
(2002) 05 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Rev. No. 62 of 2002

Seema Trading Company

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 16-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47, 60
Himachal Pradesh Debt Reduction (Amendment) Act — Section 2, 21

Citation : (2004) 3 BC 563 : (2002) 2 ShimLC 252

Hon'ble Judges : K.C. Sood, J

Bench : Single Bench

Advocate : Chirag Bhanu Singh, for the Appellant; Devyani Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Kuldip Chand Sood, J.—This revision petition arises out of the orders of the learned Senior Sub-Judge, Mandi, dated 16th January, 2002.

2. It appears, petitioner judgment-debtor, Seema Trading Company, had taken certain advances from the decree holder Punjab National Bank. The loan amount was not paid to the Bank. A suit was filed by the Bank for the recovery of the amount due to the Bank. Judgment-debtor suffered a decree, dated 27th March, 1996, for Rs. 36,356/- along with interest pendente lite and future at the rate of 17.5% per annum with quarterly rests till the realisation of the decretal amount. The decretal amount was not paid by the judgment-debtor. The decree holder brought an execution petition before the Trial Court qua Rs. 1,09,448.90 paise, which included interest and costs as well as the costs of the execution. The judgment-debtor filed objections u/s 47 of the CPC claiming that the house/building of the judgment-debtor, which was located in Mohalla Mangwain of Mandi Town, sought to be attached in execution by the decree holder, is exempted from attachment being a residential house in which the judgment-debtor and his family members reside and the objector has no other house to

live in. Learned Trial Court vide its impugned orders dismissed the objections holding that the objections were not maintainable.

3. Learned Trial Court in dismissing the objections relied upon State Bank of India, Bathri v. Shri Balak Raj Abrol and Anr. I (1992) BC 193 : 1992 (2) Sim L.C. 172. In Balak Raj Abrol, learned Single Judge of this Court held that in view of the provisions of Section 60 of the CPC as amended by an amendment Act 104 of 1976, the property was not exempted from the attachment simply because it happened to be main residential house of the judgment-debtor.

4. I need not go into the various provisions of the Act as the matter is squarely covered by the Division Bench of this Court in Himachal Lithographers and Ors. v. Punjab and Sind Bank, Shimla, in C.M.P. No. 22 of 1998 in Civil Review No. 1 of 1998, dated 30th July, 1998. In that case the Division Bench took a view that Section 21 of the Himachal Pradesh Debt Reduction Act, 1976, (hereinafter referred to as the "Debt Reduction Act"), amended Section 60 of the CPC by adding Clause (ccc) to Sub-section (i) of Section 60, thereby exempting one main residential house and other buildings attached to it belonging to a judgment-debtor, other than an agriculturist, and occupied by him, from attachment or sale in the execution of a decree.

5. The Division Bench referred to the definition of the loan in Clause (ix) of Section 2 of the Debt Reduction Act. "Loan" is defined as under:

"(ix) "loan" means an advance in cash or kind and includes any transaction which in substance amounts to such advance but does not include an advance by the Central or State Government or by a local authority authorised by the State Government to make advances, by a co-operative society or by a Bank or by the Life Insurance Corporation of India or a loan taken or used for the purposes of trade."

6. The Division Bench noticed that advances made by the Central or State Government or by local authorities authorised by the State Government or by Co-operative Societies or by a Bank or by Life Insurance Corporation of India or loan taken or used for the purposes of trade I would not fall within the meaning of the "loan" for the purposes of Debt Reduction Act.

7. The learned Division Bench also noticed that the newly asserted Clause (ccc) to Subsection (i) of Section 60 of the CPC as inserted by Section 21 of the Debt Reduction Act would apply only to the execution of the decrees to which the Act applies and it has no general application.

Present case, thus, is covered by the Division Bench authority of this Court in M/s. Himachal Lithographers and Others.

In the circumstances, I find no merit in this revision petition. The same is dismissed.

8. The parties are directed to appear before the learned Executing Court on 28th

June, 2002. There will be no order as to costs.

CMP No. 71/2002 :

The interim orders dated 14th March, 2002 shall stand vacated. The application is disposed of.