



\$~59

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 4922/2025**

SH. RAJ KUMAR AND ANR.

.....Petitioners

Through: Mr. Gautam Panjwani, Ms. Aashna Singh, Mr. Mayank Rana and Ms. Ishpreet Kaur, Advs.

versus

MRS POONAM

.....Respondent

Through: Ms. Sumitra Choudhary, Mr. M. K. Raghav Raman and Ms. Nitya Sharma, Advs. (Through VC) for R-1
Respondent (Poonam) in person.

CORAM:

HON'BLE MR. JUSTICE AJAY DIGPAUL

ORDER

% **24.07.2025**

CRL.M.A. 21320/2025 (exemption)

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 4922/2025

3. Through the present petition, the petitioners have assailed the order dated 17.07.2025 passed by the learned ASJ - West, Tis Hazari Courts, Delhi¹, by virtue of which the Crl. Revision Petition bearing No. 221/2025, preferred by the petitioners, has been dismissed.
4. Heard.

¹ Hereinafter "learned ASJ"



5. Issue notice.

6. Ms. Sumitra Choudhary, learned counsel appearing on behalf of the respondent no. 1, who has appeared on advance notice, accepts notice and prays for one week's time to file reply. Let the same be filed within one week as prayed. Rejoinder thereto, if any, be filed within two weeks thereafter.

7. List on 28.08.2025.

8. Trial Court Record be requisitioned before the next date of hearing.

CRL.M.A. 21321/2025 (stay)

9. The petitioners have sought *ad interim ex parte* stay of the impugned order dated 17.07.2025 as well as the order dated 27.06.2025.

10. In the captioned petition, the petitioners have assailed the order dated 17.07.2025 passed by the learned ASJ, by virtue of which the Crl. Revision Petition bearing No. 221/2025, preferred by the petitioners has been dismissed.

11. The petitioners, in the aforesaid revision petition before the learned ASJ, had challenged the orders dated 04.06.2025 and 27.06.2025 passed in Ex Crl. No. 257/2023, and orders dated 06.06.2025 and 09.06.2025 passed in Ex Crl. No. 90/2025, by the learned JMFC (Mahila Court-03), West District, Tis Hazari Courts, Delhi², all titled as "*Poonam vs. Suraj Pal*". Both execution petitions were filed by respondent no. 1 (decree holder therein) against respondent no. 2 (judgment debtor therein).

12. The learned JMFC, vide the above mentioned orders, denied the objectors'/petitioners' request of examination of witnesses, dismissed their

² Hereinafter "learned JMFC"



objections raised against execution petition, and attached one-fourth share of the property bearing no. WZ-38C/1, Mansarovar Garden, New Delhi³ and further directed that the same shall be sold by way of public auction.

13. The basic contention of the petitioners is to the effect that the petitioners (brothers of respondent no. 2) are residing in the *subject property* as co-owners and vide a family settlement deed 18.06.2012, respondent no. 2 had relinquished his right in the *subject property*. Further, the petitioners have no other property to reside and the *subject property* is the only dwelling unit where the petitioners are residing currently as co-owners in terms of the above settlement deed.

14. It is submitted that the learned ASJ has failed to take into consideration the submissions raised by the petitioners as regards to the provisions of Section 60 (1) (ccc) of the Code of Civil procedure, 1908⁴. The petitioners are protected by the said provision as there is a mandate of the law that every person has a right to reside and there cannot be an execution against the only dwelling house which a person possesses.

15. Reliance in this regard has been placed upon the judgment passed by the Division Bench of this Court in ***Mohinder Singh v. Bimal Saxena***⁵, wherein, it was observed that the subject property therein, which was the only residential property, could not be attached and sold. The relevant paragraph of the same is as follows:

“..17. As a matter of fact, the plain language of Section 60(1)(ccc) of the CPC also supports the contention raised before us by Mr. Kirpal. For convenience, the said provision is extracted hereafter:

³ Hereinafter “subject property”

⁴ Hereinafter “CPC”

⁵ 2024 SCC OnLine Del 6515



“Section 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, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a 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 judgmentdebtor 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:— xxx xxx xxx

(c) 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 of a domestic servant] and occupied by him.

(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.”

[Emphasis is ours]

18. That said, it is obvious that the assignee decree holders would not be able to seek satisfaction of the decree (at least not properly in time) unless the appellants/judgment debtors sell whole or a part of the subject property. That the counsel for the appellants/judgment debtors took the stand that they were willing to make use of the subject property to generate liquidity is noted in paragraph 21 of the impugned judgment and order. For convenience, paragraph 21 is also set forth hereafter:

"21. At this stage, Mr. Mehta, learned counsel, states that he will get a collaborator and work out a viable deal, so that Rs. 9 crores/an amount to the satisfaction of the decree holder, is transferred in favour of the decree holder.”

19. Concededly, attention of the bench which rendered the decision in *Sujata Kapoor* was not drawn to the earlier judgments passed in *VP Arora* and *Kiran Bala* case.

19.1. The following observations made in *VP Arora* being apposite are extracted hereafter:



“10. As already noticed, the underlying object of section 60(ccc) is not to displace a judgment-debtor from the main residential house in execution of a money decree. It hardly matters whether he owned the house when degree [sic : decree] was passed or he comes to own the house at a time when it is sought to be attached or sold. That is why the law framers used the word ‘or’ between attachment and sale. The last relevant time would be the date of sale and if on the date of sale a residential house is owned by the judgment-debtor, it would not be sold and will have to be released from attachment.”

19.2. For convenience, the relevant paragraph of *Kiran Bala* case is also extracted below:

“6. Having set out the above facts, it is crystal clear to us that we have to grant relief to the appellant. It is evident that she sold the house in question ostensibly to pay off her debts but the sale has been declared by the civil court, decided in CS No. 636 dated 6-8-1991, to be null and void. The effect of that decision would be that the said sale becomes non est and the parties reverted to their original position; meaning thereby that the appellant got a negative declaration that she continued to be the owner-in-possession of the house in question. On that premises, what sequently follows cannot be withheld merely on account of the conduct of the appellant. Since the legal consequence is that she would be the owner-in-possession of the house, she would definitely be entitled to claim its exemption from attachment or sale under sub-clause (ccc) of Section 60(1) of the Code of Civil Procedure, afore-referred to. Had the claim of the plaintiff in the said suit been negatived as regards the transfer being with the object of defeating or delaying her creditors, the house in question would necessarily have been out of the reach of the decree-holder. Merely because it has now been reverted back to the judgment-debtor that fact, by itself, would not disentitle the judgment-debtor from raising the legal plea of exemption. In this view of the matter, we are convinced that the executing court was in error in dismissing the objection petition of the appellant and so was the High Court in dismissing the revision petition in limine.”

[Emphasis is ours]

20. Given this position, as noticed above, on the plain language of Section 60(1)(ccc) of the CPC, we are constrained to rule in favour of the appellants/judgment debtors. The subject property being the appellants'/judgment debtors' “one main residential house”, it cannot be attached and sold in execution proceedings...”



16. Mr. Panjwani submits that respondent no. 1 (wife of respondent no. 2), who has filed the aforesaid execution petition, is well aware of the fact that there was a family settlement and the *subject property* was not owned and possessed by respondent no. 2 (husband of respondent no. 1), against whom she has filed the said execution proceedings.

17. Heard.

18. Issue notice.

19. Ms. Sumitra Choudhary, learned counsel appearing on behalf of respondent no. 1, on advance notice, accepts notice and prays for two days' time to file reply. Let the same be filed within two days as prayed. Rejoinder thereto, if any, be filed before the next date of hearing.

20. Learned counsel for respondent no. 1 has vehemently opposed the present application and the arguments advanced by Mr. Gautam Panjwani. She submits that the impugned order has been passed in accordance with the law and after considering the entire facts and circumstances of the case, including the abovesaid settlement deed, and there is no error or illegality thereto.

21. She also submits that respondent no. 2 has failed to comply with the directions issued by the court concerned with respect to the payment of maintenance to respondent no. 1 due to which the said execution petitions were filed. She further submits that the settlement agreement, with respect to the *subject property*, upon which the petitioners are relying, is a sham agreement and even the learned JMFC has adjudicated upon it stating it to be unreliable. Moreover, the *subject property* is an undivided property and respondent no. 2 is in possession of his share thereto, which fact has been



admitted by him in his deposition.

22. At this juncture, certain counter offers to settle the dispute were made by respondents no. 1 and 2, however, since both are at loggerheads with each other, nothing fruitful could be arrived at. Even this Court tried to persuade the parties to amicably settle the matter, but to no avail.

23. It is pertinent to mention here that upon meticulous perusal of the records available before this Court and considering the submissions advanced, it is found that the petitioners have raised substantial point of law as regards to the protection provided under Section 60 (1) (ccc) of the CPC.

24. This Court has also noted the objections raised by respondent no. 1 with regard to the veracity of the settlement deed and the status of ownership/possession of respondent no. 2 *qua* the *subject property*.

25. Even though respondent no. 1 has contended that respondent no. 2 has admitted to certain facts *qua* his possession over the *subject property*, it is made out that in the event one-fourth share of the same is allowed to be sold without dealing with the contentions raised by both the parties with regard to the veracity of settlement deed, admissions alleged to be made by respondent no. 2, contention of the petitioners that they were not allowed to examine certain witnesses, irreparable loss might be caused to the petitioners. Thus, for the proper adjudication of the dispute raised before this Court, it would only be appropriate to go through the entire trial court record and to hear the parties in detail.

26. Therefore, this Court is of the considered view that the instant matter requires consideration as there is *prima facie* substance in the arguments advanced on behalf of the petitioners. Since this Court deems it appropriate to adjudicate upon the said contentions and also that the balance of



convenience lies in favour of the petitioners, the proceedings before the learned JMFC in Ex Crl. No. 257/2023 and Ex Crl. No. 90/2025 are stayed till the next date of hearing with respect to the auction of *subject property*.

27. List on 28.08.2025.

28. It is made clear that this Court has not commented upon the terms of payment of maintenance, decided in favour of respondent no. 1 vide orders dated 26.04.2017 and 20.08.2020 in CC no. 5552613/2016, and it shall remain the same.

AJAY DIGPAUL, J

JULY 24, 2025
gs/ryp