him to show the same. In these circumstances how can it be said that it would be for the revenue initially to show that the failure was without a reasonable cause and it will be only when the assessee has shown the cause that opinion can be formed by the concerned authority about its reasonableness or otherwise. The liability to the imposition of the extra tax termed as penalty would arise immediately on the failure of the non-furnishing of the return within the prescribed time. Actual imposition is further postponed till the Assessing Authority comes to the finding that the failure was without any reasonable cause. It does not mean that it is for the revenue to show that the failure was without a reasonable cause. On the contrary it only means that the failure on the part of the assessee to furnish the return within the prescribed period would not entail the imposition of penalty if he is able to show that there was sufficient cause for not doing so. In other words, although the assessee becomes liable to the imposition of the penalty for not filing the return within the prescribed time but he can ward off the same if he is able to show a good cause for not doing so. The burden of proof, therefore, to show that the assessee had a reasonable cause for not filing the return within the prescribed time would be on him and on the furnishing of that case it would be for the Assessing Authority to form an opinion whether there was a good cause or the failure was without a reasonable cause. Accordingly, question No. 3 is also answered in the affirmative, that is in favour of the revenue and against the assessee. No costs. ...

(G. C. Mital),—I agree.

N.K.S.

Before: *J. V. Gupta, J.*

DAS MAL,—*Petitioner.*

versus

SANJAY SANJEEV AND ANOTHER,—*Respondents.*

Civil Revision No. 1813 of 1985

November 29, 1985.

Code of Civil Procedure (V of 1908) *as amended in Punjab and Haryana—Section* 60(1) *proviso* (c) *of the principal Act and proviso* (ccc) *as added in Punjab and Haryana—Code of Civil Procedure*

(Amendment) Act (104 of 1976)—Section 97—Execution of a decree—Residential house of the judgment debtor—Whether exempt from attachment under proviso (ccc)—Proviso (ccc)—Whether inconsistent with proviso (c) to section 60(1) of the principal Act and therefore stands repealed.

Held, that under proviso (c) to Section 60(1) of the Code of Civil Procedure, 1908, houses and other buildings belonging to an agriculturist, a labourer or a domestic servant and occupied by them, are exempt from attachment, and in addition, by virtue of clause (ccc) added in Punjab and Haryana, this exemption is available in respect of one residential house to every judgment-debtor. There is no inconsistency in the two provisions. By virtue of clause (ccc), only the scope of clause (c) has been extended. The earlier clause (c) exempts all the houses belonging to an agriculturist, a labourer or a domestic servant whereas clause (ccc) exempts only one main residential house belonging to all categories of judgment-debtors other than agriculturists, etc. The exception made in respect of agriculturists, etc., in clause (ccc) is only a consequence of clause (c) whereunder their houses (i.e., even more than one) already stand exempted. Therefore, there can be no inconsistency between the two provisions contained in clause (c) and clause (ccc) under Sections 60(1) of the Code. Thus, it is held that the protection from attachment of the main residential house in clause (ccc) is available to the judgment debtor.

(Paras 3, 4 and 5)

Petition Under Section 115 CPC for revision of the Order of the Court of Shri Amrik Singh Kathuria, PCS, Subordinate Judge, 1st Class, Amritsar, dated the 12th February 1985, setting aside the attachment of the residential house belonging to the J.D. was not in accordance with the provisions of Section 60(ccc) C.P.C.

P. S. Rana, Advocate, *for the Petitioner.*

G. S. Bhatia, Advocate and Munishwar Puri, Advocate, *for the Respondent.*

JUDGMENT

J. V. Gupta, J.—

(1) This is decree-holder's petition against whom objections filed on behalf of the judgment-debtor have been accepted.

(2) The facts of the case are that a decree for Rs. 1,94,335/- with future interest was passed against the judgment-debtor out of which

he paid an amount of Rs. 1,94,335/- while the future interest amounting to Rs. 27,339/- is outstanding against him. For this amount, the house of the judgment-debtor was attached. He filed objections alleging that the house attached was his residential house and the same was exempt from attachment under proviso (ccc) of section 60(1), Code of Civil Procedure. In the reply filed on behalf of the decree-holder, it was pleaded that the said provision of law stood abrogated in view of S. 97 of the Code of Civil Procedure (Amendment) Act, 1976. The executing court relying on *K. L. Bawa* vs. *M/s. Basant Textile* (1), came to the conclusion that the residential house of the judgment-debtor was exempt from attachment, and consequently, it dismissed the execution application. Dissatisfied with the same, the decree-holder has filed this revision petition.

(3) The short question to be decided in this petition is as to whether clause (ccc) added to S. 60, C.P.C., prior to the amending Act of 1976 is inconsistent with the provisions of the principal Act as amended, i.e., S. 60, or not. Under proviso (c) to S. 60 (1), houses and other buildings belonging to an agriculturist, a labourer or a domestic servant, and occupied by them, are exempt from attachment, and in addition, by virtue of clause (ccc) added in Punjab and Haryana, this exemption is available in respect of one residential house to every judgment-debtor. The said clause (ccc) reads as under:—

> "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."

(4) The contention raised on behalf of the decree-holder is that whereas under section 60(1) (c), only the houses belonging to an agriculturist or a labourer or a domestic servant are exempt, under clause (ccc) added by Punjab and Haryana, every judgment-debtor is entitled to this exemption. There being inconsistency between them, the counsel states that clause (ccc) stands repealed in view of

(1) 1982 P.L.R. 258.

section 97 of the Code of Civil Procedure (Amendment) Act, 1976. In support of this contention, he referred to *S. Rau's I.A.S. Study Circle* v. *Smt. Sushila Nanda* (2). Of course, the said judgment does support the contention raised on behalf of the decree-holder but the same was over-ruled subsequently by a Division Bench of the Delhi High Court itself,—*vide S. C. Jain* vs. *Union of India* (3), and, therefore, it was no more a good law. In para 10 thereof, it was observed by the Division Bench:—

> "The extension in Delhi, it is claimed, is by an Act of Parliament and thus is outside the ambit of Section 97(1) of 1976 Act. So far as Punjab is concerned, there is no dispute that the insertion of clause (ccc) in proviso is by virtue of a legislation by the State Legislature. If the view of Luthra, J., and Sultan Singh, J., that the provisions of the Code as amended by 1976 are inconsistent with Clause (ccc) of which we express no opinion is correct, the result undoubtedly would be that clause (ccc) may no longer be available so far as the State of Punjab is concerned. But the same consequence does not follow in the Union Territory of Delhi."

Thus, as regards the State of Punjab, the learned Judges did not express any opinion. On the other hand, the judgment of this Court in *K. L. Bawa's case* (supra) directly deals with the matter wherein it has been held that the protection from attachment of the main residential house under clause (ccc) was available to the judgment-debtor. The decree itself in that case was passed on 12th March, 1977, and the objections to the execution of the decree were dismissed on 29th September, 1980, i.e., after the enforcement of the amending Act of 1976.

(5) Apart from the above, I do not find any inconsistency in the two provisions of clause (c) and clause (ccc) of S. 60. By virtue of clause (ccc), only the scope of clause (c) has been extended. As observed earlier, clause (c) exempts all the houses belonging to an agriculturist, a labourer or a domestic servant, whereas clause (ccc) exempts only one main residential house belonging to all categories of judgment-debtors, other than agriculturists, etc. The exception

(2) (1981) 19 Delhi L.T. 174.

(3) AIR 1983 Delhi 367.

made in respect of agriculturists, etc., in clause (ccc) is only a consequence of clause (c) whereunder their houses (i.e., even more than one) already stand exempted. Therefore, there can be no inconsistency between the two provisions contained in clause (e) and (ccc) under S. 60(1) of the C.P.C. In this view of the matter, the petition fails and is dismissed, with no order as to costs.

N.K.S.

Before: M. M. Punchhi, J.

ROVINDERPAL SINGH,—*Petitioner.*

versus

UNION TERRITORY, CHANDIGARH,—*Respondent*

Criminal Misc. No. 5926-M of 1985.

November 29, 1985

Code of Criminal Procedure (II of 1974)—Section 167(5)—Accused sought to be tried in a summons case—Investigation not concluded within six months from the date of arrest of the accused—Continuance of investigation after the expiry of six months without permission of the Magistrate—Whether makes the entire investigation bad in law—Magistrate—Whether could take cognizance of the case—Accused—Whether entitled to discharge—Provision of Section 167(5)—True import and significance of—Stated.

Held, that if investigation is not completed within six months from the date of arrest of the accused, one of the options available to the police is to seek permission from the Magistrate to continue the investigation and on his refusal, to obtain from the Court of Session and if permission was finally refused, then the second option was to submit a report on the basis of the investigation so far made. In any of these situations, the Magistrate can either drop the proceedings, if no offence has been made out or take cognizance if he is satisfied that there is a case that should go for trial. If the police continues investigation without permission from the Court, then only that part of the investigation which has been continued without the permission of the Court which would be bad in law and the Magistrate cannot make use of it in order to determine whether he would drop the proceedings or take cognizance. In no event does the investigation in entirely become bad in law and if the investigaof the pre-six months period is good enough to take cognizance there