2026 INSC 863

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 182 OF 2016**

**SHEELA GEHLOT ... APPELLANT**

**Versus**

**MOHINI HARDAYAL SINGH & ORS. ... RESPONDENTS**

**WITH**

**CIVIL APPEAL NO. 190 OF 2016**

**PUNJAB & SIND BANK ... APPELLANT**

**Versus**

**MOHINI HARDAYAL SINGH & ORS. ... RESPONDENTS**

**AND**

**CIVIL APPEAL NO. 191 OF 2016**

**JAGMINDER SINGH ... APPELLANT**

**Versus**

**PUNJAB & SIND BANK & ORS. ... RESPONDENTS**

**J U D G M E N T**

**ALOK ARADHE, J.**



1. These appeals arise from the judgment dated 15.05.2009 passed by the High Court of Madhya Pradesh at Jabalpur (High Court) in Writ Petition No. 2199 of 2008, whereby the

High Court set aside the judgment of the Debts Recovery Appellate Tribunal, Allahabad (DRAT) dated 01.02.2008 and remitted the matter to the Debts Recovery Tribunal, Jabalpur (DRT) for a fresh inquiry. The appellant before us in C.A. No. 182 of 2016 is an Auction-Purchaser whereas appellant in C.A. No. 190 of 2016 is Punjab & Sind Bank (the Bank). C.A. No. 191 of 2016 has been filed by Jagminder Singh, son of late Mr. Hardayal Singh (the judgment-debtor). In order to appreciate the challenge laid by the appellants to the impugned judgment, it is necessary to set out the relevant facts, which are stated *infra*.

**FACTS**

**2.** M/s. Sterling Malt & Foods Pvt. Ltd. (the Company) was a company incorporated with the judgment- debtor, the husband of Smt. Mohini Hardayal Singh (respondent no.1) and Mr. N.S.S. Rao as its Managing Directors having its registered office at S-246, Panchsheel Park, New Delhi. The Company manufactured malt at its factory located at 34, Industrial Area Banmore, District Morena, Madhya Pradesh.

**3.** The Company availed credit facilities from the Bank through its branches at Connaught Place, New Delhi and

Jayendraganj, Gwalior. A charge was created over the factory land, building, plant and machinery, and the two Directors of the Company, namely judgment-debtor and Mr. N.S.S. Rao furnished personal guarantees. The house bearing No. S-246, Panchsheel Park, New Delhi (the Delhi Property) was not mortgaged for the loan taken by the Company.

**4.** The malt manufacturing unit ceased to function in 1983, leading to irregularity in repayment of loans. The Bank instituted a suit under Section 34 of the Code for enforcement of the security of equitable mortgage, namely Civil Suit No. 2601 of 1986 before the High Court of Delhi which was transferred to DRT, Delhi in 1996 and re-registered as O.A. No. 225 of 1996. The Bank filed another suit namely Suit no. 1-B of 1987 for recovery of an amount of Rs.3,84,29,670/- (Rupees Three Crore Eighty Four Lakh Twenty Nine Thousand Six Hundred Seventy) with interest from the Company before the District Court, Morena (Morena Court).

**5.** After filing of the suit by the Bank, the Company started searching for investors to take over its assets and liabilities. The respondent nos. 7 to 11, namely L.K. Trust and its trustees, in order to bail out and revive the Company acquired the majority of shareholding in the Company and proposed a scheme for its revival. The said scheme was accepted by the Bank. The Bank amended the plaint in Civil Suit no. 1-B of 1987 and arrayed respondent nos. 7 to 11 as defendants in the suit re-registering the suit as Civil Suit No. 26-A of 1989. The parties entered into a compromise on the basis of which a compromise decree was passed on 15.10.1991 by the Morena court. Under the compromise decree, the Trust and its trustees were required to pay a sum of Rs. 1.80 crores payable in half-yearly instalments over a period of seven years commencing from December, 1991. Clause 2(e) of the compromise recorded that the title deeds of the Delhi property furnished as a collateral security by the judgment-debtor, would stand released, however, it was expressly clarified that the same would not affect his personal liability to pay the decretal amount.

**6.** The judgment-debtor passed away on 17.11.1994. The Trust and its trustees paid an aggregate amount of about Rs.82,00,000/- (Rupees Eighty-Two Lakh) between September 1992 and September 1998, and thereafter defaulted, attributing the default to the Bank's failure to hand over the possession of the factory as contemplated by the compromise. The Bank filed an execution petition before the Morena court -in 1995 in which respondent no. 1 and her children were arrayed as judgment-debtors. Between 1995 to 1997, several attempts were made by the Morena court to serve notice of execution upon respondent no. 1 and her children but notices could not be served.

**7.** On 12.08.1998, the Bank made a prayer for attachment of the Delhi Property. The said prayer was rejected for want of territorial jurisdiction. The Debts Recovery Tribunal was established in Jabalpur on 07.04.1998. In view of the mandate contained in Section 31 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, now known as Recovery of Debts and Bankruptcy Act, 1993 (the 1993 Act), the execution case was transferred to the DRT.

**8.** On 20.09.2004, the Recovery Officer, DRT, ordered the auction of the Delhi property. On 24.10.2004, respondent no. 1 filed an application seeking recall of the order dated 20.09.2004 on the following grounds; (i) no notice of the execution case filed in the Morena court, and of the transfer of the case to the DRT was issued to her; (ii) an amount of Rs.82,85,817/- worth of instalments was paid to the Bank by the Trust and its trustees, the default in the subsequent instalments was attributed to the Bank not handing over the possession of the factory unit at Banmore as contemplated by the compromise; and (iii) the compromise deed was signed by all the parties including the Bank.

**9.** Prior to the decision on the aforesaid application filed by respondent no. 1, the factory premises at Banmore, together with 14 acres of land, plant and machinery were auctioned on 13.07.2006 for Rs.40,51,111/- (Forty Lakh Fifty One Thousand One Hundred and Eleven). The Recovery Officer, DRT by an order dated 10.10.2006 rejected the application preferred by respondent no.1, seeking recall of the order dated 20.09.2004 on the grounds that :- (i) no lease deed was executed by the Company as decided in the compromise and hence the Bank rightfully did not hand over the possession; (ii) the default in payment of two instalments occurred entitling the Bank to execute the decree; and (iii) form no. 17 notice was duly served and no objections were raised with respect to valuation. The Recovery Officer directed that the Delhi property be put to an auction sale for a reserve price of 928.85 lakh.

**10.** On 19.10.2006, the respondent no. 1 preferred an appeal, namely Appeal No. 31 of 2006 against the aforesaid order dated 10.10.2006 before the DRT. Along with the appeal, an application seeking stay of execution proceeding, was also filed. The DRT by an interim order dated 13.11.2006, rejected the application for stay. Subsequently, an auction notice dated 16.11.2006, was issued for the sale of the Delhi property. The respondent no.1, approached the High Court by way of writ petition, namely W.P. No. 17150 of 2006 against the order dated 13.11.2006, seeking to restrain the auction of the Delhi property due to be held on 27.11.2006. The High Court passed an interim order dated 22.11.2006, directing the continuance of the auction proceeding but directed that the same shall not be finalised without leave of the court.

**11.** An auction was held on 27.11.2006 in which the bid of Auction-Purchaser in C.A. No. 182 of 2016 was accepted. The High Court by an order dated 15.01.2007, disposed of the writ petition and directed the parties to appear before the DRAT as the same was functional and further directed continuance of interim order dated 22.11.2006 till the stay application is decided by the DRAT.

**12.** The DRAT in respondent no.1's appeal, by an order dated 27.02.2007 rejected the interim application for stay and posted the appeal for hearing on 03.04.2007. Resultantly, the auction sale was confirmed in favour of the Auction-Purchaser and a sale certificate was issued on 01.03.2007 by the Recovery Officer.

**13.** The respondent no. 1 instead of preferring an application under Rule 60 or 61 of the Second Schedule to the Income Tax Act, 1961 (1961 Act), preferred a writ petition, namely W.P. No. 3512 of 2007 in which a plea was raised without establishing any factual foundation that the Delhi property being the main residential property of respondent no.1, is exempt from attachment in view of Section 60(1)(ccc) of the Code. The learned Single Judge of the High Court by an order dated 12.03.2007, dismissed the writ petition and *inter alia* held that : -(i) the respondent no. 1 cannot claim exemption under Section 60(1)(ccc) of the Code without any factual foundation; and (ii) no application under Rule 60 or Rule 61 of the Second Schedule to the 1961 Act was filed.

**14.** The respondent no.1 preferred a writ appeal, namely W.A. No. 433 of 2007. The Division Bench passed an interim order on

15.03.2007 directing the parties to maintain *status quo* with regard to possession of the Delhi property. The writ appeal was disposed of on 22.03.2007 with the following directions :- (i) the parties shall appear before DRAT on 03.04.2007, (ii) the interim order dated 15.03.2007 shall remain in force till the decision of the appeal, (iii) the DRAT shall deal with the issues raised by the contesting respondents and shall determine the objections permitted within the parameters of law, and (iv) the DRAT shall dispose of the appeal by 20.04.2007.

**15.** The DRAT by an order dated 19.04.2007, dismissed the appeal preferred by the respondent no. 1 *inter alia* on the following grounds:- (i) the respondent no. 1 had knowledge about the execution proceeding before the DRT; (ii) the objection that the Delhi property was never mortgaged with the Bank was never raised by respondent no. 1 before the Recovery Officer; (iii) the plea that the Delhi property is exempted from attachment under Section 60(1)(ccc) of the Code was not pleaded and proved before the Recovery Officer; (iv) DRT has territorial jurisdiction to proceed for sale of Delhi property; (v) no deposit as contemplated under Rule 61 of the Second Schedule to the 1961 Act was made, and (vi) the execution case was transferred and received by the DRT before insertion of Section 31A of the 1993 Act.

**16.** The respondent no.1 challenged the order dated 19.04.2007, in the writ petition, namely W.P. No. 5489 of 2007, which was allowed to be withdrawn by recording the undertaking of the counsel for the Auction-Purchaser that she shall not dispossess respondent no. 1 for thirty days and directed the DRT to decide the appeal on or before 31.05.2007.

**PROCEEDING BEFORE THE DRT**

**17.** The DRT by an order dated 29.05.2007, allowed the Appeal No. 31 of 2006 preferred by respondent no. 1 on 19.10.2006 and set aside the orders dated 20.09.2004 and 10.10.2006 passed by the Recovery Officer, DRT. The DRT recorded the following findings: (i) non-issuance of Recovery Certificate is not illegality but is a mere irregularity; (ii) the respondent no.1's objection under Section 60(1)(ccc) of the Code is maintainable and can be raised after before the Recovery Officer, DRT by affording an opportunity to the parties; (iii) no notice required under Rule 2 of the Second Schedule of the 1961 Act was issued to respondent no.1; and (iv) respondent no. 1 was not required to comply with the provisions of Rule

60 or 61 of the Second Schedule to the 1961 Act as no notice under Rule 2 was issued to her. The DRT permitted respondent no. 1 and Bank to urge their respective contentions before the Recovery Officer, DRT.

**PROCEEDING BEFORE THE DRAT**

**18.** The Auction-Purchaser and the Bank challenged the order dated 29.05.2007 passed by the DRT in an appeal before the DRAT. The said appeals were allowed by an order dated 01.02.2008 and the order dated 29.05.2007 passed by the DRT was set aside on the following grounds :- (i) notice of attachment under Form 16 was duly served upon respondent no. 1; (ii) the notice envisaged under Rule 2 of Second Schedule to 1961 Act is required to be issued in the name of the defaulter, namely the judgment-debtor and his widow i.e. respondent no.1, son and daughter had already been impleaded; (iii) Section 31A of 1993 Act does not apply; (iv) respondent no. 1 neither pleaded any exemption under Section 60(1)(ccc) of the Code nor produced any evidence regarding exclusive ownership and possession of the Delhi property; and (v) DRT erred in not attaching the Delhi property for want of territorial jurisdiction.

**PROCEEDING BEFORE THE HIGH COURT LEADING TO THE IMPUGNED JUDGMENT**

**19.** The respondent no. 1 challenged the order dated 01.02.2008 in a writ petition, namely W.P. No. 2199 of 2008. By the impugned judgment, the Division Bench of the High Court on 15.05.2009, held that omission of notice under Order XXI Rule 22 of the Code and by parity of reasoning under Rule 2 of the Second Schedule to the 1961 Act is not a mere irregularity but a defect which goes to the root of jurisdiction of the execution proceeding in which the legal representatives were substituted after judgment debtor's death. It was further held that admittedly no notice was issued to respondent no. 1 and her children either before Morena court or after transfer of the proceeding to the DRT. The High Court, however, held that the same cannot be held to be void on this ground alone and that the confirmed sale, the rights of the *bona fide* Auction- Purchaser who had invested a substantial sum and the unresolved question of exemption under Section 60(1)(ccc) of the Code requires a fact- finding inquiry. It was also held that Section 31A of the 1993 Act did not apply retrospectively to the pre-existing execution and respondent no. 1 is entitled to an opportunity to lead evidence about her claim to exemption under Section 60(1)(ccc) of the Code being a mixed question of law and fact.

**20.** Accordingly, the High Court allowed the writ petition, set aside the judgment of the DRAT dated 01.02.2008, and remitted the matter to the DRT, with a direction that an inquiry be held within three months, and a decision be rendered within six weeks to ascertain whether respondent No.1 had suffered substantial prejudice by reason of non-service of notice and whether the Delhi property qualified for exemption under Section 60(1)(ccc) of the Code. It directed *status quo* as to possession of the Delhi property to be maintained pending the fresh inquiry and left the parties to bear their own costs of the writ petition.

**21.** Being aggrieved, the Auction-Purchaser namely, Ms. Sheela Gehlot has preferred C.A. No.182 of 2016, the Bank has preferred C.A. No.190 of 2016 and Mr. Jagminder Singh, son of judgment-debtor has preferred C.A. No.191 of 2016.

**SUBMISSIONS**

**22.** Dr. A.M. Singhvi, learned senior counsel for the appellant in C.A. No.182 of 2016 submitted that benefit of Section 60(1)(ccc) of the Code is limited for the benefit of the judgment-debtor himself and not for his legal heir. In support of the aforesaid submission, reliance has been placed on a decision of the High Court of Delhi[1]. It is contended that by virtue of the Punjab Relief of Indebtedness Act, 1934 (1934 Act), which introduced Section 60(1)(ccc) into the Code, the judgment-debtor alone could have invoked the aforesaid provision, and also the language of the 1934 Act excludes the debts given by scheduled banks. It is, therefore, urged Section 60(1)(ccc) of the Code has been misapplied and misused as it excludes the debts by the scheduled banks, again relied upon a judgment of the High Court of Delhi[2]. It is pointed out that the case was transferred from Morena court after the enactment of the 1993 Act and there was no occasion to issue notice under Order XXI Rule 22 of the Code. It is argued that insofar as alleged absence of notice under the Second Schedule to the 1961 Act, is concerned, admittedly, the judgment-debtor herself filed detail objections in an application on 24.10.2004 seeking recall of the order passed by the Recovery Officer, DRT on 20.09.2004 and, therefore, the question of prejudice to the respondent no.1, does not

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[1] **Yogesh Sharma** v. **Devi Dayal & Ors., 1977 SCC OnLine Del 39**
[2] **Sujata Kapoor** v. **Union Bank of India & Ors. 2019 SCC OnLine Del 12184**

arise as she had complete knowledge and exercised the opportunity to vigorously object to the direction for auction by filing detailed objections in which all factual and legal points were urged. It is, therefore, contended that the impugned judgment deserves to be set aside. It is argued that the appeal filed by the son of judgment-debtor is devoid of any merit and is liable to be dismissed.

**23.** Mr. D.N. Goburdhun, learned senior counsel for the Bank in C.A. No.190 of 2016 submitted that an auction sale conducted under the 1993 Act, cannot be assailed by the judgment-debtor without filing an appropriate application under Rule 60 or 61 of the Second Schedule to the 1961 Act. It is further submitted that the High Court in exercise of the powers of superintendence does not act as a court of appeal or as a court of error. It is urged that a sale can be set aside only if there is a material irregularity or fraud in the sale which has resulted in substantial injury to an applicant. It is argued that the appeal preferred by the legal representative of the judgment-debtor is liable to be dismissed. In support of the aforesaid submissions, reliance has been placed on various decisions[3].

**24.** Mr. Rajiv Shakdher, learned senior counsel for the appellant in C.A. No.191 of 2016 submitted that High Court erred in holding that equities were in favour of auction purchaser and ought to have appreciated that no notice of execution proceeding was served either on the widow or the legal representative of the judgment-debtor. It is further submitted that the Delhi property is the residential house of the legal representative of the judgment-debtor and is exempt under the provision of Section 60(1)(ccc) of the Code. It is further contended that on account of non-compliance of Section 31A of 1993 Act, the auction was required to be set aside. It is urged that DRT had no jurisdiction to execute the decree in respect of an immovable property not situate within its local limits. It is urged that in the appeals preferred by the Auction-Purchaser and the Bank, no interference is called for. In support of the aforesaid submissions, reliance has been

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[3] **Sadhana Lodh v. National insurance Co. Ltd. & Anr., (2003) 3 SCC 524; Shamshad Ahmad & Ors. v. Tilak Raj Bajaj (Deceased) Through LRs. & Ors., (2008) 9 SCC 1; Canara Bank v. M/s. Luthra Industries & Ors., (2017) SCC Online Del 8165; Sujata Kapoor v. Union Bank of India & Ors., (2019) SCC OnLine Del 12184; Saheb Khan v. Mohd. Yousufuddin & Ors. (2006) 4 SCC 476**

placed on the decisions of various High Courts and this Court[4].

**25.** Mr. Shekhar Naphde, learned senior counsel for respondent no. 1 in C.A. 182 of 2016, has submitted that Order XXI Rule 22 is mandatory and admittedly no notice was issued by the executing court to respondent no. 1 and her children and therefore, the auction is *void*. It is submitted that Rule 2 of the Second Schedule to the 1961 Act, is couched in mandatory language which has not been followed in the instant case. In support of the aforesaid submission, reliance has been placed on a decision of this Court[5].

**ANALYSIS**

**26.** We have considered the rival submissions and have perused the record. The questions which arise for determination are as follows: (i) whether the plea of non-compliance of Order XXI

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[4] **Syam Mandal** v. **Satinath Banerjee, AIR 1917 Cal 728; Charan Kanwal Rice General Mills & Ors.** v. **New Bank of India & Ors., [I (2000) BC 26 ORT]; O. Vasantha v. Karnataka Bank Ltd., Mangalore & Ors. [II (1999) BC 54]; Punjab & Sind Bank v. M/s Avi Autos & Ors.; [I (2000) BC 112 ORT; DRT, Mumbai; Gauri Lal** v. **Smt. Sujham Devi & Ors. AIR 1986 Himachal Pradesh 3; Rajagopala Aiyar** v. **Ramanuja Chariyar & Anr., AIR 1924 Madras 431; Kanchamalai** v. **Shahaji Rajah Sahib & Ors. AIR 1936 Madras 205; Leelachand Walchand Gujar** v. **Vishnu Ganesh Lakade, AIR 1945 Bombay 409; Ajab Lal** v. **Hari Charan, AIR 1945 Patna 1; Marotrao Shama** v. **Narayan Jasrup & Ors., AIR 1948 Nagpur 300; Rm. P. Ar. Ramanathan Chettiar** v. **Pl. Ar. Lakshmanan Chettiar, AIR 1951 Madras 325; Prabhash Chand Jain & Ors.** v. **Punjab & Sind Bank, [(2000) 1 BC 43 (DRAT)] ; Devassia** v. **South Indian Bank Ltd. [(2001) 2 BC 524]; Calcutta Dock Labour Board** v. **Smt. Sandhya Mitra and Ors., (1985) 2 SCC 1; Badri Chando** v. **Raja Inderjit Pratap; (1932) ILR 54 All 736;** and **Radhakisan Hakumji** v. **Balvant Ramji, (1883) ILR 7 Bom 530**

[5] **Satyanarain Bajoria & Anr.** v. **Ramnarain Tiberwal & Anr., (1993) 4 SCC 414**

Rule 22 of the Code has any impact on auction sale? (ii) whether failure to serve notice under Rule 2 of Second Schedule to 1961 Act to the respondent no.1 and her children in respect of Delhi property has rendered the execution or sale *void*? and (iii) whether the Delhi property was exempt from attachment under Rule 10 of the Second Schedule read with Section 60(1)(ccc) of the Code? We proceed to examine the aforesaid questions in its turn.

**27.** At the outset, it would be apposite to notice the statutory framework within which the aforesaid questions arise for consideration. The 1993 Act is an Act enacted with an object of expeditious adjudication and recovery of debts due to banks and financial institutions and matters connected therewith or incidental thereto. Chapter IV of the 1993 Act deals with the procedure of Tribunals. Section 19 provides for an application to the Tribunal whereas Section 22 enumerates the procedure and powers of the Tribunal and the Appellate Tribunal. Section 22 which is relevant for the purposes of controversy involved in the appeals reads as under: -

> **"22. Procedure and powers of the Tribunal and the Appellate Tribunal.—**

(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;

(h) any other matter which may be prescribed.

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) For the purpose of proof of any entry in the 'bankers books', the provisions of the

> Bankers' Books Evidence Act, 1891 (18 of 1891) shall apply to all the proceedings before the Tribunal or Appellate Tribunal."

**28.** Thus, Section 22(1) of the 1993 Act stipulates that Tribunal while deciding an application under Section 19 of the 1993 Act, shall not be bound by the procedure of the Code and shall be guided by the principles of natural justice. Section 29 of the 1993 Act makes certain provisions of the 1961 Act, applicable to recovery of the amount of debt due under the 1993 Act. Section 29 is extracted below for the facility of reference :-

> "**29. Application of certain provisions of Income-tax Act.—**The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income-tax:
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> Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the defendant under this Act."

**29.** Section 29 of the 1993 Act mandates the Recovery Officer to proceed in accordance with the procedure envisaged under the Second Schedule to the 1961 Act subject to such modification as may be notified for recovery of debts due under the Act.

**30.** Before proceeding further, it is apposite to take note of Order XXI Rule 22 of the Code which reads as under:

> "**22. Notice to show cause against execution in certain cases. –**
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> (1) Where an application for execution is made, -
>
> (a) more than two years after the date of the decree, or
>
> (b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44A or
>
> (c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent,
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> the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:
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> Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice."

**31.** No doubt, that requirement contained in Order XXI Rule 22 is mandatory and the use of word "shall" in Order XXI Rule 22 of the Code admits of no ambiguity and the executing court is under an obligation to issue notice to the person against whom a decree is sought to be executed in the circumstances enumerated therein[6].

**32.** In the instant case, the decree was passed on 15.10.1991. The Execution Petition was filed on 12.09.1995 before the Morena Court in which respondent no.1 and her children were impleaded which is evident from Annexure R-1 to the counter filed in C.A. No. 190 of 2016 by the son of judgment-debtor and respondent no. 1, himself, namely Jagminder Singh. The record of execution proceeding annexed with the additional documents by respondent no.1 herself discloses that as many as on seven dates, namely 19.09.1995, 17.01.1996,

[6] **Bharat Kantilal Dalal (Dead) through LR** v. **Chetan Surendra Dalal & Ors., 2025 SCC OnLine SC 2502; Rahul S. Shah** v. **Jinendra Kumar Gandhi & Ors.; (2021) 6 SCC 418; Barkat Ali & Anr.** v. **Badrinarain (Dead) by LRs., (2008) 4 SCC 615** and **Satyanarain Bajoria & Anr. (supra)**

10.05.1996, 26.08.1996, 30.10.1996, 30.11.1996 and 24.01.1997, notices under Order XXI Rule 66 of the Code were issued to respondent no.1 and her children but the same could not be served.

**33.** Thereafter, the Morena Court on 07.04.1997, directed issuance of notice under Order XXI Rule 22 of the Code to the respondent no.1 and her children. Again on 25.06.1997, 12.08.1997, 23.10.1997 and 16.12.1997, the Morena Court directed issuance of notice under Order XXI Rule 66 of the Code, however, the same could not be served. The execution proceeding stood transferred to DRT on 15.12.1998. On 10.07.2003, the respondent no. 1 filed a Miscellaneous Application, namely M.A. No. 65 of 2003 in O.A. No. 225 of 1996 before the DRT, Delhi seeking a direction to the Bank to release the title deeds in respect of the Delhi property. In paragraphs 9, 11 and 15 of the said application, the respondent no.1 mentioned about the pendency of the execution proceeding. Thus, respondent no. 1 at least on 10.07.2003 was aware about the execution proceeding.

**34.** At this stage, it is pertinent to take note of the addition made to Order XXI Rule 22 for the State of Punjab by which a proviso was inserted to sub-rule 2 of Order XXI Rule 22 of the Code by High Court Notification No. 125-GAZ-XI-Y-14 dated 07.04.1932. For the facility of reference Order XXI Rule 22(2) with proviso as applicable to the State of Punjab is extracted below:-

> "22(2)-Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.
>
> **"Failure to record such reasons shall be considered an irregularity not amounting to a defect in jurisdiction."**

The aforesaid proviso is applicable to Delhi as well.

**35.** The Morena court for a long period of two years and three months i.e. from 19.09.1995 to 16.12.1997 tried to serve notices on respondent no.1 and her children and would have been justified in proceeding with the execution of the decree without notice to respondent no.1 and her children as issuance of such notice would have caused unreasonable delay. In view of Order XXI Rule 22(1) of the Code as applicable to Delhi, even if, the execution proceeding had continued before the Morena court, the non-issuance of notice under Order XXI Rule 22(1) of the Code, would merely have been an irregularity and not a defect in jurisdiction.

**36.** The respondent no. 1 and her children were impleaded in the execution proceeding before the Morena court. The DRT was established in Jabalpur on 07.04.1998. Thereupon, in view of mandate contained in Section 31 of the 1993 Act, the execution proceedings were transferred from Morena court to DRT.

**37.** It bears emphasis that Delhi property was neither attached nor brought to sale in execution of the decree as a proceeding before the Morena court. It was attached and sold in exercise of powers under the 1993 Act which is a special enactment for expeditious recovery of debts due to banks and financial institutions. The transfer of execution proceeding from Morena court to the DRT, effected under Section 31 of the 1993 Act, did not merely change the forum of execution, it clothed the Recovery Officer, with the power to recover the amount in accordance with the procedure prescribed under Section 29 of the 1993 Act read with Second Schedule to the 1961 Act, in supersession of procedure under the Code before the Morena Court. The procedure governing the execution before the Recovery Officer only required the notice under Rule 2 of Second Schedule to 1961 Act. Therefore, Order XXI Rule 22 of the Code has no impact on the validity of the auction sale. Accordingly, the first question is answered.

**38.** Before proceeding to examine the second question, we may, at this stage, take note of Rule 2 and Rule 61 of the Second Schedule to the 1961 Act, which read as under:-

> "**2. Issue of notice.—**When a certificate has been received by the Tax Recovery Officer from the [Assessing Officer] for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.
>
> **61. Application to set aside sale of immovable property on ground of non-service of notice or irregularity.—** Where immovable property has been sold in execution of a certificate, 5 [such Income-tax Officer as may be authorised by the 6 [Principal Chief Commissioner or Chief Commissioner] or 7 [Principal Commissioner or Commissioner] in this behalf], the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the

> defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:
>
> Provided that—(a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and
>
> (b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate."

**39.** The Rule 2 of the Second Schedule to the 1961 Act, requires a notice of demand to be served upon a defaulter before recovery is levied against him. Rule 2 of the Second Schedule incorporates principles of natural justice to the procedure for recovery. However, it is to be noted that the Second Schedule also contains Rule 61 which supplies the consequences of and the remedy precisely for such a default, namely an application to set the sale aside on the ground of non-service of notice or of irregularity. Such an application has to be made within a period of 30 days from the sale and requires that sale shall be set aside only if an applicant has sustained substantial injury by reason of non-service or irregularity.

**40.** Admittedly, no notice under Rule 2 of the Second Schedule was served either on respondent no. 1 or on her children. However, it is pertinent to note, respondent no. 1 and her children were already parties to the execution proceedings. The respondent no. 1 had notice about the auction of Delhi property as she had filed M.A. No. 65 of 2003 before DRT, Delhi seeking release of original title deeds of the Delhi property. In the said M.A. respondent no.1 had stated about pendency of execution proceeding. The respondent no.1 had also filed an application seeking recall of the order dated 20.09.2004 directing an auction. Therefore, the question of substantial injury being caused to respondent no. 1 and her children on account of non-service of notice under Rule 2 of the Second Schedule to the 1961 Act, does not arise. It is also pertinent to note that even after the sale, the legal representative did not take recourse to the remedy provided under Rule 61 of the Second Schedule of the 1961 Act. Therefore, in the facts and circumstance of the case, absence of notice under Rule 2 of the Second Schedule to the 1961 Act, does not render either the execution or the sale void. Accordingly, the second question is answered in the negative.

**41.** Now, we deal with the third question. It is pertinent to note that clause (ccc) incorporated in sub-Section (1) of Section 60 of the Code, by means of Section 35 of the Punjab Relief of Indebtedness Act, 1934 as amended by Punjab Amendment Act No. XII of 1940 and Punjab Amendment Act No.VI of 1942, application of which was extended to the erstwhile State of Delhi by a subsequent notification dated 08.06.1956 published in the Gazette on 16.06.1956. Admittedly, Section 60(1)(ccc) of the Code applies to National Capital Territory of Delhi. The relevant extract of Section 60(1)(ccc) of the Code is reproduced below: -

> "**60. Property liable to attachment and sale in execution decree-**
>
> (1) x x x
>
> 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 there to 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."

**42.** Section 60(1)(ccc) of the Code in its application to Delhi exempts attachment and sale of one main residential house belonging to judgment-debtor other than an agriculturist and occupied by him the protection is by its own text personal to the judgment debtor as it is confined to a house belonging to and occupied by the judgment debtor and this protection does not extend to legal representatives of judgment debtor.

**43.** The Delhi High Court[7] interpreting Section 60(1)(ccc) of the Code has held that a legal representative is a distinct juridical concept from judgment debtor and liability devolving upon legal representative is limited to the estate in his hands and he cannot, merely by virtue of residing in a house which belonged to the deceased judgment debtor, claim personal exemption that Section 60(1)(ccc) of the Code affords to a judgment-debtor alone. The same view has commended itself to the Punjab & Haryana High Court in two decisions[8]. Thus, the plea of exemption under Section 60(1)(ccc) of the Code is personal to the judgment-debtor and is not available to be raised by his legal representatives.

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[7] **Yogesh Sharma & Ors.** v. **Devi Dayal & Ors., AIR 1977 Delhi 270**

[8] **K.L. Bawa** v. **Basant Textiles, AIR 1982 P&H 275, Pargat Singh & Anr.** v. **Gurmail Kaur & Ors.; 2014 SCC OnLine P&H 23436**

**44.** The view taken by the Delhi and Punjab & Haryana High Courts about the interpretation of local amendment to Section 60(1) of the Code, namely Section 60(1)(ccc) of the Code which is applicable to the State of Punjab, Haryana and Delhi has held the field for thirty seven long years. We find no good ground to differ with the view taken by the aforesaid High Courts. Therefore, the plea of exemption under Rule 10 of the Second Schedule read with Section 60(1)(ccc) of the Code is not available to respondent no. 1 and her children.

**45.** For yet another reason, it is not necessary for us to examine the issue of applicability of Section 60(1)(ccc) of the Code. It is a well-settled legal proposition that a pure question of law can be raised at any stage of the proceeding but a question of fact that requires an investigation and inquiry for which no factual foundation has been laid cannot be allowed to be agitated in a writ petition. Thus, a mixed question of law and fact cannot be raised for the first time in a writ petition[9].

**46.** It is noteworthy that respondent no. 1 neither in her application before the Recovery Officer on 24.10.2004, nor in M.A. 65 of 2003 filed before the DRT, Delhi raised an objection

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[9] **Greater Mohali Area Development Authority & Ors.** v. **Manju Jain & Ors.; (2010) 9 SCC 157, (2010) 3 SCC (Civ) 639**

with regard to plea of exemption under Section 60(1)(ccc) of the Code. The respondent no. 1 also did not raise the plea in her appeal against order dated 10.10.2006 (31 of 2006) and in the writ petition filed against the order dated 13.11.2006 passed by the DRT. The respondent no. 1's plea of exemption under Section 60(1) (ccc) of the Code, came to light for the first time in a writ petition filed against the order dated 27.02.2007 rejecting the application for stay wherein the High Court while dismissing the writ petition observed that there is no iota on record that the exemption was ever claimed by her. In the proceeding before the DRT, leading to order dated 29.05.2007, the respondent no. 1 did not either plead or lead any evidence with regard to applicability of exemption under Section 60(1)(ccc) of the Code. Therefore, the High Court erred in entertaining and in remitting the matter to the Recovery Officer, DRT to decide the same after giving an opportunity to the parties to lead evidence. Accordingly, the third question is answered.

**47.** For the foregoing reasons, the impugned judgment dated 15.05.2009 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 2199 of 2008 is quashed and set aside.

**48.** In the result, C.A. No. 182 of 2016 and C.A. No. 190 of 2016 are allowed whereas C.A. No. 191 of 2016 is dismissed. However, there shall be no order as to costs.

**..........................................................J.**
**[PAMIDIGHANTAM SRI NARASIMHA]**

**..........................................................J.**
**[ALOK ARADHE]**

**NEW DELHI;**
**AUGUST 14, 2026.**