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**126-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1.CR-7284-2023 (O&M)

Vinod Kumar

....Petitioner

Versus

Narender Kumar

..Respondent

1.CR-6372-2023 (O&M)

Vinod Kumar

....Petitioner

Versus

Narender Kumar

..Respondent

Date of decision: 11.01.2024

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Munish Jolly, Advocate for the petitioner

Mr. Keshav Pratap Singh, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. By this order, two connected revision petitions i.e CR-7284-2023 and CR-6372-2023 shall stand disposed of.

2. The Executing Court passed two orders; one rejecting the judgment debtor's objection petition qua the attachment of the residential house and by second order, the objection to his warrants of arrest have been dismissed.

3. Learned counsel representing the petitioner contends that in accordance with Section 60(1) (ccc) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') attachment of the only residential house is exempted. He contends that his only house cannot be sold in order to recover the money decree.

4. On the other hand, the learned counsel representing the respondent has produced a photocopy of the order passed by the First Appellate Court, which passed the decree.

5. It is evident that the decree-holder had filed a suit for the specific performance of the contract and for possession. There was an agreement to mortgage the land. The specific performance of the aforesaid agreement was sought. In the aforesaid suit, the court granted the alternative relief of the recovery of the amount.

6. Thus, the suit property is not exempted as it creates a charge on the aforesaid property. While hearing/considering CR-6329-2019 (titled as Rulia Singh vs. Munsha Singh) and other connected case decided on 03.11.2023, this Court examined the entire case law and held as under:-

“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 judgmentdebtor 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)."

7. Keeping in view the aforesaid facts, there is no substance in the argument of the Learned counsel representing the judgment debtor that the suit property is exempted from the attachment under Section 60(1) (ccc) CPC being the only house of the judgment debtor.

8. Learned counsel representing the petitioner submits that the Executing Court has erred in issuing his warrants of arrest without following the procedure prescribed.

9. On the other hand, the learned counsel representing the respondent has highlighted the petitioner's conduct in delaying the execution petition by filing repeated objections. He submits that at the first instance, the petitioner filed an objection petition claiming that regular second appeal is pending, which was dismissed on 20.04.2023. Thereafter, his wife and children filed the objections, who claim that the property has been transferred in their name by the judgment debtor. The court declared that the aforesaid transfer results in a fraudulent transfer that has been effected by the judgment debtor to defeat the rights of the creditors in accordance with Section 53 of the Transfer of Property Act, 1882. Thereafter, again the presence of the petitioner was sought to be secured, however, he did not come/appear or respond.

10. This Court has considered the submissions made by the learned counsel representing the parties.

11. In the facts and circumstances of the present case, CR-6372-2023 is dismissed. However, the petitioner is granted one last opportunity to appear and file his affidavit in terms of Order XXI CPC. If the petitioner appears before the Executing Court on 01.02.2024, the court will pass a fresh order after considering the

facts and circumstances of the entire situation. CR-7284-2023 stands disposed of. However, it is made clear that if the petitioner does not enter appearance on the aforesaid date, the revision petition (CR-7284-2023) shall be deemed to have been dismissed without further reference to the Court.

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

11.01.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE