(2000) 02 DEL CK 0117

In the Delhi High Court

Case No : E.A. No. 109/97 IN EX. No. 96/94

Punjab National Bank APPELLANT

Vs

Shri Suresh Kumar Jain and Others RESPONDENT

Date of Decision : 15-02-2000

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 47, 60

Citation : (2000) 4 AD 842 : (2001) 106 CompCas 714 : (2000) 85 DLT 37 : (2000) 53 DRJ 432 : (2000) 125 PLR 26

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. A.P.S. Ahluwalia, for the Appellant; Hemant Malhotra, for the Respondent

Judgement

Vikramajit Sen, J.—By this Order I shall dispose of an application u/s 47 read with Section 60 of the Code of Civil Procedure, filed on behalf of Judgment Debtor No. 2. A decree has been passed in the Bank''s suit for recovery of Rs. 200315.19 against the defendants in Suit No. 2673/1986, being a suit brought under Order XXXIV of the Code of Civil Procedure. The applicant was the third defendant in that suit and had admittedly executed a mortgage in favor of the plaintiff, as collateral for the loans granted to Defendant No.1. The contention of learned counsel for the applicant is that he is entitled to the protection granted under Sections 60, 60(IA) as well as Sub-section (ccc) of the Civil Procedure Code, which is applicable to Delhi as has been specifically held in S.C. Jain Vs. Union of India,

2. Section 60 of the CPC reads as under :

"Property liable to attachment and sale in execution of decree.

60.(1). The following property is liable to attachment and sale in execution 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, 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:"

3. Section 60(1A)(ccc) of the CPC reads as under :

"One main residential house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant 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. Section 60 firstly declares which properties are liable for execution and then sale towards satisfaction of a decree. Sub Clause (ccc) thereafter creates an exception to that availability in respect of the main residential house, but even this is not absolute. It is subject to such house not having been charged with the debt. The intention of the legislature could only be, by extrapolation, that a mortgage which creates a much larger right in the property., would not qualify as an exception at all.

5. The gravamen of his argument is that a mortgage operates as a waiver of the exemption specifically granted in these Sections and being an act inter-parties, would not override the statutory protection granted to debtors in these provisions. He has further drawn a distinction between a mortgage and a charge and it is contention that a charge is not synonymous to a mortgage, as would be evident from a bare reading of Section 100 of the Transfer of property Act. He has further contended that the right to object or resist the sale of property is maintained even after the passing of a decree, which is also clear from a plain reading of Section 60.

6. I am unable to agree with the contentions raised by learned counsel for the applicant. To my mind the questions raised by him are no longer rest integra. They have been conclusively dealt with and answered by a Division Bench judgment in K.K. Lakshmi and Another Vs. State Bank of Travancore, which specifically enunciates that Sub-section 1 of Section 60 and the proviso thereto would operate only in relation to money decrees and not decrees for the enforcement of mortgages. Learned counsel for the applicant had contended that the provisions applied in the Kerala case are not the same as those relied upon in the present case. However, I am of the opinion that those provisions are para materia even in the present case. Learned counsel for the Decree Holder thereafter relied on the decision in Laxman Bhat Vs. Subbanna Bhat, in which similar views were expressed and it was opined that Section 60(1) would not apply to mortgage decrees. Learned counsel thereafter relied on A. Nabisa Beevi Vs. The Manager, Canara Bank, Nagarcoil, and M.S. Doraisami Iyer Vs. A.R.

Arunachalam Chettiar and others, in which similar observations have been made. In view of the uniform decisions of various High Courts, the arguments of learned counsel for the applicants that the distinction between a mortgage and a charge was not specifically raised, would not prevail upon me to differ with the reasonings of the learned Judges of these Courts. I am in respectful agreement with them, also for the reason that the provisions of Section 60 of the Civil Procedure Code, pertain explicitly to the attachment and subsequent execution of the decree. The protection is specifically granted only to money-decrees, inasmuch as, in these cases there would perforce be first an attachment and subsequently a sale. A mortgage decree, is on a totally different footing. In a manner of speaking, on the execution of a mortgage a transfer of property takes effect but the right to redeem the loan is reserved. In the case of a charge, no transfer of property takes place. In the decisions cited above the learned Judges have uniformly appreciated that in a mortgage decree the orders of sale are at once contemplated, and there is no requirement for attachment orders being passed as a precursor or the harsher sale orders.

7. Learned counsel for the Decree Holder has rightly drawn my attention to the judgment of a Division Bench of this Court which is fully binding on me. In S.C. Jain Vs. Union of India, which is relied on by both the parties, it has firstly clarified that the Punjab Amendment is fully applicable to Delhi, and thereafter it has been held that a residential house of a Judgment Debtor or assessed which is occupied by him is exempted for being proceeded against for execution of a simple money decrees or income tax demands. This judgment Therefore recognises the existence of the disparate status of a money decree vis-a-vis a mortgage decree. This dichotomy is preserved. This decision would, Therefore, leave no option but to negative the arguments put forward by the learned counsel for the applicant/Judgment Debtor No. 2. In these circumstances the application is rejected and dismissed. In view of the submission of learned counsel that his client has been duped by the Principles Debtors, against whom no recovery has been made by the plaintiff bank, there shall be no orders as to cost.

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8. The Judgment Debtor No. 2 has prayed for setting aside of the order passed in Suit No. 2673/86 on which the present Execution proceedings are founded.

9. On the request of learned of learned counsel for the Decree Holder, after arguments were concluded by learned counsel for the applicant/Defendant No. 2 final disposal of the application under Order IX filed by the judgment Debtor No. 2 has been adjourned. It is, Therefore, clearly in the interest of justice that execution proceedings in respect of Judgment Debtor No. 2 should not proceed till the disposal of these applications. It is ordered accordingly. It is clarified that the Decree Holder is free to proceed against Judgment Debtor Nos.1 and 3.

10. Re-notify on 17th July, 2000.

