

(1985) 11 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No 1813 of 1985

Messrs. Das Mal Baij Nath, Amritsar

APPELLANT

Vs

Sanjay Sanjeev and Company and Another

RESPONDENT

Date of Decision : 29-11-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60, 60(1), 60(1)(c)

Citation : (1985) 11 P&H CK 0001

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : P.S. Rana, for the Appellant; G.S. Bhatia and Mr. Munishwar Puri, for the Respondent

Judgement

J.V. Gupta, J.—This is decree-holder's petition against whom objections filed on behalf of the judgment-debtor have been accepted.

2. The facts of the case are that a decree for Rs. 1,94,335/- with future interest was passed against the judgment debtor out of which he paid an amount of Rs. 1,94,335/- while the future interest amounting to Rs. 27,399/- is outstanding against him. For this amount, the house of the judgment-debtor was attached. He filed objections alleging that the house attached was his residential house and the same was exempt from attachment under proviso (ccc) of Section 60(1), Code of Civil Procedure. In the reply filed on behalf of the decree-holder, it was pleaded that the said provision of law stood abrogated in view of S. 97 of the CPC (Amendment) Act, 1976. The executing court relying on K. L. Bawa v. M/s Basant Textiles (1982) 84 P. L. R. 258, came to the conclusion that the residential house of the judgment-debtor was exempt from attachment, and consequently, it dismissed the execution application. Dissatisfied with the same, the decree holder has filed this revision petition.

3. The short question to be decided in this petition is as to whether Clause (ccc) added to S. 60, C. P. C., prior to amending Act of 1976 is inconsistent with the provisions of the principal Act as amended, i. e, S. 60, or not. Under proviso (c)

to S 60(1), houses and other buildings belonging to an agriculturist, a labourer or a domestic servant and occupied by them, are exempt, from attachment, and in addition, by virtue of Clause (ccc) added in Punjab and Haryana, this exemption is available in respect of one residential house to every judgment-debtor. The said Clause (ccc) reads as under:-

One main residential house and ether 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 recovered.

4. The contention raised on behalf of the decree holder it that whereas u/s 60(1) (c), only the houses belonging to agriculturist or a labourer of a domestic servant are exempt, under Clause (ccc) added by Punjab and Haryana, every judgment debtor is entitled to this exemption. There being inconsistency between them, the counsel states that Clause (ccc) stands repealed in view of section 97 of the CPC (Amendment) Act, 1976. In support of this contention, he referred to S Rou's I A S. Study Citcle v. Smt. Sushila Nanda (1981) 19 D. L. T. 174. Of course, the said judgment does support the contention raised on behalf of the decree holder but the same was over-ruled subsequently by a Division Bench of the Delhi High Court itself vide S C. Jain v. Union of India A. I. R. 1983 Del 367 and, therefore, it was no more a good law. In para 10 thereof, it was observed by the Division Bench:-

The extension in Delhi, it is claimed, is by an Act of Parliament and thus is outside the ambit of Section 97 (1) of 1976 Act. So far as Punjab is concerned, there is no dispute that the insertion of Clause (ccc) in proviso is by virtue of a legislation by the State Legislature. If the view of Luthra, J. and Sultan Singh, J., that the provisions of the Code as amended by 1976 are inconsistent with Clause (ccc) (of which we express no opinion) is correct, the result undoubtedly would be that Clause (ccc) may no longer be available so far as the State of Punjab is concerned. But the same consequence does not follow in the Union Territory of Delhi.

Thus, as regards the State of Punjab, the learned Judges did not express any opinion. On the other hand, the judgment of this Court in K. L. Bawa's case (supra) directly deals with the matter wherein it has been held that the protection from attachment of the main residential house under Clause (ccc) was available to the judgment-debtor. The decree itself in that case was passed on 12th March, 1977, and the objections to the execution of the decree were dismissed on 29th September, 1980, i. e., after the enforcement of the amending Act of 1976.

5. Apart from the above, I do not find any inconsistency in the two provisions of Clause (c) and Clause (ccc) of S. (sic) By virtue of Clause (ccc), only the scope of

Clause (c) has been extended. As observed earlier, Clause (c) exempts all the houses belonging to an agriculturist, a labourer or a domestic servant, whereas Clause (ccc) exempts only one main residential house belonging to all categories of judgment-debtors, other than agriculturists, etc. The exception made in respect of agriculturists, etc., in Clause (ccc) is only a consequence of Clause (c) whereunder their houses (i. e , even more than one) already stand exempted. Therefore, there can be no inconsistency between the two provisions contained in Clause (c) and (ccc) u/s 60(1) of the C. P. C. In this view of the matter, the petition fails and is dismissed, with no order as to costs.