(2002) 06 BOM CK 0081

In the Bombay High Court

Case No : Civil Revision Application No. 865 of 1999

State Bank of India APPELLANT

Vs

Jayram Sitaram Pedhamkar and Others RESPONDENT

Date of Decision : 21-06-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47, 60, 60(1)

Citation : (2002) 4 ALLMR 360 : (2003) 2 BomCR 195 : (2003) 3 CivCC 493 : (2002) 4 MhLj 10 : (2003) 1 RCR(Civil) 95 : (2003) 1 RCR(Civil) 195

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Ketan Chothani, instructed by Dhruva and Co, for the Appellant; S.D. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Heard Advocates for the parties. Perused the records.

2. The applicant challenges the order dated 8.12.1998, whereby the Trial Court has allowed the applications filed by the respondents for setting aside the order of sale of machineries and shed as well as lifting of the attachment thereof and further to restrain the applicant from seeking to execute the decree of the Trial Court by attachment and sale of the said machineries and the shed.

3. Pursuant to failure on the part of the respondents to pay the loan amount which was borrowed from the applicant, Special Civil Suit No. 180 of 1993 came to be filed in the Court of Civil Judge, Senior Division, Ratnagiri, by the applicant against the respondents for the recovery of the said amount and the said suit was decreed by judgment and decree, dated 5.2.1996, and accordingly the respondents were directed to pay a sum of Rs. 2,22,895.90 ps. to the applicant-Bank with interest at the rate of 18% per annum on the principal amount of Rs. 1,25,000/- from the date of the suit till realisation of the entire amount. The respondents were also permitted to pay the decretal amount by way of

installments at the rate of Rs. 5,5007 per month on or before 10th of each month, commencing from April, 1996. Since the respondents did not pay the amount in terms of the decree, the applicant filed execution proceedings being Special Darkhast No. 37 of 1996. In the said proceedings, the property which was the subject matter of the hypothecation to secure the loan amount was attached and sought to be sold for recovery of the dues from the respondents. The property so attached was the tin shed and the machineries comprising of (i) Bhagwati 13" X 18" auto feed thickness planner, (ii) 3 H.P. electric motor, (iii) Bhagwati surface planner, (iv) Extra 3 H.P. electric motor, (v) Carbide tipped saw-blade, (vi) Bhagwati heavy duty vertical spindle with motor, and (vii) Extra 2 H.P. motor. The respondents thereupon filed an application, dated 26.11.1998, claiming exemption from the attachment and sale of the said machineries and the tin shed on the basis of the provisions contained in Section 60(1)(B),(C) of the Code of Civil Procedure, 1908 (for short, "C.P.C."). Though the said application was objected to by the applicant, the same was allowed by the impugned order passed by the Court below and hence the present revision application.

4. Relying upon the decisions in the matters of Shaligram Shriram Dangra v. Sheopratap Wallabhadas and Anr., AIR 1939 Nagpur 3; Mathrabai Bhat and Another Vs. Kanhaiyalal Baluram Agrawal, ; Armugha Gounder and Another Vs. K. Marappa Gounder, ; A.P. Coop. Central Agricultural Development Bank Ltd. Vs. V. Venkateswar Rao and Another, ; and Ram Lal and Others Vs. Piara Lal Gobindram and Others, , the learned Advocate for the applicant submitted that the items which were sought to be attached and sold were the items sought to be purchased pursuant to the grant of loan and being hypothecated to the applicant under the agreement executed by the respondents while enjoying the benefit of the loan amount from the applicant and, therefore, those items were not covered by the provisions of Section 60 of the C.P.C. It was further submitted that the respondents not being agriculturists or labourers or domestic servants, were not entitled to seek exemption of attachment of the tin shed wherein the machineries have been installed. It was also submitted that the items which were attached and sought to be sold were not the tools of artisans within the meaning of the said expression u/s 60 and certainly the livelihood of the respondents is not solely based upon the use of the said articles. On the other hand, learned Advocate for the respondents, submitted that it was an undisputed fact that the respondents being self-employed carpenters are labourers and that the articles being used for the carpentry purposes, they are to be held as tools of artisans of the respondents, and therefore, no fault can be found with the impugned order passed by the Court below. Reliance is sought to be placed in the decision of the Rajasthan High Court in the matter of Harjiram Vs. Ghanshyam Das, .

5. Undisputedly, the items which were sought to be attached were the subject-matter of the deed of hypothecation by the respondents in favour of the applicant and the said items were purchased pursuant to the loan amount obtained from the applicant. It is also not in dispute that the agreement of

hypothecation which was entered into between the parties apparently disclose that the respondent No. I was carrying on the business of manufacture of wooden materials of buildings and furniture as the sole proprietor under the name and style of Bandhuprem Kashthakala. It is also not in dispute that the tin shed though attached to the residential house of the respondents, it is utilised exclusively for installation of the machineries which were purchased pursuant to the loan amount obtained from the applicant and the subject matter of attachment for the recovery of the loan amount from the respondents.

6. The learned Single Judge of the Rajasthan High Court, while dealing with the matter in second appeal arising from the order passed by the District Judge, affirming the order of the Executing Court by dismissing the objection raised by the appellant therein u/s 47 of the C.P.C., held that all the tools which are required to carry on a trade as an artisan are covered by the provisions of Section 60(1)(b) of the C.P.C., and as there was no dispute between the parties that the appellant therein was an artisan, and that working on a lathe machine is an artisan''s job and the fact that the judgment-debtor was a mechanic and that therefore, an artisan, and therefore, it was held that the lathe machine was exempted from the order of attachment in terms of Proviso (b) to Section 60(1) of the C.P.C. Apparently, in the case before the Rajasthan High Court there was no dispute regarding the status of the judgment-debtor to be an artisan and the lathe machine was one of the artisan''s tools. Once it was not in dispute that the lathe machine was one of the artisan''s tools, there was no occasion for the Court to adjudicate upon the issue as to whether the working on a lathe machine can be said to be an artisan''s job or not and apparently, the judgment was delivered on concessions made by the parties to the proceedings before the Rajasthan High Court.

7. In Shaligram Shriram Dangra ''s case (supra), the learned Single Judge of the Nagpur High Court has ruled that a motor-tractor cannot be said to be an implement of husbandry within the meaning of Section 60 of the C.P.C., more particularly so when at the time of attachment it was not being used for agriculture but for driving a flour-mill and, that therefore, the same was not exempt from attachment u/s 60 of the C.P.C. It was also held that an artisan is a person who is trained to manual dexterity in some mechanic art or trade, and the implements would mean such instruments as the artisan would handle in the course of his artistic work or the work connected with his trade. It was held that driving a motor-tractor cannot be said to be a manual work, and therefore, it cannot be regarded as an implement. Similarly, it was observed that it is necessary for the parties seeking to obtain exemption in respect of the implements to produce necessary evidence on record in support of the claim regarding the items to be the implements within the meaning of the said expression u/s 60 of the C.P.C.

8. The Madhya Pradesh High Court in Mathrabai''s case (supra), has held that where at the time of attachment the water pump engine was being used for

driving a Hour-mill and the water pump was lying idle as the well where it was fitted had dried up permanently and those articles were not being used for agriculture, they were clearly not exempted as implements of husbandry u/s 60 of the C.P.C. even if the engine was first being used for running a flour-mill as well as for working the water pump.

9. The Madras High Court in the matter of Arumugha Gounder and Ors. (supra), has held that the principle underlying the exemption u/s 60 of the C.P.C. is that artisans. who depend for their livelihood on the tools which they possess or the implements of husbandry which they, as agriculturists, require to earn their livelihood should alone he exempted from attachment. The word "livelihood" connotes the idea of means of living or sustenance and an oil engine used as a quick mode of drawing water from a well is not indispensable loan agriculturist to cultivate his land even though mechanical appliances may enable an agriculturist to irrigate his land quickly and to draw more water to irrigate hi;; field. But on that score it cannot be said that an oil engine is indispensable for an agriculturist.

10. The Apex Court in V. Venkateshwar Rao ''s case (supra), has held that the tractor in respect of which loans were granted would not fall within the description of the expression "implements of husbandry" under me said Section 60, and therefore, the decree-holder would be entitled to take steps for distraint and sale of the same.

11. The Apex Court in Ram Lal''s case (supra), has held that if a portion of the main residential house is occupied by the judgment-debtor himself for the purposes of a shop then the said portion does not cease to be apart of such residential house and the entire house would be exempt from attachment. However, the said ruling, as rightly submitted by the learned Advocate for the applicant, is in relation to the provisions of Section 60, as is applicable u> the State of Punjab and Haryana. Section 60 as has been amended for the purpose of its application to the territories covered by the State of Punjab and Haryana provides clauses like "(cc) and (ccc)", to the proviso to Sub-section (1) after Clause (c) and before the Clause (d). Clause (ccc) as applicable to the State of Punjab and Haryana reads thus :

"One main residential house and other 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 man 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."

Considering the provision under which the residence and the houses along with the attached building to it in enjoyment of the judgment-debtor are exempted from the attachment and as the case before the Apex Court was arising from State of Punjab and Haryana, it was ruled that the portion of the main residential house in occupation of the judgment-debtor even though used as a shop, it did not cease to be a part of the house, and therefore, the judgment-debtor was entitled for the benefit of exemption u/s 60 even in relation to such a portion of the house. Certainly, that is not the case in hand, and therefore, the decision can be of no help to the applicant. Undisputedly, Clause (ccc), as it exists and applies to the matters arising from the State of Punjab and Haryana, is not applicable to the cases arising from the State of Maharashtra.

12. Reverting to the contentions on behalf of the parties, it is apparent that the items which are sought to be attached for the purpose of sale are those items which were obtained by the judgment-debtor pursuant to the loan facility enjoyed from the applicant and the very same items were hypothecated as security for repayment of the loan amount. The nature of the items which are sought to be attached disclose that by no stretch of imagination can be held to be tools of artisans. They are either electric motors, or saw blades and thickness planners. Besides, a person carrying on business of manufacture of wooden materials for buildings and furniture can hardly be considered a labourer or artisan within the meaning of the said expression under the said Section 60. Admittedly, no evidence in support of the claim of the respondents to be labourer and artisan within the meaning of the said expression u/s 60 of C.P.C. has been produced on record. Whether a person is a labourer or an artisan cannot be a mere question of law. In order to enable the respondents to claim themselves as the labourers or artisans, necessary materials in support of such claim ought to have been placed on record by the respondents. So also merely because a person is a carpenter by profession, he cannot claim himself to be a labourer within the meaning of the said expression u/s 60 of the C.P.C.

13. An exemption in relation to a house and building u/s 60(1), proviso (c) is available only to an agriculturist or a labourer or a domestic servant. The respondents are neither agriculturists nor domestic servants. The claim regarding the respondents to be labourers has also not been established. Besides, the tin shed which is sought to be attached is not part of a residential premises of the respondents but the same has been erected in order to install the machineries which were purchased by the respondents pursuant to the loan facility by the applicant to the respondents and there being no provision like Clause (ccc), which is in force in the State of Punjab and Haryana the respondents were certainly not entitled to claim benefit of exemption from attachment of the tin shed merely because it is adjoining the house where the respondents reside.

14. There being no material placed on record that the machineries which is sought to be attached forms part of the tools of artisan within the meaning of the said expression u/s 60 of the C.P.C., the Court below had clearly erred in allowing the application filed by the respondents for lifting of attachment and stopping/ stalling the sale of the said items. As rightly submitted by the learned Advocate for the applicant, neither the decision of the Rajasthan High Court in Harjiram''s case nor the decision of the Apex Court in Ram Lai''s case are of any assistance to the respondents to claim exemption of the articles from attachment u/s 60 of

the C.P.C.

15. In the result, therefore, the revision application succeeds. The impugned order is hereby quashed and set aside and the Executing Court is directed to proceed with Special Darkhast Application No. 37 of 1996 from the stage where it was on the date when the impugned order was passed. Rule is made absolute in above terms with no order as to costs.