

(2018) 08 DEL CK 0232

In the Delhi High Court

Case No : EX.Petition 386 OF 2015 & EA(OS) 861 OF 2015, 233, 337, 339 OF 2017, 197, 268 OF 2018

Avneet Soni

APPELLANT

Vs

Kavita Agarwal

RESPONDENT

Date of Decision : 10-08-2018

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 31

Citation : (2018) 08 DEL CK 0232

Hon'ble Judges : NAVIN CHAWLA, J

Bench : Single Bench

Judgement

NAVIN CHAWLA, J. (Oral)

EA(OS) 268/2018

This is an application seeking condonation of 46 days delay in filing reply to EA(OS) 197/2018.

For the reasons stated in the application, the delay is condoned and the application stands allowed.

EA(OS) 197/2018

1. This application has been filed by the petitioner inter alia praying for an order of attachment of the rights of the Judgment Debtor in the two

Agreement(s) to Sell both dated 11th March, 2008 by which the Judgment Debtor along with her husband Mr.C.S.Agarwal have agreed to purchase

the second and the third floor of the property bearing No.K-15, Hauz Khas Enclave, New Delhi.

2. The said Agreement(s) to Sell are not denied by the Judgment Debtor. The only contention raised by the Judgment Debtor is that the rights of the

Judgment Debtor under the said Agreement(s) to Sell cannot be attached under Section 60 of the Code of Civil Procedure, 1908, (hereinafter referred

to as the "CPC"), the same not being a right in property but being a contingent right. In this regard reliance has been placed on proviso (m) to

sub-section (1) of Section 60 of the CPC, which reads as under:-

"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, lands, houses or 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 properties shall not be liable to such attachment or sale, namely:-

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;"

3. The question before this Court is whether the rights possessed by the Judgment Debtor under the Agreement(s) to Sell dated 11th March, 2008 are liable to be attached under sub-section (1) of Section 60 of the CPC.

4. A reading of sub-Section (1) to Section 60 of the CPC would show that all saleable property, movable or immovable property, belonging to the

Judgment Debtor over which he has a disposing power are liable to be attached and sold in execution of a decree.

5. In the present case, the Agreement(s) to Sell authorize the Judgment Debtor to assign her rights in these Agreement(s) to a third party. Clause 10

of the Agreement(s) to Sell is reproduced hereinbelow:

"10. That the Vendee shall have the full right to nominate and/or assign all rights under this Agreement to Sell in favour of any person or persons,

be it a body Corporate, firm or Association of Persons or an individual and the Vendor shall have no objection thereto."

6. In *Bhairon Prasad Chaurasiya vs. Smt. Tara Devi* AIR 1980 All 36, the Full Bench of the Allahabad High Court has held that having regard to the

width and the amplitude of the words in Section 60 of the Code of Civil Procedure, particularly the words "All other saleable property, whether movable or immovable, belonging to the Judgment Debtors or over which, or the profits of which he has a disposing power.....", properties of all sorts and of whatever nature, whether movable or immovable, are, save for the expectations specifically mentioned in Section 60(1) of the CPC, liable to attachment and sale in execution of a decree. The only qualifications required are that the property must be saleable and the Judgment Debtor should have a disposing power over it.

7. It was further held that an Agreement to Sell an immovable property was clearly assignable, unless there was a contract to the contrary in the Agreement itself. Unless the contract itself provides that the rights under the Agreement to Sell shall not be assigned or that the terms of the contract lays down conditions which may indicate that the contract has to be personally performed by the parties to it, an Agreement to Sell a property is assignable. What is assignable is clearly saleable property, which is distinct from a right in the property itself. It was held as under:-

"14.We hold that a right to get a property is itself a property, distinct and separate from the property which is sought to be purchased and that such a right is saleable and, therefore, liable to attachment and sale. We have reached that conclusion notwithstanding that an agreement to sell does not create an interest in the property agreed to be sold."

8. The Court further negated the arguments based on Proviso (m) to Section 60(1) of the CPC.

9. I am in full agreement with the view taken by the Allahabad High Court and, therefore, hold that the rights possessed by the Judgment Debtor under the Agreement(s) to Sell, being assignable at her own volition, are liable to attachment in terms of Section 60(1) of the CPC.

10. The learned senior counsel appearing for the respondent has placed reliance on the judgment of the Supreme Court in *Swami Motor Transports (P) Ltd. vs. Sri Sankaraswamigal Mutt* AIR 1963 SC 864, wherein the Supreme Court, while dismissing the challenge to the Madras City Tenant's Protection Act, 1921 as amended by the Madras Act No.13 of 1960 had held that the law of India does not recognize equitable estates and a statutory right to purchase a property is not a right of property. He has

further placed reliance on the judgments of the Supreme Court in

B.Banerjee vs. Smt. Anita Pan 1975 1 SCC 166; P.Ananthakrishnan Nair & Anr. vs. Dr.G. Ramakrishnan & Anr. 1987 2 SCC 429 and Bharat

Petroleum Corpn. Ltd. & Anr. vs. N.R.Vairamani & Anr. 2004 8 SCC 579, which have followed the judgment of the Supreme Court in S.M.

Transports (P) Ltd. (supra). In my opinion the above judgments can be of no assistance to the Judgment Debtor as what was being considered therein

was whether the Madras City Tenant's Protection Act, which inter-alia gave a right to the tenant to apply to the Court, in a proceeding for

eviction instituted against him by the landlord, for an order directing the landlord to sell the land to him for a price to be fixed by the Court, was a right

in property under Article 19(1)(g) or Article 31 of the Constitution of India. In the present case, what is sought to be attached is not the Judgment

Debtor's right in the property but under the Agreement(s) to Sell.

11. The learned counsel for the Judgment Debtor has further placed reliance on Hari Saran Das vs. Pyare Lal (1931) 8 Reports of Cases Oudh

Weekly Notes 927, wherein it was held that what was sought to be sold in execution of the decree was not any absolute right possessed by the

Judgment Debtor under the Agreement but such right as may be determined in his favour with reference to that Agreement by the Privy Council in

the appeals adjudicating the disputes between the Judgment Debtor therein and one Mahant Har Narain Das who was claiming that the Judgment

Debtor therein had forfeited all his rights under the Agreement. This Judgment would, therefore, have no application to the facts of the present case.

This judgment, did not deal with the question whether the rights under the Agreement(s) to Sell can be attached under Section 60 of the CPC.

12. The learned senior counsel for the Judgment Debtor further placed reliance on the judgment in Ahmad-ud-din Khan vs. Majlis Rai & Ors. ILR

(1880) 3 ALL 12. In this case, the question before the Court was whether the right or interest which the vendor of an immovable property has in the

purchase money, where it has been agreed that the same shall be paid on execution of the conveyance, is liable to be attached or sold in execution of

a decree. The Court held that as the sale consideration is not a debt due to the defendant/ Judgment Debtor and would arise only after the conveyance

of the property is executed, the same cannot be attached. This judgment

therefore, again would be of no help to the Judgment Debtor in the present case.

13. The learned senior counsel for the Judgment Debtor placed reliance on Syud T.H. Khan. V. Rughoonath Pershad, XIV Moore IND.APP 39,

wherein it was held that a mere right of suit is not a "property" but a title to recover future property and therefore, cannot be attached. In the

present case, the attachment being sought by the Decree Holder is not of the right possessed by the Judgment Debtor in the suit instituted by her but a

right possessed under the Agreement(s) to Sell and therefore, this judgment in my opinion, would have no application to the facts of the present case.

14. The learned senior counsel for the Judgment Debtor has also placed reliance on the judgment of the Patna High Court in Rajendra Prasad Missir

& Ors. vs. Emperor AIR 1932 Patna 292, wherein the Court vacated the order attaching the whole property under Section 386(1)(a) of the Code of

Criminal Procedure, 1898, where the offender only had an undivided share. This judgment therefore, again would be of no assistance to the Judgment

Debtor.

15. In view of the above, the present application is allowed, ordering attachment of the rights of the Judgment Debtor in the two Agreement(s) to Sell

dated 11th March, 2008.

16. I may only clarify that this order of attachment shall not affect the rights of Mr.C.S.Aggarwal, the husband of the Judgment Debtor under the

Agreement(s) to Sell, and /or the rights of the legal heirs of Mr.D.K.Jain and Ms.Nirmal Jain.

EX.P. 386/2015 & EA(OS) 861/2015, 233, 337, 339/2017

Re-list on 26th October, 2018.