

(2014) 05 DEL CK 0188

In the Delhi High Court

Case No : EX. S.A. 2/2014, CM Nos. 8179-80/2014

Satpal Singh

APPELLANT

Vs

Girja Shanker Shukla

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

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

Citation : (2014) 6 AD 218

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : S.C. Phogat, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Najmi Waziri, J.—The petitioner has impugned an order dated 19.3.2014 which dismissed his Regular Civil Appeal against an order of the Execution Court in Execution Petition No. 40/2009. The petitioner had challenged the attachment of House No. F-1/94, Sultanpuri, Delhi in execution of a money decree in favour of the respondent/plaintiff. The learned counsel for the petitioner submits that the property being the only residential accommodation could not be put to auction nor could the occupant being a judgment debtor, be put out on the street. He relies upon the judgment in S.C. Jain Vs. Union of India, and Brij Mohan Arora Vs. Bank of Baroda and Others, . The Trial Court took note of the fact that u/s 60(1) clause (ccc) of the CPC as applicable to the Union Territory of Delhi, the main residential house of the judgment debtor which is occupied by him is exempt from being proceeded against, in execution of a simple money decree. The Court considered the various occasions on which the notices were issued to the appellant and then concluded that despite of notice having served at the alternate address i.e. D-3/4, Kanwar Singh Nagar, Nangloi, Delhi the appellant failed to appear before the Court. Accordingly, warrants of attachment of movable goods were issued on the fresh address at Sultanpuri. The warrants were received back with the report that the appellant was not available but his

wife had assured the bailiff to send the judgment debtor to the Court on the next date hearing i.e. 25.9.2009. The Court noticed that the report of the bailiff bore the signature of the appellant's wife Smt. Darshana. However, the appellant defaulted in appearance and the property was once again attached. The appellant moved a fresh application for releasing the house from attachment on the same ground as done earlier.

2. The learned counsel for the petitioner submits that he has not been heard by the lower court otherwise he would have proven that the appellant was not in occupation of the Nangloi residence. He submits that the appellant was not living at the Nangloi address because of an estranged relationship with his wife since January, 2011. Instead, he was living separately at the aforesaid Sultanpuri address with his son and the son's wife. That in the course of the day all three of them went out for work, therefore, if per chance anybody went to the Sultanpuri address they would ordinarily find the place locked. The learned counsel further contends that the report of the bailiff was manipulated and obtained in collusion of the decree holder.

3. The records would bear out that the decree has been pending since the year 2001, that in the earlier phase of the proceeding a case has been set up by the appellant's wife - Smt. Darshana that she was the owner of Nangloi house. Her objections were dismissed on 1.5.2004. Subsequently, warrants of arrest were issued against the appellant at the Nangloi as well as Sultanpuri addresses. The warrants were received unexecuted from both the addresses. The report shows that the police official who visited the Sultanpuri house to execute the warrant was to the effect that the house was locked on 9.12.2010 and the neighbours had informed him that the appellant was not permanently residing in the said address. The appellant's son Mr. Mukesh Kumar met the police official at the said Nangloi address and told him that since his father was out of station, he would inform the latter about the warrant of arrest. As noted hereinabove apropos the Nangloi address, the wife too had already undertaken to intimate the appellant. The police report contained the statement of said Sh. Mukesh Kumar. Thereafter, notice of settlement of terms of proclamation of sale of Sultanpuri house was issued to the appellant but it was received back with a report that the house had been lying locked for a year. The appellant's application seeking release of the Sultanpuri house through attachment was dismissed. The appellate court rejected the judgment debtor's appeal on the ground that there were consistent reports from different agencies to the effect that the Sultanpuri house was lying locked and the appellant was indeed residing with his family in the Nangloi house. Statements of Smt. Darshana, appellant's wife and his son Sh. Mukesh Kumar dated 9.12.2010 and 16.3.2011 respectively show that the appellant was residing at the Nangloi house and an assertion that he was living separately at the Sultanpuri house was contrary to the record. The Appellate Court concluded that the appellant's endeavour was to deprive the decree holder of the fruits of the decree. This Court having considered arguments of the learned counsel for the appellant as well as the facts of the case, is of the view that the case set up

by the appellant is a mere sham and only an endeavour to defeat the process of justice. The protection u/s 60(1)(ccc) CPC as applicable to the National Capital Territory of Delhi, would be available to the appellant only so far as the judgment debtor was able to show that his principal place of residence was being attached. However, since it has been established that the principal place of residence was Nangloi and not the Sultanpuri address the latter property was attached. Logically, since the latter would not be sheltered under the protective cover of Section 60(1)(ccc) CPC.

4. In the circumstances, this Court finds no material irregularity or error in the reasoning and conclusion arrived at in the impugned order. The petition is without merit and is accordingly dismissed.