IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6060-2022 (O&M)
Date of Decision: December 11, 2025

Surinder Kumar

...Petitioner

Versus

Sanjeev Kumar

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Manmeet Singh Rana and Mr.Aaryan Kagwal, Advocates for Mr.P.S.Jammu, Advocate for the petitioner.

Mr.Manish Singla, Advocate for the respondent.

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<u>ARCHANA PURI, J.</u>

Challenge in the present revision petition is to the orders dated 09.05.2022 as well as 25.11.2022, vide which, the applications filed by the petitioner-decree holder, for attachment of the property were dismissed.

In pursuance of the notice issued, the respondent made appearance through counsel.

Counsel for the parties heard.

The facts germane, to be noticed, are as follows:-

That, initially, petitioner-Surinder Kumar had filed a suit under Order 32 CPC for seeking recovery from the respondent-Sanjeev Kumar. The said suit was filed on the basis of the pronote and receipt dated 01.11.2017 executed by the respondent, in favour of the petitioner. The suit was decree vide judgment dated 18.01.2021, copy whereof is Annexure P-1. Thereupon, the petitioner, being the decree holder, had filed an execution. During the pendency of the execution, application was filed for passing appropriate order for attachment and auction of the land comprised in Khewat no.975 Khatoni No.2364 Khasra No.819 (0-6) Gair Mumkin Makan to the extent of 7/24 share situated at New Dabwali, Tehsil Dabwali, District Sirsa vide Fard Jamabandi for the year 2017-18.

Therein, it was asserted about the said property to have been transferred by the respondent-JD, in the name of his son Aryan, during the pendency of the suit. Considering the submissions aforesaid and considering the assertion made about the transfer of the property, having effected during the pendency of the suit, to be palpably wrong as well as considering the fact of the property to have been transferred in the year 2019, the said application was dismissed.

Subsequently, another application was filed, thereby, stating that the property was transferred in favour of Aryan, son of Sanjeev Kumar, on 19.04.2019 and erroneously, it was stated about the property to have been transferred, during the pendency of the suit. In the light of the same, a prayer was again made for attachment of the property. This application was also dismissed by learned Executing Court vide order dated 25.11.2022.

Now, it is submitted by learned counsel for the petitioner that erroneous observations have been made by learned Executing Court, with regard to the property being exempted from attachment under Section 60(1)(ccc) CPC, as the said protection is not available to the respondent-JD, once he submits that it has been so transferred to his son. Otherwise also, it is submitted that transfer was made with malafide intention, only to frustrate the recovery to be effected from the respondent.

Furthermore, also it is submitted that said transfer has been effected in favour of son of JD, with ulterior motive to avoid the payment of outstanding amount and to frustrate the execution of the decree obtained by the petitioner.

At this juncture, it is necessary to make reference to the amended provisions of Section 60(1) (ccc) CPC, as applicable to the State of Punjab, Haryana and Chandigarh, which is reproduced, as herein given:-

> *"'S. 60(1)(CCC) one main residential house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a judgment-debtor other than an 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 recorded."*

The amended provisions of Section 60(1)(CCC) CPC, 1908, as applicable to State of Punjab, Haryana and Chandigarh clearly shows that only main residential house of JD is exempted from attachment. The only exception is to the house, which has been specifically charged, in the debt sought to be recovered.

It is pertinent to mention that money decree was passed against the respondent-JD. As culled out from the judgment passed in favour of the petitioner, an amount of Rs.20 lakh was borrowed by the respondent, on the basis of the pronote and receipt dated 01.11.2017. The suit for seeking recovery was filed and registered on 29.10.2020. The transfer, admittedly was executed by the respondent-JD, in favour of his son Aryan, on 09.04.2019. The aforesaid suit was decided on 18.01.2021. Given the said dates, much emphasis has been laid upon the transfer having effected prior to the filing of the suit and considering the same, the attachment was not ordered, on account of the suit land also being residential house of respondent-JD.

So far as, the property which is sought to be attached is concerned, it is a residential house, but however, the benefit of exemption from attachment, as provided under Section 60(1) (ccc) CPC, is not available to the respondent/JD, since he had already transferred the said house and this exemption, as such, in any case, is also not available to his son, under this provision. The day when the amount of Rs.20 lakh was borrowed by the respondent-JD, on the basis of the pronote and receipt dated 01.11.2017, it became quite obvious that he has created liability in his favour to repay the said amount. There is strong probability of the respondent-JD having transferred the property in favour of his son, with the sole purpose to avoid the repayment of the borrowed amount, at a later stage. It is quite obvious, once the amount has been borrowed, on the basis of pronote and receipt, the person who had lent the money, is bound to initiate action, in the eventuality of borrowed amount, not being paid to him.

In view of the same, it is necessary to keep in mind that suit for recovery to be filed by the person, from whom, the respondent-JD had borrowed the amount, was inevitable. Knowing this eventuality to soon arise, with a malafide intention, the respondent-JD had transferred the property, in the name of his son. It is not unknown that such circumstances are generally created by the persons, who had created liability against themselves. There is no room to doubt that things had happened in this manner, only with the malafide purpose to avoid money decree, which was bound to be passed in favour of the petitioner-decree holder. Such thing had happened. The money decree was passed and therefore, eventually execution petition was also filed.

Such being the circumstances, the respondent-JD had acted in malafide manner, which caused manifest injustice to the petitioner-decree holder. This Court, therefore, cannot come to the rescue of the respondent-JD, to counter payment of the outstanding amount. In the given circumstances, the findings recorded by learned Executing Court, vide impugned orders, are palpably erroneous.

In the light of the aforesaid observations, the revision petition, as such, is hereby allowed the impugned orders are set aside. Learned Executing Court is required to conduct further proceedings, on the basis of the applications, as such, filed by the petitioner-decree holder.

December 11, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

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