

argument is clearly devoid of merit because the Regional Transport Authority has acted beyond jurisdiction on and beyond the mandatory provisions of section 47(3) of the Act. Once the Regional Transport Authority had no jurisdiction to grant more than one permit with one return trip on each of the two routes, the failure of justice is implicit. The petitioner, who is also operating on the basis of the stage carriage permits in the State of Punjab, did not object to the grant of one permit with one return trip on each of the two routes and for that reason neither applied for grant of permit nor raised objections to the applications filed by the other transporters and the Regional Transport Authority was well within its jurisdiction to grant one permit with one return trip on each of the two routes to any of the applicants. The petitioner had to object to the order Annexure P-3 because the Regional Transport Authority granted two permits with two return trips on each of the routes i.e. it granted double the number of permits. In view of the Supreme Court's judgments, the order Annexure P-3 granting double number of permits is wholly illegal and against the mandatory provisions of the Act.

(13) For the reasons recorded above, this petition is allowed, the order Annexure P-3 is hereby quashed and the Regional Transport Authority is directed to pass fresh orders in accordance with law keeping in view the observations made above. However, there will be no order as to costs.

N.K.S.

Before D. V. Sehgal, J.

SWARAN SINGH,—*Petitioner.*

versus

FINANCIAL COMMISSIONER (TAXATION), PUNJAB and
others,—*Respondents.*

Civil Writ Petition No. 4250 of 1978.

February 12, 1986.

Code of Civil Procedure (V of 1908)—Sections 11 and 60(1)(ccc) and sub-sections (3) and (6) (as inserted by Punjab Acts VII of 1934, XII of 1940 and VI of 1942)—Punjab Tenancy Act (XVI of 1887)—Sections 77 and 88—Decree passed by a Revenue Officer against a

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tenant under section 77—Execution of—Provisions of Section 60 of the Code—Whether applicable—Earlier application for execution of the decree dismissed—Judgment debtor not raising the plea of section 60(1)(ccc) of the Code—Subsequent application for execution—Plea of section 60(1)(ccc) of the Code by the judgment debtor—Whether barred by the principles of constructive res judicata.

Held, that the provisions of Section 60(1) proviso (ccc) and subsections (3) and (6) inserted in the Code of Civil Procedure, 1908, were meant to afford relief to the poor from onerous indebtedness. If it is held, that these provisions do not apply to execution of a decree passed by a Revenue Officer against a tenant of agricultural land under section 77 of the Punjab Tenancy Act, 1887, the object of the provisions would be substantially negated. In any case, section 88 of the Tenancy Act leaves no scope for doubt that the provisions of the Code are applicable to the execution of a decree passed in a civil suit by a Revenue Court under section 77 of the said Act.

(Paras 6 and 7).

Held, that the application filed by the judgment debtor raising objection to the effect that the house attached, being his main residential house, was exempt from attachment was not barred by the principles of constructive *res judicata* in spite of the fact that an earlier application against execution filed by him in which this objection was not raised, had been dismissed.

(Para 9).

Matu Ram and sons and another vs. Elgin Mills Co. Ltd. and others.
A.I.R. 1974 Delhi 205.

(Dissented from).

Petition under Articles 226/227 of the Constitution of India praying that the writ petition may be accepted and the orders Annexures P/2, P/3 and P/4 be set aside with costs throughout and the objections of the petitioner with regard to the attachment of sale be upheld, and the sale set aside. It is further prayed that dispossession of the petitioner be stayed during the pendency of the writ petition.

Ashok Aggarwal, Advocate, for the Petitioner.

V. K. Jhanji, Advocate, for Respondent No. 7.

M. R. Agnihotri, Senior Advocate (Deepak Agnihotri, Advocate with him), for respondent No. 5.

JUDGMENT

D. V. Sehgal, J.—

(1) Surinder Mohan Singh and Sat Parkash respondents Nos. 5 and 6 obtained a decree from the Assistant Collector, Nawanshahr, against Swaran Singh, petitioner for recovery of Rs. 4,860/- and costs, being the rent of the agricultural land payable by him. In execution of the decree, respondents Nos. 5 and 6 got his house attached and sold which is described in the plan Annexure P. 1. He filed objections against attachment of the residential house before its sale on the ground that the same was exempt from attachment, being his self-occupied residential house. These objections were, however, dismissed by the Assistant Collector, 1st Grade, Nawanshahr, respondent No. 4,—*vide* his order dated 12th August, 1976 on the ground that the same were barred by the principle of constructive *res judicata* and that he had two houses out of which one had been attached. His appeal to the Collector, Jalandhar, was dismissed,—*vide* order dated 19th August, 1977 Annexure P. 3 on the ground that it was barred by time and there was no justification for condoning the delay. On a revision petition being filed by him, the Commissioner, Jalandhar Division,—*vide* his order dated 8th March, 1978 (P. 4) reached at the conclusion that the delay ought to have been condoned by the Collector and the appeal should have been heard on merits. Consequently, the case was forwarded to the Financial Commissioner, Punjab, recommending that the delay should be condoned and the case be remanded to the Collector, Jalandhar, for disposing of the same on merits. The Financial Commissioner (Taxation) Punjab,—*vide* order dated 22nd September, 1978 Annexure P. 5 did not agree with the recommendations made,—*vide* order Annexure P. 4 and instead upheld the order of the Assistant Collector, 1st Grade and that of the Collector. Respondent No. 1 observed that the petitioner had failed to satisfy the decree and his one house had rightly been attached and that the decree-holders had quite sportingly prayed that either of the two houses of the judgment-debtor (the petitioner) be put to auction to meet the liability. Swaran Singh petitioner thereon filed the present writ petition in this Court praying for the issuance of a writ of *certiorari* to quash the orders Annexure P. 2, P. 3 and P. 5. Written statement has been filed on behalf of respondents Nos. 5 and 6, who are the contesting respondents.

(2) I have heard the learned counsel for the petitioner and respondents Nos. 5 and 6. The petitioner has categorically asserted

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that he had only one residential house in village Banga, tehsil Nawanshahr, which was in his occupation. There was no material before the Assistant Collector or the Financial Commissioner to conclude that he had two residential houses. The site plan of house No. 2551 owned by him and in his occupation which was attached in execution is Annexure P. 1. The learned counsel for the petitioner, therefore, contends that in view of the provisions of section 60(1) (ccc) of the Code of Civil Procedure, 1908 (hereinafter called 'the Code'), as applicable to the State of Punjab, the said house being the main and the only residential house of the petitioner was not liable to attachment or sale in execution of the decree passed by the Assistant Collector, 1st Grade secured by respondents Nos. 5 and 6. He further proceeds to contend that respondent No. 4 was wrong in his conclusion that because of an earlier objection application filed by him, which had been dismissed, the objection that the residential house was not liable to attachment or sale was barred by the principle of constructive *res judicata*.

(3) The learned counsel for respondents Nos. 5 and 6 could not dispute the fact that house No. 2551 at Banga as described in site plan Annexure P. 1 was the only residential house of the petitioner and he did not own any other house. He, however, put forward two-fold defence to the contentions of the petitioner. Firstly, he submitted that since the decree under execution had been passed by the Assistant Collector by virtue of the powers conferred on him under section 77 of the Punjab Tenancy Act, 1887 (hereinafter called 'the Tenancy Act'), it was not a decree of a civil Court and as such the provisions of section 60(1)(ccc) of the Code were not applicable. The decree was being executed by the Revenue authorities and the substantive provisions of the Code and the procedure for execution laid down by the Code has no application. In support of this submission, he placed reliance on *State of Punjab and another v. Dina Nath* (1). His second submission is that the petitioner had earlier made an application on 11th June, 1976, raising certain objections against the execution of the decree after the house had been attached on 28th May, 1976, which was dismissed by respondent No. 4 on 5th July, 1976. At that time it was open to him to raise an objection that his residential house was not liable to attachment but no such objection was raised. The second objection application filed on 13th

(1) (1984) 1 S.C.C. 137.

July, 1976, which was culminated into the impugned orders, was therefore, barred by the principle of constructive *res judicata*.

(4) After giving my thoughtful consideration to the rival contentions of the parties, I am of the view that this petition deserves to be allowed. The house in dispute being the only residential house in self-occupation of the petitioner was exempt from attachment. *Dina Nath's* case (*supra*) has no application to a case where a decree passed in a civil suit by the Assistant Collector 1st Grade under the Tenancy Act is being executed. In *Dina Nath's* case recovery of the amount due from a liquor vend licensee was sought to be effected as arrears of land revenue under the provisions of Chapters VI and VII of the Punjab Land Revenue Act, 1887, and in those proceedings his residential house was attached and sought to be sold. In this context the Supreme Court observed that the provisions of the Punjab Land Revenue Act, 1887, provide a complete code of procedure for recovery of an amount as arrears of land revenue and that the procedure provided for execution of a decree in the Code had no application. *Dina Nath's* case is, therefore, clearly distinguishable.

(5) Clause (ccc) to sub-section (1) of section 60 and sub-sections (3) and (6) thereto were inserted by the Punjab Relief of Indebtedness Act, VII of 1934, as amended by Acts XII of 1940 and VI of 1942, which, *inter alia* made the following provision:—

“60. *Property liable to attachment and sale in execution of decree :*

(1)

Provided that the following particulars shall not be liable to such attachment or sale, namely :—

... ..

(ccc) 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”

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(3) Notwithstanding any other law for the time being in force an agreement by which a debtor agrees to waive any benefit of any exemption under this section shall be void.

... ..
(5) No order for attachment shall be made unless the Court is satisfied that the property sought to be attached is not exempt from attachment or sale."

(6) The above provision inserted in the Code was meant to afford relief to the poor from onerous indebtedness. If it is held, going by the contention of the learned counsel for respondents Nos. 5 and 6, that these provisions do not apply to execution of a decree passed by a Revenue Officer against a tenant of agricultural land under section 77 of the Tenancy Act, the object of the provisions would be substantially negated. Section 88 of the Tenancy Act, *inter alia*, provides as under:—

"88. *Procedure of Revenue Courts*—(1) The State Government may make rules consistent with this Act for regulating the procedure of Revenue Courts in matters under this Act for which a procedure is not prescribed thereby, and may by any such rule direct that any provisions of the Code of Procedure shall apply, with or without modification, to all or any classes of cases before those Courts.

(2) Until rules are made under sub-section (1), and subject to those rules when made and to the provisions of this Act;

(a) the Code of Civil Procedure shall, so far as it is applicable, apply to all proceedings in Revenue Courts whether before or after decree;

... .."

(7) Section 88 of the Tenancy Act leaves no scope for doubt that the provisions of the Code are applicable to the execution of a decree passed in a civil suit by a Revenue Court under section 77 of the said Act.

(8) In support of his second contention that the objection application dated 13th July, 1976 filed by the petitioners stating that his

residential house was exempt from attachment was barred by the principle of constructive *res judicata*, the learned counsel firstly placed reliance on *Tara Singh v. Nathu Ram* (2), wherein it has been laid down that where a judgment-debtor failed to plead in the suit or raise in the execution proceedings the objection that the amount due from him could not be recovered from him due to the bar of section 3 of the Punjab Registration of Money Lenders' Act, the same must be considered to be barred by the principles of constructive *res judicata*. This judgment is clearly distinguishable on facts as it has no application to a claim made for exemption of a residential house from attachment in execution of a decree in view of section 60(1)(ccc) of the Code. He next placed reliance on a Division Bench judgment of the Delhi High Court in *Matu Ram and Sons and another v. Elgin Mills Co. Ltd. and others* (3). It has no doubt been held in this judgment that where in an earlier objection application against execution no plea is raised that the residential house is exempt from attachment and such an application is dismissed, a subsequent application raising such a plea is barred by the principle of constructive *res judicata*. This judgment, however, does not take into consideration the earlier Division judgment of this Court in *Pt. Vishnu Datt v. Jai Ndrain and another* (4), wherein after taking into consideration the provisions of sub-sections (3) and (6) of section 60 of the Code set out above, it was held as under:—

“It will be apparent that the benefit conferred by the substantive provisions of section 60(1)(ccc) cannot voluntarily or otherwise be parted with. The rule of *res judicata* is a rule of estoppel and would not, in my opinion stand on a higher footing than the conscious waiver. If a conscious waiver is made void, it is hard to conceive that its place will be taken by legal waiver, or in other words, by *res judicata*.”

(9) I am bound by the Division Bench judgment of this Court in *Pt. Vishnu Datt's case* (supra) and hold that the application, dated 13th July, 1976, filed by the petitioner before respondent No. 4 raising objection to the effect that the house attached, being his main residential house, was exempt from attachment was not barred by the principle of constructive *res judicata* in spite of the fact that an

(2) AIR 1979 Pb. and Hay. 75.

(3) AIR 1974 Delhi 205.

(4) 1966 C.L.J. (Pb.) 921.

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earlier application dated 11th June, 1976 against execution filed by him in which this objection was not raised, had been dismissed on 5th July, 1976.

(10) The learned counsel for respondents Nos. 5 and 6 then contended that after attachment of the residential house of the petitioner, the same was put to auction and has been sold out during the course of pendency of his appeal and revision before respondents Nos. 1 to 3. In my view, attachment of residential house was *void ab initio*. It was incumbent on respondent No. 4 before he passed an order of attachment to satisfy himself that the petitioner's residential house, which was sought to be attached, was not exempt from attachment or sale as is required by sub-section (6) of section 60 of the Code. Since apparently no such satisfaction was recorded and rather on the bald allegation of respondents Nos. 5 and 6 that he had two residential houses, proceedings subsequent to attachment of the house were carried on resulting in sale thereof, the whole proceedings including the sale of his house in auction are void.

(11) Consequently, I allow this petition and quash the orders Annexures P. 2, P. 3 and P. 5 passed by respondents Nos. 4, 2 and 1, respectively. I also quash the sale of the residential house of the petitioner bearing No. 2551 situate at Banga town as described in plan Annexure P. 1 by holding that the same was not liable to attachment or sale in execution of the decree passed against him by respondent No. 4 in favour of respondents Nos. 5 and 6. There shall, however, be no order as to costs.

N.K.S.

Before D. V. Sehgal, J.

MOHAMAD AZAM and others,—Petitioners

versus

STATE OF HARYANA and others,—Respondents.

Civil Writ Petition No. 3760 of 1985.

February 14, 1986.

Punjab Ayurvedic and Unani Practitioners Act (XLII of 1963)—
Sections 2(i), 2(h), 14, 15 and 29—Indian Medicine Central Council