

(1987) 11 DEL CK 0022

In the Delhi High Court

Case No : Election First Appeal No. 7 of 1985

Brij Mohan Arora

APPELLANT

Vs

Bank of Baroda and Others

RESPONDENT

Date of Decision : 10-11-1987

Acts Referred:

Citation : AIR 1988 Delhi 321 : (1988) 14 DRJ 157

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : J.L. Bhanot and Jagjit Singh, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This execution first appeal has been presented to this Court by Shri Brij Mohan Arora-judgment debtor challenging the order dated August 26, 1985. of Shri J.D. Kapoor, Additional District Judge, by which he had dismissed the objection petition filed by the appellant challenging the attachment of house No. C-48, East Krishan Nagar, Delhi, in execution of money decree obtained by Bank of Baroda against the appellant and three other judgment debtors for recovery of Rs. 41,251/3 IP. with costs and future interest.

(2) The case of the appellant in the objection petition was that the aforesaid house is his main residential house and was exempt from attachment in execution of the money decree in view of Section 60, Sub-section (1) Clause (ccc) of the Code of Civil Procedure, as applicable to the Union Territory of Delhi. The aforesaid clause had been introduced by the Punjab State by Amendment Act of 1942 made u/s 35 of the Punjab Relief of Indebtedness Act, 1934, which has been extended to Delhi. The Clause (ccc) reads as follows:

"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 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 recovered.)"

(3) It has been held by a Division Bench of this Court in S.C. Jain Vs. Union of India, , that the aforesaid clause is still applicable to Delhi. In the aforesaid case, a challenge was made that by virtue of Civil Procedure Amendment Act of 1976 and in view of Section 97 of the Act, this amendment made by the Punjab State introducing Clause (ccc) in Section 60 of the Code of Civil Procedure, is no longer applicable to the Union Territory of Delhi, but this challenge was repelled and it was held by the Division Bench of this Court that the said Clause (ccc) continues to apply to Delhi. No challenge has been made before me to the ratio laid down in that judgment and I am respectfully bound by the same. The Additional District Judge after recording evidence had given a finding that in fact, the petitioner-judgment debtor had failed to prove that the aforesaid house was occupied by him for residential purpose at any time. He also gave a finding that rather it has been proved that the whole of the house was being used for commercial purposes and admittedly a portion of the house stands let out also by the judgment-debtor himself. So, with these findings he dismissed the objection petition. It is true that in the judgment the learned Additional District Judge has mentioned that a photo copy of the ration card exhibited in the case has not been duly proved. Counsel for the appellant has vehemently argued that this finding of the Lower Court is vitiated with misreading of evidence inasmuch as the original ration card was brought by the judgment debtor while deposing as JDW1 and photo copy of the said ration card JDW1/1 was exhibited without any objection and it was not fair on the part of the Court to have come to a conclusion in the final judgment that the said ration card has not been properly proved. He has urged and rightly so, according to me, that any objection regarding mode of proof ought to have been raised at the time the document was sought to be proved in evidence. When a particular document has been exhibited without any objection regarding mode of proof, it was not proper for the Court to have taken any objection regarding the mode of proof for proving the particular document at the final stage. In case any objection had been raised, at the time the document was exhibited, regarding mode of proof, the judgment-debtor could have led evidence to prove that the ration card brought by him is a genuine one and the copy placed on the record is true copy of the aforesaid ration card. The appellant has given an application for permission to lead additional evidence to summon the officials of the department concerned with the original record in order to prove the said ration card. I do not see any reason to allow this application because reading the evidence as it exists on the record of the lower Court, there can be no option but to hold that the ration card of which JDW1/1 is the photo copy has been duly proved. This ration card has been obtained by the judgment debtor in the year 1983 admittedly and it shows the address of the petitioner from the house in question. The appellant, however, has made a statement that this ration card had been issued to him on the basis of previous ration card which he had already surrendered. He had also made a

categorical statement on oath that he had no other residential house except the house in question. In the cross-examination it was not suggested that this appellant was having any other residential house. No evidence in rebuttal was brought on record to prove by the decree holder that in fact this appellant has any other residential house. There was no occasion for the lower Court to disbelieve the sworn and unrebutted testimony of the judgment debtor-appellant that he has only the house in question as his main residential house and he along with his family members is residing in a portion of that house. The lower Court has made reference to the testimony of JDW2, an official from the Municipal Corporation, wherein he had stated that he had surveyed the said house and had found that the said house was being used for running a karkhana (factory) and a shop and he did not see any portion of the said house being used for residential purposes. However, it was not brought out from his testimony as to when he had visited the said house and which portion was being used specifically for running a factory and which portion was being used as a shop. So, from his testimony no irresistible conclusion could be arrived that in fact no portion of the said house was being used for residential purposes. Hence, I hold that the finding of the lower Court that no portion of the house in question was being used for residential purposes by the appellant is not correct and is based on misappraisal of evidence. I reverse the same and I hold that it was proved that the appellant was using a portion of the house for residential purpose.

(4) But the difficulty of the appellant does not end by this finding alone because it has come out from his cross-examination that he has let out a portion of the house to a firm which is carrying on the business under the name and style of Modi Wool Ka Karkhana in a portion of the premises and that he has been charging Rs. 200.00 per month as rent. Vidya Sagar Jain and Smt. Veena Arora are the partners of the said firm and the appellant admitted that he is not the partner in that firm. He also admitted the photographs Exs. DH2 to DH4 which depicted that the board of the said factory was displayed at the said house. He admitted that there are two shops in that house which are being used by the said partnership firm for commercial purpose. The question which arises for decision is whether in view of the fact that two shops in the residential house stand let out by the judgment debtor himself would have the effect of depriving the judgment debtor the benefit of the aforesaid Clause (ccc) for getting the house released from attachment, being his only main residential house. In *Ram Lal and Others Vs. Piara Lal Gobindram and Others*, , this particular clause came up for consideration and in the cited case the facts were that one shop was being used by the judgment debtor himself for commercial purpose while the remaining portion of the building was being used by him for residential purpose. It was held by the highest Court that if a portion of the main residential house is occupied by the judgment debtor himself for the purpose of a shop, that portion does not cease to be part of the said residential house and the entire house is exempt from attachment. A Full Bench decision of the Punjab & Haryana High Court, in *Ude Bhan and Others Vs. Kapoor Chand and Others*, , was considered in this

judgment but was distinguished on facts because in the case of Ude Bhan it was proved that a particular portion has been let out by the tenant himself for commercial purpose and it was held by the Full Bench of the said High Court that the portion which had been let out by the tenant for commercial purpose cannot be deemed to be in occupation of the tenant and thus, that portion is liable to be attached while the remaining portion which is being occupied by the judgment debtor for residential purpose is exempt from attachment. I have gone through the judgment of the Full Bench of the Punjab & Haryana High Court which deals with the matter from all angles and it has been held clearly in that case that in order to earn the beneficiary provision of Clause (ccc) which is an exemption from the main Section 60(1) of the Code of Civil Procedure, which clause has to be construed strictly, the judgment debtor is bound to prove firstly that the house sought to be attached in execution of money decree is his main residential house and secondly, the same is occupied by him. After going through the meaning of the word "occupied" as appearing in various dictionaries and various cases, the Full Bench came to the conclusion that the word "occupation" would mean keeping in view the context in which the word appears in the aforesaid clause, the physical occupation and not a constructive occupation. If a particular portion stands let out by the tenant, the said portion cannot be deemed to be in occupation of the judgment debtor-landlord, as it would be obviously in occupation of the tenant. So, at the most the appellant was entitled to get released from attachment the portion of the said house which the appellant is using for residential purpose. The two shops as shown in the photographs Exs. DH2 to DH4 which abut on the road and stand let out to a firm, Modi Wool Ka Karkhana, are not exempt from attachment and they can be sold in execution. I, hence, partly allow the appeal with the above directions. The parties shall bear their own costs in this appeal.