
(1988) 10 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2002 of 1987

Smt. Pushpmala Jain

APPELLANT

Vs

Bank of Baroda and others

RESPONDENT

Date of Decision : 26-10-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 11, Order 38 Rule 5, 47, 60(1)
Limitation Act, 1963 — Article 137

Citation : AIR 1990 P&H 28 : (1992) 73 CompCas 552 : (1989) 2 ILR (P&H) 89

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : Ashok Bhan, A.K. Mittal and Puneet Jindal, for the Appellant;

Judgement

1. This revision petition is directed against the order dt 16-5-1987 passed by the learned Senior Sub Judge, Rohtak, in the course of execution of a decree dt. 5-1-1983 passed by the trial Court, which was affirmed in appeal by the learned District Judge on 23-7-1984. The execution of the said decree was sought by the Bank of Baroda respondent 1 claiming a sum of Rs. 10,91,280/-from the judgment debtors. It is not in dispute that during the pendency of the suit, the property of the objector-petitioner was attached before judgment by the trial Court in the year 1979.

2. The petitioner filed the instant objection petition during the pendency of the execution proceedings in the year 1984 claiming that the property in dispute is a residential house situated in Sarai Mohalla, Rohtak, She and her sons are putting up their residence in the said house. She is a widow having no other source of income. She, therefore, claimed that the property being a residential house was exempt from attachment. This objection petition has, however, been dismissed by the learned Executing Court vide the impugned order.

3. It is not in dispute that the evidence on the record clearly brings out that the ground floor and the first floor of the building besides a shop forming part of the building are on rent with tenants. In fact, the Bank decree-holder, respondent 1,

is the tenant on the ground and the first floors while one room in the shape of a Baithak is being used as a shop by another tenant. In view of a Full Bench judgment of this Court in Ude Bhan and Others Vs. Kapoor Chand and Others,), the portion of the building which is let out cannot be considered in occupation of the petitioner as a residential house within the meaning of S. 60(1)(ccc) of the Civil P. C. (for short "the Code"). So far as this legal position is concerned, there can hardly be any dispute.

4. The learned counsel for the petitioner contends that as regards the remaining property which consists of the second floor, the Executing Court has erred in exercise of its jurisdiction while dismissing her objection petition. Her objections have been dismissed on two scores. Firstly, that these had been filed long after the expiry of the period of limitation prescribed by Art. 137 of the Limitation Act, 1963. Secondly, that the petitioner has not been able to prove that she along with her children is residing on the second floor of the building which is not let out to tenants.

5. Mr. Ashok Bhan, the learned Senior Advocate, appearing on behalf of the petitioner, submits that the period of limitation for filing the objections under S. 47 of the Code would start from the date of the decree of the Appellate Court, i.e. 23-7-1984. The limitation could not start from the date of attachment before judgment, as till the decree was passed no objection under S. 47 of the Code could be filed. I find force in this submission. The order of attachment before judgment under O. XXXVIII, R. 5 of the Code is aimed at securing the interests of the plaintiff in case the suit is ultimately decreed in his favour. S. 47 of the Code provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Thus, the provisions of S. 47 of the Code can be invoked only after a decree is passed. Adjudication of any dispute between the parties during the period proceeding the decree would be a dispute during the pendency of the suit and would not come within the ambit of S. 47 of the Code.

6. O. XXXVIII, R. 11 of the Code, provides that where property is under attachment before judgment and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property. A bare reading of this provision leads to its reasonable construction to the effect that the moment the decree is passed in favour of the plaintiff, the attachment before judgment shall operate as attachment in execution of the decree and it shall be operative as such from the date of the decree and not before it. In my view, therefore, the prescribed period of limitation for filing application under S. 47 of the Code the petitioner started on 5-1-1983 when the decree was passed. The objections of the petitioner were, therefore, well within time.

7. The learned Executing Court has observed that the petitioner has not been

able to bring on record evidence in the form of ration-card, voters' list birth certificates of the children, etc. to show that she is residing on the second floor of the building in dispute.

8. I have gone through the evidence adduced on the record by the parties. The evidence of the petitioner is positive to the effect that she along with her children is residing on the second floor of the building in dispute. All that could be addressed to her in cross-examination was that during partition of family property her children got separate shares but no question was addressed to her to the effect that she or her children are living in a house other than the second floor of the building in dispute. No doubt, Shri C. L. Kalra D.W. 1, who had been Manager of the Branch of the decree-holder Bank at Hissar, stated that he had not seen the petitioner along with her children residing on the upper part of the building in dispute where the Branch of the Bank is located, but he could not tell in cross-examination as to where the petitioner and her children were residing or who else was residing on the second floor of the building in dispute. On due appreciation of the evidence on the record, it is clear that the petitioner has led unimpeachable evidence that she is residing with her children on the second floor of the building in dispute, which is consequently exempt from attachment and sale in execution of the decree under S. 60(1)(ccc) of the Code.

9. Consequently, I allow this revision petition and hold that the second floor of the building in dispute is exempt from attachment under S. 60(1)(ccc) of the Code and the same cannot be sold in execution of the decree. There shall, however, be no order as to costs. The executing Court shall now proceed with the execution application in accordance with law.

10. Petition allowed.