entirely outside the scope of the aforesaid Cl. (kb). I am afraid that this reasoning of the learned counsel cannot be accepted. I say so, because, first of all one has to bear in mind the policy of the Legislature that caused the exemption to be laid down. I am of the opinion and **I believe that the legislature had exempted from attachment the monies payable under a policy of insurance on the life of the judgement-debtor in order to give some security to the heirs and legal representatives of the deceased. This being the position, even though the said monies are becoming a part and parcel of the estate of the deceased, nevertheless the exemption laid down in Clause (kb) C.P.C. follows the same monies.** I am fortified in this view by the observations of the Supreme Court in [Sarbatı Devi](#)'s case to the effect that the exemption was specifically laid down because the amounts payable under an Insurance Policy on the life of a person were otherwise attachable. In other words, the Supreme Court pointed out that had it not been for the specific provision of Cl. (kb) of [Sec. 60\(1\)](#) C.P.C., the monies payable under an Insurance Policy on the life of a person would have been liable to attachment and sale for the satisfaction of a decree. I am thus of the firm view that monies payable under an Insurance Policy on the life of a judgment-debtor are entirely exempted from attachment and sale by virtue of the aforesaid Cl. (kb) of [Sec. 60\(1\)](#) C.P.C., irrespective of the circumstance as to whether the Insurance Policy matures during the lifetime of the assured or the monies become payable after his death.

[Bold, italicized and underlined portion emphasised by this court]

13. In view of the above legal position and concurring with the view taken by Bombay High Court in ***Indiradevi Kunjamma’s case (supra)***, it is held that the money received by the judgment debtor-Daljit Kaur Sodhi, under the policy of insurance on the life of deceased-Harbhajan Singh Sodhi, or the house purchased by her by utilizing that amount, could not be put to auction or sale.

14. Consequently, the present appeal is hereby accepted. The impugned orders passed by the Courts below are hereby set aside. The house in question, as owned by Daljit Kaur Sodhi, purchased by her by virtue of sale deed dated 21.08.2001, is directed to be released from attachment. It is made clear that judgment-debtor/respondent state shall be at liberty to realize the decretal amount from the estate of deceased-Harbhajan Singh Sodhi as per the decree dated 24.07.2007, only after establishing that the judgment debtors have inherited any property / estate from the said deceased.

12.08.2024

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No