

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

C.R.No.5744 of 2005

Date of Decision: 08.08.2013

Mohd. Yamin

...Petitioner

Versus

Ram Swaran Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE L. N. MITTAL

Present:- None for the petitioner.

Mr. Subhash Aggarwal, Advocate,
for the respondent.

L. N. MITTAL, J (ORAL)

Judgment Debtor (JD)-Mohd. Yamin has filed this revision petition under Article 227 of the Constitution of India impugning order dated 16.09.2005 (Annexure P-1) passed by the Executing Court thereby dismissing objections preferred by JD against attachment of his house in execution of money decree sought by respondent Decree Holder(DH)-Ram Swaran Singh.

Decree for recovery of ₹ 21,000/- with interest was passed in favour of DH against JD. In Execution petition, DH sought attachment and sale of house of the JD. JD, however, alleged that he is a carpenter and, therefore, his only residential house is not liable for attachment. Learned Executing Court has repelled this objection on the ground that the JD is not agriculturist, labourer or domestic servant whose house is exempted from

attachment under Proviso (c) to Section 60 (1) of the Code of Civil Procedure (CPC). Feeling aggrieved, JD has filed this revision petition to assail the said order of the executing Court.

None appeared for the parties on 11.07.2013. In the interest of justice, case was adjourned for today i.e. 08.08.2013. Counsel for the parties were ordered to be informed by the office. Accordingly, counsel for the parties have been informed by the office, but in spite thereof, none has appeared for the petitioner even today whereas counsel for respondent has appeared.

I have heard the learned counsel for the respondent and perused the case file.

Proviso (c) to Section 60 (1) CPC is reproduced here under.

“Houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him.”

The case of JD petitioner may or may not be covered by the said provision but I need not go in the said question in view of amendment of CPC made by States of Punjab and Haryana which would also be applicable to the instant case of Chandigarh. By amendment, following proviso (ccc) has been added to Section 60(1) CPC:-

“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 judgment-debtor other than an agriculturist and occupied by him.

Provided that the protection afforded for this clause shall not extend to any property specifically charged with the debt sought to be recovered.”

According to aforesaid provision, one main residential house of every JD (irrespective of being agriculturist etc. or not) is exempted from attachment in execution of money decree subject to the condition mentioned in the aforesaid provision. Resultantly, irrespective of whether the JD-petitioner being carpenter comes within the purview of agriculturist, labourer or domestic servant mentioned in Proviso (c) to Section 60 (1) CPC or not, the only residential house of the JD-petitioner is exempted from attachment in execution of money decree in view of Proviso (ccc) to Section 60 (1) CPC. Resultantly, it is manifest that impugned order passed by the Executing Court for attachment and sale of the said house is illegal and suffers from jurisdictional error.

As a necessary consequence, the instant revision petition is allowed. Impugned order (Annexures P-1) passed by the Executing Court order is set aside. One residential house of JD-petitioner is exempted from

attachment and sale in execution of decree money in question. However, the respondent-DH shall be at liberty to execute the decree in accordance with law in any other manner.

Pending Civil Misc. Application, if any, stands disposed of as infructuous.

08.08.2013
vandana

(L.N.MITTAL)
JUDGE