

(2010) 10 DEL CK 0285

Delhi High Court

Case No: Writ Petition (C) No. 6793 of 2010

Attar Singh

APPELLANT

Vs

The Assistant Collector-I/II
(Recovery Officer), Grade-I and
Others

RESPONDENT

Date of Decision: Oct. 5, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 60

Hon'ble Judges: Valmiki J Mehta, J; Sanjay Kishan Kaul, J

Bench: Division Bench

Advocate: Hem C. Vashist and Kuldeep Soni, for the Appellant; E.M. John, for Anju Bhattacharya, for R-1 and R.N. Bhardwaj, for R-2, for the Respondent

Judgement

Sanjay Kishan Kaul, J.

CM No. 13440/2010

1. Allowed subject to just exceptions.

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2. Rule DB.

3. Learned Counsels for respondents 1 & 2 accept notice. Respondent No. 3 is a formal party.

4. At joint request of learned Counsels for the parties the matter is taken up for final disposal.

5. The petitioner is aggrieved by the impugned order of the Delhi Cooperative Tribunal dated 15.9.2010 vacating the injunction granted in favour of the petitioner in the pending appeal.

6. A reading of the impugned order shows that the ground for stay of recovery against the petitioner was that the petitioner claimed that his salary had been attached for more than 24 months and that was not permissible u/s 60 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code). The counsel for respondent No. 2 bank appeared and submitted that the provisions of the said Code do not apply and thus the stay should be vacated. This plea was accepted.

7. We are constrained to note that the impugned order accepting the submission of learned Counsel for respondent No. 2 is contrary to statutory provisions. To appreciate the legal position, we reproduce the relevant provision of the said Code, which reads as under:

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

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, banknotes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment- debtor or by another person in trust for him or on his behalf:

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

...

[(i) salary to the extent of [the first [[one thousand rupees]] and two third of the remainder] [in execution of any decree other than a decree for maintenance.]

[Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.]

8. It is not in dispute that the recovery against the petitioner arises from an award under the Delhi Co-operative Societies Act, 2003 (hereinafter referred to as the said Act). The execution is under this Act. The Delhi Co-operative Societies Rules, 2007 (hereinafter referred to as the said Rules) were framed under the said Act. The relevant Rule 132 of the said Rules reads as under:

132. Attachment of salary or allowances of public officer or of servant of a Railway Administration or local Authority: In case the movable property to be attached is the

salary or allowance or wages of a public officer or of a servant of railway administration or local authority or a firm or a company, the Recovery Officer may order in Form No. 36 that the amount shall, subject to the provisions of Section 60 of the Code of Civil Procedure, 1908 (1 Act V of 1908), be withheld from such salary or allowance or wages either in one payment or by monthly installments as the Recovery Officer may direct and upon notice of the order, the officer or other person whose duty is to disburse such salary or allowances or wages shall withhold and remit to the Recovery Officer, the requisite amount.

9. It is, thus, apparent from the bare reading of the aforesaid Rule that the recovery has been made specifically subject to provisions of Section 60 of the said Code. The Tribunal has not even cared to read this Rule while accepting the contention of learned Counsel for respondent No. 2 bank. We may note that it was even the duty of the counsel for the respondent No. 2 bank to have pointed out this provision which deals with the attachment of salary and allowances.

10. The impugned order dated 15.9.2010 of the Delhi Co-operative Tribunal, thus, is ex facie unsustainable and is accordingly set aside and the interim orders in favour of the petitioner are restored till the disposal of the appeal pending before the Delhi Co-operative Tribunal.

11. The Rule is made absolute leaving the parties to bear their own costs.

CM No. 13439/2010

In view of the disposal of the writ petition, the application does not survive for consideration and stands disposed of.

A copy of this order be sent, without process fee, to the Chairman and Member of the Delhi Co-operative Tribunal so that such a legal mistake does not occur in other matters.