

The Public
Foundry and
Workshop, Pri-
vate, Limited,
Phillaur

v.
The Deputy
Commissioner,
Jullundur and
another

Bhandari, C. J.

Proposition to the contrary that the expression "Income" means "all that which comes in" cannot possibly be supported.

The petitioner in the present case contends that although his total gross receipts aggregated to a sum of Rs. 1,05,433, the actual income received by him after deducting the necessary expenses was considerably less. The Excise and Taxation Department should in my opinion determine the income of the petitioner in accordance with the principles propounded above.

For these reasons I would allow the petition, quash the order of the Appellate Authority and direct the Assessing authority to make a fresh assessment in accordance with law. There will be no order as to costs.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

M/S ANGAD RAM-RAM SINGH,—*Defendant-Appellant.*

versus ...

M/S GAINDA MAL CHARANJI LAL AND OTHERS,—*Defendants-Respondents.*

Execution First Appeal No. 72 of 1958.

1959

Sept. 7th

Code of Civil Procedure (V of 1908)—Order 41 Rule 6(2)—Order directing stay of sale of immovable property on condition that judgment debtor deposits half the decretal amount in cash in Court—Whether legal.

Held, that the conditions envisaged in sub-rule (2) of rule 6, Order 41 of the Code of Civil Procedure clearly contemplate an order asking for the deposit of a substantial

sum out of the decretal amount before the sale of immovable property can be stayed. In fact the executing court has jurisdiction to make it a condition of the order for stay of sale that the money decreed should be deposited in Court in cash.

Execution First Appeal from the order of the Court of Shri Brijinder Singh, Sub-Judge Ist Class, Kandaghat; dated the 3rd April, 1958 allowing the application but calling upon the judgment-debtor applicant to deposit half the decretal amount in cash in Court before stay orders are issued.

SHAMAIR CHAND and G. C. MITAL, for Appellant.

G. P. JAIN, for Respondents.

JUDGMENT

SHAMSHER BAHADUR, J.—Gainda Mal Charanaji Lal, obtained a decree for Rs. 7,744-1-6 on 20th of March, 1956, with costs against Angad Ram-Ram Singh, A regular first-appeal has been instituted by the judgment-debtor in this Court from this decree.

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Though the decree was granted by the Subordinate Judge, Rupar, the execution proceedings were transferred at the instance of the decree-holder to Kandaghat where two shops and one house belonging to the judgment-debtor have been attached. The judgment-debtor applied under Order 41, rule 6(2) of the Civil Procedure Code, to have the sale of these properties stayed. On the condition that the judgment-debtor deposited half the decretal amount in cash in Court the order of sale was stayed by the executing Court. The judgment-debtor feeling aggrieved from this order has come in appeal to this Court.

To appreciate the contention which has been advanced by Mr. Shamair Chand, the learned

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counsel for the appellant, it would be necessary to set out-rule (2) of rule 6 of order 41 of the Civil Procedure Code, under which proceedings have been taken by the executing Court:—

“(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the court which made the order, be stayed on such terms as to giving security or otherwise as the court thinks fit until the appeal is disposed of.”

It has been argued by the learned counsel that the provisions of the sub-rule do not warrant the order asking the judgment-debtor to deposit half the decretal amount. He has relied on a decision of Martineau, J., in *Shankar Das and another v. Kasturi Lal and others* (1), in his support. In that case the executing court ordered that the sale shall be stayed on condition that the decretal amount be deposited and paid to the decree-holders, who, however, were not required to furnish security. Martineau J., held that “the order which the lower court passed is clearly against the spirit of the rule, as it is tantamount to an order refusing to stay the sale.” I take the authority of Martineau J., to mean that an executing court would be justified in asking the judgment-debtor to deposit an amount less than the decretal amount before staying the sale of an immovable property in execution of the decree. All that Martineau, J., said was that if the judgment-debtor is asked to pay up the whole of the decretal amount, there is hardly any point in asking for staying of sale of immovable properties as the decree would in that case stand fully satisfied. The conditions envisaged in sub-rule (2)

(1) A.I.R. 1925 Lah. 69

clearly contemplate an order asking for the deposit of a substantial sum out of the decretal amount. Indeed the ruling of Martineau, J., has been doubted by a Division Bench of the Madras High Court in *P. C. Thirumalai Goundar v. Town Bank, Ltd., Pollachi* (1), Where it was held that the lower Court has jurisdiction to make a condition that the stay would be granted on deposit of the decretal amount. The same view has been held by the Patna High Court in *Beni Singh v. Ram Saran Singh* (2), and by the Madras High Court in *Rukmani Ammal v. Subramania Sastrigal and another* (3), In 1911, a Division Bench of Woodroffe and Carnduff, JJ., of the Calcutta High Court, in *Ram Nath Singh v. Raja Kamleshwar Prasad Singh* (4), held that "the Court can make it a condition of the order for stay of sale that the money decreed should be deposited in Court in cash."

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There is a clear weight of authority in favour of the view which has been taken by the executing Court, whose order, therefore, must be upheld. This appeal fails and is dismissed. I would, however, make no order as to costs.

B.R.T.

REVISIONAL CIVIL

Before Dulat and Mahajan, JJ.

RAJESHWAR PARSHAD,—Petitioner.

versus

BANSI LAL,—Respondent.

Civil Revision No. 139 of 1957.

*East Punjab Urban Rent Restriction Act (III of 1949)—
Whether competent piece of legislation to the extent it
operates in cantonment areas.*

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Sept., 8th

- (1) A.I.R. 1934 Madras 709
(2) A.I.R. 1936 Patna 443
(3) A.I.R. 1940 Madras 82
(4) 9 Indian Cases 323