

Iqbal Singh v. The Traders Bank Limited, New Delhi  
(R. N. Mittal, J.)

of the new Code the offence is exclusively triable by the Court of Sessions, then under section 209, Criminal Procedure Code, the Magistrate must commit the case for trial to the Court of Session without recording any evidence. However, if under the new Code the offence has ceased to be exclusively triable by the Court of Session and is triable by the Magistrate, then no order for commitment can be passed and the Magistrate must proceed to try the case himself. However, if a Judicial Magistrate commits an accused for offence, which is not exclusively triable by the Court of Session, then the Sessions/Additional Sessions Judge should frame charge and by order passed under section 228(1)(a), Criminal Procedure Code, transfer the case to the Court of the Chief Judicial Magistrate for trial in accordance with law as a warrant case instituted on a police report.

(9) For the above reasons, it is held that the order of commitment dated 18th May, 1974, passed by the Judicial Magistrate, 1st Class, Sirsa, in this case is invalid and the same is quashed. The case is ordered to be sent back to the Judicial Magistrate, 1st Class, Sirsa, for trial.

H.S.B.

APPELLATE CIVIL

Before R. N. Mittal, J.

IQBAL SINGH—JD/Appellant.

versus

THE TRADERS BANK LIMITED, NEW DELHI,—DH/Respondent.

E.F.A. No. 454 of 1975.

December 2, 1975.

*Code of Civil Procedure (V of 1908)—Section 60(1), proviso (CCC)—More than one residential house owned and occupied by a judgment-debtor—Attachment of one such house at the instance of the decree holder—Judgment-debtor—Whether entitled to claim exemption of the attached house under proviso (CCC) to section 60(1).*

*Held*, that a reading of the proviso (CCC) to section 60(1) of the Code of Civil Procedure, 1908 shows that the intention of the legislature was that a judgment-debtor is allowed to seek exemption from attachment and sale in execution of a decree of one residential house, however big it may be, provided it is in his occupation. In case he is owner and in occupation of only one such house, he can retain the same and if he is owner and in occupation of more than one house he can retain the main residential house out of them. It cannot be spelt out from the proviso that if the judgment-debtor is owner and in occupation of more than one house and only one of them, is attached, he cannot claim exemption of that house because he is in occupation of another residential house. If he is in occupation of another house the same can be got attached and sold by the decree holder. After getting exemption from the attachment and sale of one residential house, he cannot be allowed to take benefit of the proviso, if another house is attached. (Para 5).

*Application under Section 5 of the Indian Limitation Act, praying that the delay in filing the appeal be condoned.*

S. C. Kapoor, Advocate, for the appellant.

S. K. Aggarwal, Advocate, for the respondent.

#### JUDGMENT

Rajendra Nath Mittal, J. (oral).—(1) This judgment will dispose of Civil Miscellaneous No. 927-C-I, of 1975, and Execution First Appeal No. 454 of 1975. This appeal has been filed by the judgment-debtor against the judgment of the Senior Subordinate Judge, Ambala, dated March 27, 1974, by which the objections filed by the judgment-debtors were dismissed.

(2) Briefly the facts of the case are that a decree for recovery of Rs. 26,957/2/9 was passed by Senior Subordinate Judge, Ambala, in favour of the decree-holder against the judgment-debtors. On December 9, 1965, the decree-holder, in execution of the decree, got attached the property in dispute. The objection petition was filed by Iqbal Singh one of the judgment-debtors under sections 47 and 60 of the Code of Civil Procedure, *inter alia* stating that the house in dispute was the main residential house of the judgment-debtors and they were in possession thereof. The objection petition was contested by the decree-holder. The executing Court held that the judgment-debtor had failed to prove that they had no residential

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house other than the house in dispute in India. He, however, did not give any findings as to whether the house in dispute was in their occupation or not. Consequently, he dismissed the objection petition. The judgment-debtor filed an appeal against the judgment of the Senior Subordinate Judge to the District Judge. An objection was taken before him that he had no jurisdiction to decide the appeal as the jurisdictional value of the case was more than Rs. 10,000. The District Judge accepted the objection of the decree-holder and ordered that the appeal be returned to the judgment-debtor for presentation to the proper Court, on June 16, 1975. The judgment-debtor filed the appeal in this Court on June 28, 1975, along with an application under section 5 of the Limitation Act for condonation of delay.

(3) An objection has been taken by the learned counsel for the respondent that the appeal should be dismissed as it is barred by limitation. I have heard the learned counsel for the parties but do not find any substance in the contention of the learned counsel for the respondent. In the application under section 5 of the Limitation Act it is stated by the appellant that the appellant filed the appeal before the District Judge, Ambala, under the bonafide belief that he had jurisdiction to decide the same. The appeal was accepted by the office of the District Judge, Ambala, without any objection and that no objection was raised by the other party till the date of hearing, i.e., June 10, 1975. The appeal was ordered to be returned on June 16, 1975. The High Court was closed at that time on account of summer vacations. The appeal was filed in this Court on June 28, 1975, which was the first opening day after vacation. After going through the affidavit and taking into consideration the circumstances of the case I am of the view that the mistake of the counsel was bona fide and, therefore, I condone the delay in filing the appeal on June 28, 1975. I decide the Civil Miscellaneous accordingly.

(4) The only contention of the learned counsel for the appellant is that the appellant had pleaded that the house in dispute is the only residential house with them and they were in occupation thereof. According to the learned counsel, the Courts without deciding the aforesaid question has held that the judgment-debtor had failed to show that they had no other residential house throughout.

India. He further argues that the approach of the learned executing Court was erroneous.

(5) I have given a thoughtful consideration to the argument of the learned counsel for the appellant and find substance in it. In order to appreciate the arguments, it is necessary to refer to proviso (ccc) to Section 60(1) of the Code of Civil Procedure. It is stated therein that one main residential house and other buildings attached to it belonging to a judgment-debtor other than an agriculturist and occupied by him shall not be liable to attachment or sale in execution of a decree. A reading of the above proviso shows that the intention of the Legislature was that a judgment-debtor should be allowed to seek exemption from attachment and sale in execution of a decree of one residential house, howsoever big it may be provided it is in his occupation. In case he is owner and in occupation of only one house he can retain the same and if he is owner and in occupation of more than one house, he can retain the main residential house out of them. From the proviso, it is not spelt out that if the judgment-debtor is owner and in occupation of more than one house and only one of them is attached he cannot claim exemption of that house, because he is in occupation of another residential house. If he is in occupation of another house the same can be got attached and sold by the decree-holder. After getting exemption from attachment and sale of one residential house, he cannot be allowed to take benefit of the proviso, if another house is attached.

(6) In the present case the learned Court has not given any finding as to whether the house was in occupation of the judgment-debtor or not. It has dismissed the objection solely on the ground that the judgment-debtor must prove that he had no residential house other than the house in dispute in India and that he was not entitled to the protection of the proviso, if he had any other residential house in his occupation. The interpretation put by the learned Court on the proviso, is erroneous and cannot be maintained.

(7) For the reasons recorded above, I accept the appeal and remand the case to the executing Court for deciding it afresh after taking into consideration the observations made above. In the circumstances of this case, I make no order as to costs.

B. S. G.