

Ram Lal and Others

Vs

M/s. Piara Lal Gobindram and Others

Civil Appeal No. 1248 of 1967

(D.G. Palekar, A. Alagiriswami JJ)

03.05.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal by certificate against the judgment of a Division Bench of the Punjab High Court in a Letter Patent Appeal.

2. The question for decision in this appeal depends upon the interpretation of clause (ccc) added to the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure by Punjab Relief of Indebtedness Act 7 of 1934 as amended by Punjab Act 12 of 1940 and 6 of 1942 exempting from attachment :

"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 than 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."

The facts giving rise to this appeal are as follows. The appellants are two brother and their sons. They constituted a firm called Jahangiri Mal Kalu Ram. On November 19, 1956, they were declared insolvents and the Official Receiver took possession of all their properties including the building in dispute. On November 21, 1956, the appellants filed an objection petition under Section 60 of the Code Civil Procedure read with Section 4 of the Provincial Insolvency Act in respect of taking the possession of the building in dispute basing this upon clause (ccc) above referred to. The official Receiver contended that the property in dispute is not a residential house but a shop and that the back portion of the building which consists of a kitchen and raised platform, etc. For placing water was given in trust to the petitioners for residential purposes at the time of taking the possession of the shop. The creditors also contended that the property in dispute is a shop and not a residential house, even though the appellants were admitted to be using the back portion of the shop as their residence.

3. The Trial Court held that :

"..... the entire building consists of two distinct units, the one opening in the chowk of the Mandi being distinct business premises as a shop while the other structure on the back thereof is exclusively residential house. The unit which is a shop has the mainhall which has two apartments on account of the arched columns in the middle,

and the kotha immediately behind the said hall. I consider this kotha to be an integral part of the shop because there is no indication at the spot that it was an essential part of the residential house. To the contrary, the staircase leading from the hall on to the roof of that kotha and the steps from the roof on that kotha leading to the roof of the hall and to the room on a portion thereof, show that the said kotha is an integral part of the shop itself. The two units being the property of the same persons naturally we would expect connecting doors between these two units."

He, therefore, upheld the objection petition of the appellants in respect of the portion BCDE in the plan and the upper storey thereon and dismissed it in respect of the rest of the building. On appeal by the insolvents the learned District judge of Hissar held that there was no manner of doubt that the building in question is the main residential house of the insolvents and allowed the appeal. On appeal by the creators a learned Single Judge observed :

"Accepting the finding of the Insolvency Judge that the shop has a separate access of its own it cannot be denied that the residential portion is connected with it. The shop is in the ground floor and there is an opening in the Mandi but it is connected with the residential portion on the same floor. The other portion of the building is entirely devoted to residential purposes."

In the result he held :

"It is only a portion of the ground floor which has been used for shops. In my opinion, the view adopted by the lower appellate court is in conformity with the intent and language of the Legislature and is also in accord with the authorities of this Court."

on a further appeal under the Letters Patent the Division Bench purporting to follow the full Bench decision of that Court in *Ude Bhan and Others v. Kapoor Chand and Others* (ILR (1966) 2 Punj 400 : AIR 1967 Punj 53 : 68 Punj LR 591.), where it was held that if out of the main residential house belonging to a non-agriculturist judgment-debtor a portion is let out by him to a tenant, the whole house could not be said to be in his occupation, allowed the appeal and set aside the judgments of the learned Single Judge as well as the District Judge and restored the order of the Insolvency Judge.

4. We have carefully considered the facts of this case and are in agreement with the view of the learned District Judge as well as the learned Single Judge of the High Court that the building is a single one with a portion of it in the down-stairs being used as a shop. That portion opens on the chowk Mandi Dabwali and there is another opening for regular entrance from a public street. There is no evidence that any portion of the upstairs is being used for the purpose of the shop. Therefore, there is no warrant for the finding of the Insolvency Judge that the building is in two distinct portions. Indeed the learned Judges of the Division Bench did not differ from the finding of the first appellate court and the second appellate court on this point. They seem to accept this finding and proceed on that basis. Their reasoning was that a portion of the main residential house of a judgment-debtor ceases to enjoy immunity from attachment, in case that portion is let out by the judgment-debtor to a tenant, it would necessarily follow that the shop portion of a building, the other part of which is being used for residential purpose would not be exempt from attachment. It appears to us that this conclusion does not follow from the judgment of the Full Bench or from the language of the statute. It is obvious that what clause (ccc) exempts is the main residential house.

There is no doubt that the building is the main residential house of the insolvents. The judgment of the Full Bench proceeds on the basis that when a portion of even a main residential house is let out to a tenant by the judgment-debtor that portion is not occupied by him and as occupation of the residential house by the judgment-debtor is one of the requirements of the statute in order to qualify for exemption from attachment the portion let out cannot be said to be occupied by the judgment-debtor and therefore does not qualify for exemption. Therefore, the decision of the full Bench gives no guidance in interpreting the question that has to be considered in this case.

5. The question for decision in this case is whether if a portion of the residential house is occupied by the judgment-debtor himself for the purposes of a shop that portion ceases to be part of the residential house. It appears to us clear that it does not. In the circumstances and social conditions of this country it would be difficult to justify the conclusion that where a part of a residential house is used in connection with the business or profession of the owner of that house that portion ceases to be part of the residential house. As is well-known, very often a lawyer might have his office room in his house, a doctor might have a consulting room in his house, an advocate's library might occupy one of the rooms of his house. The room where the lawyer works or his library is located cannot be said to cease to be part of his residential house. The Punjab High Court has taken the same view at least from the year 1951. In *Agha Jafar Ali Khan v. Radha Kishen* (AIR 1951 Punj 433 : 1951 Bh LR Punj 201 : 6 DLR Punj 218), it was held that

"Where the whole building is being used for the purpose of residence, the mere fact that there is a shop on the ground floor will not convert the building into something different from a residential house."

The judgment of the Full Bench mention that it is not clear in that case whether the shop portion of the building was in the possession of the judgment-debtor or was rented out by him. A careful reading of the judgment shows that there was no question in that case of the shop portion of the building being in the possession of any body except the owner. In *Firm Ganga Ram v. Firm Jai Ram* (AIR 1957 Punj 293 : 59 Punj LR 325.), where the ground floor of a building with three floors was being used for commercial purposes and the first and the second floors for residential purposes it was held that the judgment-debtor can claim immunity from attachment or sale, with respect to the entire house under the provisions of Section 60(1), clause (ccc), where it is the only residential house belonging to them and occupied by them. It is instructive to refer to a portion of the discussion.

"The conditions in our country are such which admit of composite user of the same building. A part of the same house is used for dwelling and the other part is meant for commercial or business purpose and sometimes even the latter portion, particularly after the business hours, is used for dwelling :

"..... Having regard to the mode of living of the people in this country, their habits and customs, it is not possible generally to designate a particular building as one, which is used exclusively for a residential purpose in contradistinction to a commercial purpose :

"..... On this basis, residential building of a medical practitioner, will not be exempt from liability to attachment or sale, if in a portion he receives or treats his patient :

"Similarly, where in his house, an iron-smith works on his forge, a shoes-maker

makes shoes on his last, a potter turns his wheel, or any other artisan spreads his tools, to make a living, or a petty trader keeps his wares for sale, according to the interpretation, which the learned counsel for the respondent, asks me to put on the words occurring in the Code, the provisions will be powerless in extending any effective protection. This construction will result in defeating the very propose of the law."

We completely agree with the learned Judge's observations. It is interesting to not that in Punjab Mercantile Bank Limited (in liquidation), Jullundur City v. Messrs General Typewriter Co., Jullundur City (AIR 1963 Punj 205 : 64 Punj LR 1081.), Tek Chand, J., who gave the above Judgment held that where the judgment-debtor was residing in the greater part of the house two chabaras on the first floor let out to tenants were not exempt from attachment and sale. To the same, effect is the judgment of the full Bench relied on by the Division Bench in this case. Tek Chand, J., has kept clear in his mind the distinction between a case where a portion of the residential house is let out and a portion used by the owner himself, though for a purpose other than residential. Such use does not make the residential cease to be a residential house or the portion so used as not part of the residential house.

6. There is no doubt that this was the main residential house of that insolvents and it was occupied by them. The fact of the case bring it squarely within the scope of the section and the whole building is, therefore, exempt from attachment.

7. The appeal is, therefore, allowed, the judgment of the Division Bench set aside and the judgments of the learned Single Judge and the learned District Judge are restored. The respondents will pay the appellants' costs.

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