
(1975) 12 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : E.F.A. No. 454 of 1975

Iqbal Singh

APPELLANT

Vs

The Traders Bank Limited, New Delhi

RESPONDENT

Date of Decision : 02-12-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1977) 1 ILR (P&H) 281 : (1976) 78 PLR 215

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : S.C. Kapoor, for the Appellant; S.K. Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

Rajinder Nath Mittal, J.—This judgment will dispose of Civil Misc. No. 927-C-I of 1975 and Execution First Appeal No. 454 of 1975(sic). This appeal has been filed by the judgment-debtor against the judgment of the Senior Subordinate Judge, Ambala, dated March 27, 1974, by which the objections filed by the judgment-debtors were dismissed.

2. Briefly the facts of the case are that a decree for recovery of Rs. 26,957/2/9 was passed by Senior Subordinate Judge, Ambala in favour of the decree-holder against the judgment-debtors. On December 9, 1965, the decree holder, in execution of the decree, got attached the property in dispute. The objection petition was filed by Iqbal Singh one of the judgment debtors under Sections 47 and 60 of the Code of Civil Procedure, inter alia stating that the house in dispute was the main residential house of the judgment debtors and they were in possession thereof. The objection petition was contested by the decree holder. The executing Court held that the judgment debtor had failed to prove that they had no residential house other than the house in dispute in India. He, however, did not give any findings as to whether the house in dispute was in their occupation or not. Consequently he dismissed the objection petition. The judgment-debtor filed an appeal against the judgment of the Senior Subordinate

Judge to the District Judge. An objection was taken before him that he had no jurisdiction to decide the appeal as the jurisdictional value of the case was more than Rs. 10,000/. The District Judge accepted the objection of the decree-holder and ordered that the appeal be returned to the judgment-debtor for presentation to the proper Court, on June 16, 1975. The judgment-debtor filed the appeal in this Court on June 28, 1975, along with an application u/s 5 of the Limitation Act for condonation of delay.

3. An objection has been taken by the Learned Counsel for the Respondent that the appeal should be dismissed as it is barred by limitation. I have heard the Learned Counsel for the parties but do not find any substance in the contention of the Learned Counsel for the Respondent. In the application u/s 5 of the Limitation Act it is stated by the Appellant that the Appellant filed the appeal before the District Judge, Ambala, under the bona fide belief that he had jurisdiction to decide the same. The appeal was accepted by the office of District Judge, Ambala, without any objection and that no objection was raised by the other party till the date of hearing i.e. June 10, 1975. The appeal was ordered to be returned on June 16, 1975. The High Court was closed at that time on account of summer vacations. The appeal was filed in this Court on June 28, 1975, which was the first opening day after vacation. After going through the affidavit and taking into consideration the circumstances of the case I am of the view that the mistake of the counsel was bona fide and, therefore, I condone the delay in filing the appeal on June 28, 1975, I decide the Civil Miscellaneous accordingly.

4. The only contention of the Learned Counsel for the Appellant is that the Appellant had pleaded that the house in dispute is the only residential house with them and they were in occupation thereof. Accordingly to the Learned Counsel, the Courts without deciding the aforesaid question has held that the judgment-debtor had failed to show that they had no other residential house throughout India. He further argues that the approach of the learned executing Court was erroneous.

5. I have given a thoughtful consideration to the argument of the Learned Counsel for the Appellant and find substance in it. In order to appreciate the arguments, it is necessary to refer to proviso (ccc) to Section 60(1) of the CPC. It is stated therein that one main residential house and other buildings attached to it belonging to a judgment-debtor other than an agriculturist and occupied by him shall not be liable to attachment or sale in execution of a decree. A reading of the above proviso shows that the intention of the Legislature was that a judgment-debtor should be allowed to seek exemption from attachment and sale in execution of a decree of one residential house, howsoever big it may be provided it is in his occupation. In case he is owner and in occupation of only one house he can retain the same and if he is owner and in occupation of more than one house, he can retain the main residential house out of them. From the proviso, it is not spelt out that if the judgment debtor is owner and in occupation

of more than one house and only one of them is attached he cannot claim exemption of that house, because he is in occupation of another residential house. If he is in occupation of another house the same can be got attached and sold by the decree-holder. After getting exemption from attachment and sale of one residential house, he cannot be allowed to take benefit of the proviso, if another house is attached.

6. In the present case the learned Court has not given any finding as to whether the house was in occupation of the judgment-debtor or not. It has dismissed the objection solely on the ground that the judgment debtor must prove that he had no residential house other than the house in dispute in India and that he was not entitled to the protection of the proviso, if he had any other residential house in his occupation. The interpretation put by the learned Court on the proviso, is erroneous and cannot be maintained.

7. For the reasons recorded above, I accept the appeal and remand the case to the executing Court for deciding it afresh after taking into consideration the observations made above. In the circumstances of this case, I make no order as to costs.