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Income Tax Officer in pursuance of the notice issued under sub-section (5) of section 35 of the Act is without jurisdiction and of no effect. This order and in consequence the order of the Commissioner of Income Tax, dated the 7th May, 1962, are quashed by a writ of *certiorari*. As the legal question involved in this case is not free from difficulty, the parties are left to bear their own costs.

K. S. K.

FULL BENCH

Before Mehar Singh, S. B. Capoor and P. C. Pandit, JJ.

UDE BHAN AND OTHERS,—*Appellants*

versus

KAPOOR CHAND AND OTHERS,—*Respondents*

Execution Second Appeal No. 450 of 1963

1965

December, 15th.

Code of Civil Procedure (Act V of 1908)—S. 60(1)(ccc)—Non-agriculturist judgment-debtor letting out a portion of, or a building attached to, his main residential house to a tenant or tenants—Whether can be deemed to be in occupation of that portion or building—Letting out of the portion not voluntary—Whether makes any difference.

Held, per Full Bench—That when the judgment-debtor has himself let out a portion of the house, he cannot under clause (ccc) of section 60(1) of the Code of Civil Procedure be deemed to be in occupation thereof, even if the remaining part of it is occupied by him and the let-out portion will not be exempt from attachment or sale. A fortiori if a building attached to the main residential house, belonging to and occupied by a non-agriculturist judgment-debtor, is let out to a tenant, that portion cannot be considered to be in his occupation within the meaning of section 60(1)(ccc) of the Code of Civil Procedure.

Held, by majority (Mehar Singh and Capoor, JJ.; Pandit J. *Contra*)—That having regard to the plain terms of section 60(1)(ccc) of the Code of Civil Procedure, no distinction can on legal grounds be made between a case where part of the house is let by the judgment-debtor himself and a case in which the tenant had been inducted by a competent authority such as the Requisitioning or the Rehabilitation authorities. In each of these cases the inescapable fact is that on the relevant date, that is, at the time of attachment, the portion of the house, which is sought to be attached, is not in the occupation of the judgment-debtor.

Held, by Pandit, J.—That in a particular case where the letting of the property by a judgment-debtor is not voluntary, but is the result of some order of a Competent Authority, as for example, the Requisitioning or the Rehabilitation Authority, then that property would still be considered to have been occupied by him within the meaning of Section 60(1)(ccc) of the Code of Civil Procedure.

Case referred by the Hon'ble Mr. Justice Prem Chand Pandit on 20th September, 1963 to the Division Bench for decision of the important questions of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice S. S. Dulat and the Hon'ble Mr. Justice P. C. Pandit, on 14th February, 1964, referred the case to the Full Bench for decision of the important questions of law involved in the case. The Full Bench consisting of the Hon'bls Mr. Justice Mehar Singh, the Hon'ble Mr. Justice S. B. Capoor and the Hon'ble Mr. Justice P. C. Pandit on 15th December, 1965, after deciding the questions of law remanded the case to a Single Judge for disposal. The case was finally decided by the Hon'ble Mr. Justice D. K. Mahajan, on 15th April, 1966.

Execution Second Appeal from the order of the Court of Shri F. S. Gill, Additional District Judge, Gurgaon, dated the 11th February, 1963, modifying that of Shri Shiv Dass Tyagi, Sub-Judge, attached shop in the occupation of Mukh Ram tenant was not exempt 1st Class, Rewari, dated the 18th April, 1962, ordering that the from attachment, and the attachment of the chaubara of the judgment-debtor had, however, been rightly released, by the executing Court and as the appeal had partly succeeded, the parties were left to bear their own costs and were directed to appear before the Executing Court on 1st March, 1963.

G. P. JAIN AND B. S. GUPTA, ADVOCATES, for the Appellants.

PREM CHAND JAIN, ADVOCATE, for the Respondents.

ORDER OF THE FULL BENCH

CAPOOR, J.—The following three questions have been referred to the Full Bench by the order of the Division Bench, dated the 14th February, 1964:— Capoor, J.

(1) If out of the main residential house belonging to a non-agriculturist judgment-debtor, a portion of it is let by him to tenant(s), is the whole house deemed to be in his occupation within the meaning of section 60(1)(ccc) of the Code of Civil Procedure ?

(2) If any building attached to the main residential house belonging to and occupied by a non-agriculturist Judgment-debtor is let out to a

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tenant, will that portion be considered to be in his occupation within the meaning of the above provision ?

(3) Does it make any difference if the letting is not voluntary, but the result of the order of a competent authority, e.g., of a requisitioning or the rehabilitation authority ?

These questions arise in three appeals from execution proceedings—Execution Second Appeal No. 450 of 1963, Execution Second Appeal No. 812 of 1963 and Letters Patent Appeal No. 120 of 1963. The facts of the cases giving rise to these appeals have been given in the referring order and it is only necessary to notice them briefly. In E.S.A. No. 450 of 1963, the judgment-debtor is Chandi Ram against whom Kapur Chand respondent obtained a money decree in execution of which he got attached a *chaubara* and a room in the house in dispute. This house was before the partition of the country Muslim evacuee property and in 1959 Chandi Ram had obtained proprietary rights with regard to the entire house. The portion of the house under attachment was in the tenancy of Mukh Ram, while Chandi Ram resided in the rest of the house. Before Chandi Ram obtained proprietary rights in the house, he as well as Mukh Ram were paying rent to the Custodian of Evacuee Property for use and occupation of their respective portions and it may be added here that Mukh Ram was carrying on Halwai business in the part of the premises which was with him. On an objection having been made by the legal representatives of Chandi Ram under section 47 of the Code of Civil Procedure to the effect that the attached property was, being a part of their residential house, exempt from attachment under section 60(1)(ccc) of the Code, the executing Court held that the property was not liable to attachment but in appeal the Additional District Judge, Gurgaon, held that the shop was liable to attachment as it had been let out to Mukh Ram on rent, who was in possession of it. The representatives of the judgment-debtor came in second appeal to this Court while the decree-holders filed cross-objections to the effect that the *chaubara* should not have been released from attachment.

In E.S.A. 812 of 1963 the property in dispute consists of a house in Rani-ka-Bagh, Amritsar. It consists of

5 rooms, out of which 3 had been requisitioned by the State Government for the District Inspector of Schools and the remaining two rooms are being used by the judgment-debtor for his residence. The executing court directed the release of the entire house from attachment but in appeal the Senior Subordinate Judge, Amritsar, held that that portion of the house which was under requisition was not exempt from attachment and sale because it could not be said to be in the occupation of the judgment-debtor.

In L.P.A. 120 of 1963, the judgment-debtor's house situated in Model Town, Rohtak, was attached. The executing court had found that this house consisted of seven rooms with two latrines, a courtyard and a verandah, out of which four rooms along with a right of common user of the courtyard, verandah and latrines were given on rent to Jawala Das while the judgment-debtor and the members of his family were themselves residing in the remaining portion of the house. The executing court on the objections made by the judgment-debtor under section 47 of the Code of Civil Procedure (hereinafter to be referred to as the Code), held that only 4 rooms, which were occupied by the tenant along with a right of common user of the courtyard, verandah and latrines, were liable to be attached and sold in execution of the decree and the court, therefore, ordered that the remaining portion of the house be released from attachment. The Single Judge having dismissed the judgment-debtor's appeal, he filed a Letters Patent Appeal.

Thus, the common factor in the three cases was that a part only in each of the houses in dispute was occupied for residence by the judgment-debtor and his family while there were tenants in the portions of the respective houses, which were under attachment. In the Letters Patent Appeal the tenant had been inducted by the judgment-debtor himself while in the other two cases he was in the premises without the volition of the judgment-debtor. Question No. 3, therefore, arises only in the two Execution Second Appeals and not in the Letters Patent Appeal.

One of the modes of execution of decrees, which are given in section 51 of the Code is by attachment and sale or by sale without attachment of any property. Under

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sub-section (1) of section 60 of the Code various kinds of properties including lands, houses or other buildings over which or the profits of which the judgment-debtor has disposing power which he may exercise for his own benefit, are liable to attachment and sale in execution of decree. Then follows several provisos containing particulars which shall not be liable to attachment and sale and one of these [clause (c)] is "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 and occupied by him". So far as Punjab is concerned, however, various amendments have been made to section 60 and the one with which we are directly concerned is that by section 35 of the Punjab Relief of Indebtedness Act, 1934 (Act No. 7 of 1934), as amended, clause (ccc) has been added among the provisos and is as follows:—

> (ccc) One main residential house and other buildings attached to it (with 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.

It may be mentioned here that section 35 of Act No. 7 of 1934 (as amended) also substituted for the words "occupied by him" in clause (c) the following words:—

> "not let out on rent or lent to others or left vacant for a period of a year or more."

The respective counsel for the judgment-debtors have taken up slightly different positions. Mr. Roop Chand, who represents the judgment-debtors in the Letters Patent Appeal, maintained that the term "main residential house" as referred to in the clause must be taken in the sense of one entire building as a unit and after the court had found which was the main residential house of the judgment-debtor, the next step was to see whether the whole or any part of it was occupied by him or not, and if any part,

may be one room only in a huge building consisting of 20 rooms, was used by the judgment-debtor for his residence, it matters not if he let out the remaining part of the house. The judgment-debtor as owner of the house would in the circumstances be deemed to be in constructive possession even of that part of the house which was let out by him to tenants.

Mr. Ganga Parshad Jain, in Execution Second Appeal No. 450 of 1963, took up an intermediate position and one which was peculiar to himself. It may be remembered that in the execution case giving rise to this appeal, the attachment subsists only with regard to the shop in the possession of Mukh Ram who had by operation of law become the tenant of the judgment-debtor Chandi Ram after the latter had obtained proprietary rights in the house. Mr. Jain maintained that the words "belonging to a judgment-debtor other than an agriculturist and occupied by him" in the clause governed only the term "main residential house" and not the term "other buildings attached to it" so that all that was necessary to show was that the judgment-debtor was in occupation of the main residential house while the attached building (the shop in the instant case) could be in the occupation of some one else and would still be exempt from attachment and sale under the proviso. He further stressed the argument that the judgment-debtor had not himself brought in the tenant; that the tenant (Mukh Ram) was in the property even before proprietary rights in it were conferred on the judgment-debtor as a displaced person by way of satisfaction of his verified claim; that Mukh Ram was to be deemed as the tenant of the judgment-debtor by operation of law under section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954; that the law was that under the proviso to sub-section (1) of that section Mukh Ram could not be ejected for a period of two years after Chandi Ram had obtained proprietary rights and that Chandi Ram actually instituted proceedings for eviction against Mukh Ram. Mr. Jain, therefore, maintained that the tenant was in the property against the wishes of the landlord, who was trying his best to recover possession of it with a view to his own residence.

Mr. S. K. Jain, learned counsel for the judgment-debtors in Execution Second Appeal No. 812 of 1963, maintained that the judgment-debtors were being deprived of

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the use of a part of their residential house on account of that part having been requisitioned by Government under the provisions of section 3 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953 (Act No. 11 of 1953). The portion in requisition was actually an integral part of the judgment-debtors' main residential house and the order of requisition, which is in its nature temporary could not deprive the judgment-debtors of the exemption under clause (ccc). This would be contrary, according to Mr. Jain, to the well-recognised principles of jurisprudence that the act of the sovereign authority does not prejudice the rights of any person and to another legal maxim that the Government does not favour one subject to the harm of another. Mr. Jain further maintained that the Punjab Relief of Indebtedness Act, by virtue of which clause (ccc) was introduced in sub-section (1) of section 60 of the Code, was a piece of beneficial legislation designed to protect the judgment-debtor and having regard to the intention of the legislature liberal interpretation in favour of the judgment-debtor must be given to the provision.

On the other hand, learned counsel for the decree-holders maintained that the words used by the Legislature in clause (ccc) were absolutely plain and unambiguous so that there was no scope for having resort to the doctrine of liberal interpretation of beneficial statutes. It was asserted that the clause must be read as a whole and there was no warrant for splitting up into separate compartments the various parts of the clause viz., the terms "main residential house" and "belonging to a judgment-debtor other than an agriculturist and occupied by him". "One main residential house" was not synonymous with the entire building of which it might form a part, but the term was meant for that accommodation which was in the actual use and occupation of the judgment-debtor and the members of his family, so that if any part of the building was let out either by himself or even by any competent authority without his volition, it could not possibly be treated as being on the date of the attachment in his occupation, there being no such thing as constructive occupation of any property.

These are the main respective contentions of the parties and they have now to be examined keeping in view

the terms of the statute interpreted according to the well-known rules of interpretation and, further, the case-law bearing on these points.

So far as the house property was concerned, the exemption from attachment or sale originally extended was only with regard to the house and ancillary buildings and land owned and occupied by the agriculturist judgment-debtor. Agriculture was and is most important in the economic life of this country and it was, therefore, considered that an agriculturist's house, his implements of husbandry, etc., necessary to pursue his occupation, should be protected from being attached, or sold at the instance of his creditors. In the Punjab, however, it was considered proper that at least one main residential house even of a non-agriculturist judgment-debtor, if such house was occupied by him, be also exempt from attachment or sale. The first point of controversy is whether the term "main residential house" means the entire building as an integral whole or only that part of it which is in the occupation of the judgment-debtor himself.

Webster's Third New International Dictionary defines "house" *inter alia as follows.* "A structure intended or used for human habitation; a building that serves as one's residence or domicile especially as contrasted with a place of business; a building containing living quarters for one or a few families—sometimes used at law of a room or other part of such a building." Whether the term "main residential house" as used in the statute would mean an entire structure used for human habitation or part of a building which may contain many such dwellings, would depend upon the context. Mr. S. K. Jain cited *Benabo* v. *The Mayor, Aldermen and Burgesses of the Borough of Wood Green* (1), for the proposition that even if a house is divided into accommodation for two separate families, it is to be treated as one separate entity, but no such proposition was laid down in that case. The learned Judges were interpreting section 15 of the Housing Act, 1936, and it was held that though the owner of the house had let it to two separate tenants, one of whom occupied the ground floor and the other the upper floor, he was not entitled to separate notices from the local authority to carry out

(1) (1945)2 All. E.R. 162.

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specified repairs to the various parts of the building for separate demands to pay for the expenditure incurred by the local authority in carrying out repairs through contractors. In another case cited by Mr. S. K. Jain, *Kimber* v. *Admans* (2), it was observed that a building containing several residential flats constitutes only one house within the meaning of the word "house" in a covenant not to erect more than a certain number of houses, unless there is some context which cuts down or alters the popular interpretation of the word. This ruling is also of no help to the judgment-debtors and even the learned counsel did not go to the length of saying that a multi-storeyed building containing flats occupied by different tenants could ever be considered as "one main residential house" of the owner of the building even if he himself resided in one of the flats.

Mr. S. K. Jain then relied on *Firm Gurparshad Dewat Ram* v. *Kishen Chand and another* (3), for the proposition that the exemption to attachment under section 60(1)(c) attaches to the property itself and not to the person holding it for the time being and the learned Judges, therefore, held that a finding that the property was exempt from attachment obtained in an execution against the judgment-debtor operated as *res judicata* in subsequent execution against his legal representative. In that case the Judges were not considering the question whether the main residential house would also include any portion of it which was let out to a tenant, viz., the extent of the property to which the exemption attaches, and so for determining this question the case *Firm Gurparshad Dewat Ram* v. *Kishen Chand and another* (supra) is of no help at all. If, as contended on behalf of the judgment-debtors, the "main residential house" means the entire building, a part only of which is in the occupation of the judgment-debtor while the other part is with the tenant, then there would have been no necessity to use the qualifying term "in his occupation" in the clause. So, in order to get at the meaning of the term used, it is necessary to read the clause as a whole and the term "main residential house" cannot be divorced from the context in which it occurs. There is no warrant either in the statute, on

(2) (1900)1 Ch. D. 412.
(3) A.I.R. 1938 Lah. 608.

principle or in authority for the argument that clause (ccc) contemplates two separate steps to be taken by the court—the first being to determine which is the main residential house of the judgment-debtor and the second whether any part of it is at all occupied by him. Even more far-fetched is the argument advanced by Mr. G. P. Jain individually that the qualifying words "belonging to a judgment-debtor other than an agriculturist and occupied by him" are to be related only to the main residential house and not to the building attached to it. This argument was obviously with an eye to the particular facts of the case in which Mr. Jain was appearing and the utmost that can be said about it is that it does credit to counsel's ingenuity.

The other term about which considerable argument has been addressed to the Bench is "occupied by him" and it has even been suggested that the property which is let by the owner to a tenant, though not in the former's actual occupation, is in his constructive occupation just as it may be said that he is possessing it though indirectly through his tenant. Reference was made to the connotation of the term "occupied" as given at pages 83 and 84 of Volume 67 of Corpus Juris Secundum. "The term has many meanings; in legal acceptation the term implies use and possession, and it has been said that it implies actual possession and not constructive possession, but it also has been held that "occupied" does not always require an actual occupancy, but it may sometimes permit a constructive occupancy. It is defined as meaning held in possession. "Occupied" is an appropriate word to use for the purpose of identifying land in actual possession, and when applied to a building, implies a substantial and practical use of the building for the purpose for which it is designed". I do not consider that the above quotation with its many meanings, some of them self-contradictory, is of any real help, and it is clear that the meaning of the word varies according to the context of the statute in which it is used.

Mr. S. L. Puri, learned counsel for the decree-holder in the Letters Patent Appeal, in his turn referred to the meaning of the word "occupy" in the Webster's Third New International Dictionary and some of the meanings as given there are—to fill up a place or extent, to take up residence, to settle in, to reside in as an owner or tenant.

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This indicates that the term "occupy" in relation to a house has an element of physical and actual occupation though not necessarily of every cubic inch of the premises which would, of course, be impossible at any given time. Reference was also made by Mr. Roop Chand to the meaning of the term "occupation" as given at page 15 of Volume 14 of the Halsbury's Laws of England (Third Edition). It was stated that "an occupier is one who actually exercises the rights of an owner in possession. The primary element of occupation is possession, but it includes something more, for mere legal possession cannot constitute an occupation. The owner of a vacant house is in possession, though not in occupation but if he furnishes the house and keeps it ready for habitation, he is an occupier, though he may not have resided in it for a considerable time before the qualifying date". These were the interpretations placed in different English cases which the learned compiler has cited. The English case actually cited by Mr. S. K. Jain, on behalf of the judgment-debtor, was *Clift* v. *Taylor* (4) at pages 402 and 403. The learned Judges were interpreting sections 4 and 5 of the Landlord and Tenant Act, 1927. The tenant was entitled to a new lease of the premises unless the landlord established certain conditions, and one of these was that the premises would be required by the landlord for occupation by himself. A part of the premises was in use by the landlord himself and when the tenant served a statutory notice requiring new lease, the business of the landlord and his partners had expanded to such an extent that he needed the rented premises also for convenience of the business. The learned Judges held that on the reasonable interpretation of the Act it would be ridiculous to suppose that Parliament had intended to complicate the simple business conception of occupation by the landlord by pursuing the irrelevant further inquiry whether he had a partner or partners or whether he let the premises in question to the firm or gave them a licence. The Judges also referred to the conception of "Modern Real Property" in England which was that land or any interest in land owned by a partnership and in its possession was occupied by all the partners and by each of them, because they were tenants in common. I do not consider that this case can be used by the learned counsel

(4) (1948)2 K. B. 394.

for the judgment-debtors for the contention that in India even the property which is let out to tenants and in no part of which possibly the landlord himself resides, will be deemed to be in the occupation of the landlord.

The term "occupy" has been interpreted in numerous cases of the Punjab and other Courts in India and it would be tedious as well as unnecessary to refer to all of them. On behalf of the judgment-debtor reference has been made to the interpretation of the terms "occupation" and "occupy" in clause (3) of the Mysore House Rent and Accommodation Control Order in *Ratilal Bros. v. The Government of Mysore and another* (5) and section 11(3) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, in *Balmukand Khatry* v. *Hari Narain and others* (6), and on behalf of the decree-holders reliance was placed on the definition of similar terms in section 7(3) of the Madras Buildings (Lease and Rent Control) Act, 1946, as given in *Dr. Mohammad Ibrahim* v. *Syed Ahmed Khan and another* (7), and in sub-section (5) of section 15 of the East Punjab Urban Rent Restriction Act, 1949, as made in *Shakuntla Bawa* v. *Ram Parkash and others* (8). These interpretations depend on the particular context in which the terms occur in the relevant statute but what has been observed in most of these cases is that the term "occupation" is of a wider import than the term possession and means something more than legal possession, which may be either actual or constructive. More helpful are some cases which arose in the Punjab under section 60(1)(c) or (ccc) of the Code. In *Jagat Singh* v. *Phuman Singh and another* (9), it was held that the expression "occupied by" means "lived in by" or "used for agricultural purposes by" and, of course, so far as clause (ccc) is concerned, a similar term would mean "lived in by the judgment-debtor". In *Bindra Ban and another* v. *Firm Chet Ram Budh Ram and another* (10), Bishan Narain, J., observed that under clause 60(1)(ccc) the term "occupy" suggests a physical occupation at a given time, that is, at the time of attachment. No case under section 60(1)(c) or (ccc) could be

(5) A.I.R. 1951 Mysore 66.
(6) A.I.R. 1949 Patna 31.
(7) A.I.R. 1950 Mad. 556.
(8) I.L.R. (1963)1 Punj. 827.
(9) A.I.R. 1934 Lahore 680.
(10) 1955 P.L.R. 4.

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cited in which it was held that the term "occupation" would mean constructive occupation also so as to give protection if the entire house was let out to a tenant, no part of it being physically occupied by the landlord.

The authority of the Supreme Court to which reference has been made for interpretation of the term "occupation" is *The Cantonment Board, Ambala Cantonment* v. *Dipak Parkash (Minor) and others* (11), at pages 965 and 966. This was a case in which the Central Government had under the authority conferred by section 7 of Cantonments (House Accommodation) Act, 1923, obtained a lease of a house in Ambala Cantonment and a military officer was in occupation of the house as a licensee of the Central Government. In appeal against the assessment of the house tax of this bungalow, the question arose whether the Central Government or its licensee—the military officer—was liable to pay the house tax. The Supreme Court held that where the Central Government after obtaining the lease under section 7 of the Cantonments (House Accommodation) Act, 1923, leases it out to any person, it is itself not entitled to actual occupation but has to put the sub-lessee into occupation and in such a case, it may be reasonably said that the Central Government has ceased to be in occupation. In the case where the Government after taking the lease merely gives a licence to some persons to come and live in it, it is entitled to take away the permission at any time and thus to come into possession itself. Thus, the fact that the person to whom such permissive possession has been given is residing in the building, does not make it any the less the actual occupation of the Government. The Supreme Court was, therefore, making a clear distinction between a lease and a license and it was held that it was only in the latter case that the Government could be held to be in the occupation while in the former it ceased to be in occupation. This authority, therefore, knocks out the argument that even if the whole house is let out by the landlord to a tenant, he can be in any sense said to be in occupation of it and the learned counsel for the judgment-debtors are not right when they say that there is any such thing as "constructive occupation" for the purposes of clause (ccc). The judgment-debtor in order to attract the exemption must be actually in the premises or at least

(11) A.I.R. 1963 S.C. 963.

have a right to actual physical possession of them any time he chooses to exercise that right, which would normally be the case if members of his family or other relations or dependents are residing in it. This disposes of the extreme position taken on behalf of the judgment-debtors, but there still remains the question as to what would be the legal position if only a part of the house is in the actual occupation of the judgment-debtor while the other part of the house is let out to a tenant. Will the whole house or only that part which is in the actual occupation of the judgment-debtor be entitled to exemption ? This is point No. 1 referred to the Bench.

For the reasons given earlier in this judgment, I am of the view that the entire clause has to be read together and the first part of it, viz., "main residential house" is qualified by the second part which lays down that it must be occupied by him, and reading these words in their plain meaning it would follow that if the judgment-debtor himself chooses to let out a part of the house to tenants for occupation by them, that part cannot be treated as being occupied by the judgment-debtor and will not, therefore, be entitled to exemption. It was contended by the learned counsel for the judgment-debtors that the Punjab Relief of Indebtedness Act, No. 7 of 1934, whereby clause (ccc) was inserted in sub-section (1) of section 60 of the Code, is a beneficial piece of legislation meant for the protection of debtors. The statement of Objects and Reasons of the Punjab Relief of Indebtedness Act, 1934, as given in pages 230—240 of the Punjab Gazette, 1934, Extraordinary, indicated that on account of the sharp fall in the prices of agricultural produce the Government was concerned to give relief to the agriculturist debtors and by section 35 the words "occupied by him" in section 60(1)(c) of the Code were substituted by "not let out on rent or lent to others or left vacant for a period of a year or more". It was by Punjab Act No. 12 of 1940 that section 35 was recast and clause (ccc) was introduced and sub-sections (3), (4), (5) and (6) were added. Sub-section (3) provided that an agreement by which a debtor agrees to waive any benefit of any exemption under section 60 of the Code shall be void and sub-section (6) lays down that no order for attachment shall be made unless the court is satisfied that the property sought to be attached was not exempt from

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attachment or sale. There is thus no doubt that the object of the Act was to give protection to the debtors and so the learned counsel for the judgment-debtors pressed into service the dicta of the Supreme Court in *Bengal Immunity Company Limited* v. *State of Bihar and others* (12), at paragraph 22 to the effect that for the interpretation of all statutes in general four things are to be discerned and considered. First, what was the common law before the making of the Act; second what was the mischief and defect for which the common law did not provide; third, what remedy the Parliament has resolved and appointed to cure the disease and fourth, the true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo* and to add force and life to the cure and remedy, according to the true intent of the makers of the Act *'pro bono publico'*.

It was again stated in *Kanwar Singh and others* v. *The Delhi Administration* (13), that it is the duty of the Court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of the legislature, which is to suppress a mischief, the Court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief. The difficulty, however, is to apply these principles to the facts of a particular case and I take it that the cardinal principle of interpretation of statutes, that a statute, which is on its face clear, precise and unambiguous, cannot be interpreted by a court, has not been whittled down. As stated by Dua, J., with whom my learned brother Pandit, J., agreed in *Balkishan* v. *Subash Chand and another* (14), at paragraph 8, where the statute is clear, precise and unambiguous, it need not and indeed cannot be interpreted by a Court and it is only those statutes which are ambiguous or of doubtful meaning which are subject to the process of statutory interpretation. When the language is plain and

(12) A.I.R. 1955 S.C. 661.
(13) A.I.R. 1965 S.C. 871.
(14) I.L.R. (1961)2 Punj. 262=1961 P.L.R. 723.

does not admit of more than one meaning, the duty of interpretation does not arise; the language itself in such a case best declares the intention of the law-giver. Now, I have been unable to find any vagueness or ambiguity in the various terms as used in clause (ccc), and to enlarge the scope of this provision so as to cover this particular argument advanced on behalf of the judgment-debtor would be not to interpret any of the terms as used in the statute but to keep them in separate compartments and to do violence to the language used, so as to read instead of the words "occupied by him" of which any part is occupied by him". So far as the principle of beneficial interpretation is concerned, it has to be remembered that clause (ccc) is by nature an exception to sub-section (1) of section 60, which makes practically every kind of property, movable or immovable, belonging to the judgment-debtor liable to attachment and sale at the instance of the decree-holder. The main object, therefore, is the satisfaction of decrees and the exception in the proviso, as held by a Bench consisting of Broadway and Tek Chand, JJ., in *Mirza and another* v. *Jhanda Ram and others* (15), must receive a strict construction. The learned Judges observed that it was a settled canon of law that a provision of the character which has the effect of conferring a privilege on certain classes of debtors and of trenching on the ordinary right of a creditor to realize his money from the property of the debtor, must receive a strict construction and it ought not to be extended to matter to which it does not in terms apply. When a judgment-debtor himself lets out a part of his house to a tenant, it is and must be in the occupancy of the tenant and I do not see how in such a case at least it can be said that the judgment-debtor also by some incomprehensible legal fiction must be deemed to be simultaneously in occupation of the portion let out. It would, in my view, be absurd to say that at a particular date—and the relevant date in this context is the date of attachment of the property—the judgment-debtor as well as the tenant are simultaneously in possession of the rented property.

Coming now to the decided cases of our Court bearing on clause (ccc) reference on behalf of the judgment-debtors was made to three reported cases—by Kapur, J.

(15) A.I.R. 1930 Lah. 1034.

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(as he then was) *Agha Jafar Ali Khan and others* v. *Radha Kishen and others* (16), by Tek Chand, J., *F. Ganga Ram-Kishore Chand* v. *F. Jai Ram-Bhagat Ram* (17), and by Shamsher Bahadur, J., *Piyare Lal-Gobind Ram* v. *Ram Lal* (18), and three unreported cases—*Kundan Lal* v. *Ram Chand and others* (Execution First Appeal No. 185 of 1956, decided on the 8th December, 1958, by Gosain, J.), *Daulat Ram Narula* v. *Shrimati Sheela and others* (Execution First Appeal No. 21 of 1958, decided on the 8th April, 1959, by Dulat, J.), and *Kharaiti Ram* v. *Partap Singh and another* (Execution Second Appeal No. 1080 of 1962, decided on the 2nd January, 1964, by Gurdev Singh, J.).

In *Agha Jafar Ali Khan and others* v. *Radha Kishan and others* (16), Kapur, J., held that where the whole building was being used for the purposes of residence, the mere fact that there was a shop on the ground-floor would not convert the building into something different from a residential house. It is not clear from this case whether the shop was occupied by the judgment-debtor himself or was rented out by him. In *F. Ganga Ram-Kishore Chand* v. *F. Jai Ram-Bhagat Ram* (17), Tek Chand, J., was dealing with a case in which the two upper storeys and part of the ground floor were used for residence and the remaining part of the ground floor for the judgment-debtor's own business. The learned counsel for the judgment-debtors has strongly relied on the learned Judge's observations at page 329 that by clause (ccc) the main residential house of the judgment-debtor other than an agriculturist is also protected provided it is occupied by him, remains sacrosanct, where the arm of the creditor cannot reach unless the debtor has himself specifically charged that property with his debt, which is sought to be recovered and that the provisions should be construed in harmony with the spirit and intent of the Act, the object of which is to relieve indebtedness in the sense that though the amount of debt stands, it cannot be realised from sale of residential house. He, further, held that having regard to the mode of living of the people of this country, their habits and customs, it is not possible

(16) A.I.R. 1951 Punj. 433.
(17) I.L.R. 1957 Punj. 1588=1957 P.L.R. 325.
(18) 1963 P.L.R. 641.

generally, to designate a particular building as one, which is used exclusively for a residential purpose in contradistinction to a commercial purpose. By way of illustration, he gave the cases of the residential building of a medical practitioner, who receives or treats his patients, and of an iron-smith who works on his forge in his house and so on. It is clear, therefore, that the learned Judge had in his mind a case in which while the greater part of the premises was being used for the residence of the judgment-debtor, a small part was being used by him for his own business, and the case is, therefore, not of much direct help in determining the first question. In the case before Shamsher Bahadur, J., *Piyare Lal-Gobind Ram* v. *Ram Lal*, (18), also the upper floor and a part of the ground-floor were used by the judgment-debtor for his residence while a part of the ground-floor was being used as a shop and the learned Judge followed the decision in *Kundan Lal* v. *Ram Chand and others* (Execution First Appeal No. 185 of 1956, decided on the 8th December, 1958). In all these cases as well as in *Daulat Ram Narula* v. *Smt. Sheela and others* (supra) the major portion of the building in question was used for residential purposes of the judgment-debtor while in the smaller portions there were some shops which were rented out to others and the learned Judges considered that having regard to the purpose of the building as a whole, which was a residential premises of the judgment-debtor, it must be held that the whole building was exempt from attachment. With due respect to these learned Judges I do not see how the statute itself provides any warrant for the consideration which weighed with them, and when the judgment-debtor has chosen to let out a portion of the building to tenants and thereby exclude himself for the period of tenancy from the occupation thereof, he cannot, when the attachment takes place during the period of tenancy, turn about and say that even the portion which is in the occupation of his tenant is in his occupation. In *Kharaiti Ram* v. *Partap Singh and another* (Execution Second Appeal No. 1080 of 1962 decided on the 2nd January, 1964), there was no evidence that the part, which was in occupation of the judgment-debtor, was let out and so this case again is not of direct assistance for answering the first question under reference.

It is unfortunate that the previous decisions given by Tek Chand, J., in *F. Ganga Ram-Kishore Chand* v.

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F. Jai Ram-Bhagat Ram (17), and by Dulat, J., in *Daulat Ram Narula* v. *Shrimati Sheela and others* (Execution First Appeal No. 21 of 1958, decided on the 8th April, 1959) were not brought to the notice of the learned Judges in *Birch* v. *Siri Raj and others* (Execution First Appeal No. 35 of 1957, decided on the 14th January, 1960), in which the judgment was delivered by Dulat, J., with whom Dua, J., agreed, and in the *Punjab Mercantile Bank Limited (in liquidation), Jullundur City* v. *Messrs General Typewriter Co., Jullundur City* (19), which was a judgment given by Tek Chand, J., in a liquidation case. These are the cases referred to in this connection by the learned counsel for the decree-holders. In the *Punjab Mercantile Bank Limited's case* (supra) the evidence was that while the judgment-debtor was residing in the greater part of the house, two *chaubaras* on the first floor were, on his own statement, let out to two tenants. His contention that the entire house was not liable to attachment and sale was repelled by Tek Chand, J., who held that the portion, which was let out to tenants, was not exempt from attachment and sale. This case is directly in point and so is *Birch* v. *Siri Raj and other* (Execution First Appeal No. 35 of 1957). In this case a *kothi* situated on the Court Road, Amritsar, was got attached by the decree-holders and the executing court released it from attachment on the ground that it was a residential house of the judgment-debtors. The evidence was that while the legal representative of the judgment-debtor was occupying half portion of the house for his residence, the other half had been requisitioned by the Government and had been given for use and occupation of a Government officer. This was, therefore, a case entirely similar to *Messrs Gopal Dass, etc.* v. *F. Sardari Lal, etc.* (Execution Second Appeal No. 812 of 1963). It was held that the portion of the disputed house, which is requisitioned by Government, was not exempt from attachment and sale in execution of the decree while the remaining portion, which was in the actual occupation of the judgment-debtor or his legal representatives was exempt from such attachment and sale.

It was on account of the conflict *inter se* in these authorities that these cases were referred to the Full Bench. The matter would now seem to be decided by

(19) 1962 P.L.R. 1081.

the observations of the Supreme Court in the *Cantonment Board, Ambala Cantt.* v. *Dipak Parkash (Minor) and others* (11), to which reference has already been made and I think it is impossible to say that the landlord can possibly be deemed to be in occupation of the portion which is with his tenants.

With due respect to the learned Judges, who held the contrary view, I am, for the reasons given above, clearly of the view that when the judgment-debtor has himself let out a portion of the house, he cannot under clause (ccc) be deemed to be in occupation thereof, even if the remaining part of it is occupied by him and hence I would answer the first question under reference in the negative.

As regards the second question, it is by implication answered. Mr. Ganga Parshad Jain's arguments have already been noticed and reasons given to repel them. If a portion of the main building, which had been let out by the landlord to a tenant, is not exempt from attachment, it would *ipso facto* follow that if the building attached to the main residential house, belonging to and occupied by a non-agriculturist judgment-debtor, is let out to a tenant, that portion cannot be considered to be in his occupation within the meaning of section 60(1)(ccc) and the second question is also answered in the negative.

The third question, in which the letting is not voluntary, does undoubtedly involve hardship to the judgment-debtor and it is in connection with the consideration of the third question that the argument for beneficial construction of the statute has been chiefly pressed. There is no doubt that if the letting out of the portion of the house, which is not in the occupation of the judgment-debtor, is without his volition, and the decree-holder seeks to attach it during the period of letting out, the landlord may as an indirect consequence of the act of the competent authority be deprived of a part of his house. Perhaps in the case of the letting out by the Rehabilitation authorities the hardship is not so great as in the case of requisitioning, because when the judgment-debtor was aware that the house was burdened with another tenancy, it would be open to him not to secure proprietary rights in the house either by not purchasing it, or if the price was to be adjusted against his verified claim, he could have got his

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claim satisfied by some other modes provided in the Displaced Persons (Compensation and Rehabilitation) Act. As far as the property under requisition is concerned, it was pointed out by the learned counsel for the decree-holders that requisitioning authority while acting under section 3 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, cannot under clause (a) of the proviso to this section requisition any property, which is *bona fide* used by the owner thereof as the residence of himself or his family. But, of course, there may be cases where the decree-holder manages to get round the authority to pass an order of requisition even for the portion, which is being used by the judgment-debtor for his residence. On the other hand, it may also be said that a dishonest judgment-debtor may get round an authority to requisition even that part of the house which he is himself not using or which had previously been let out to a tenant. These are hypothetical cases which cannot be taken into consideration while interpreting the statute and on principle I do not see how, having regard to the plain terms of the statute, any distinction can on legal grounds be made between a case where part of the house is let by the judgment-debtor himself and a case in which the tenant had been inducted by a competent authority such as the Requisitioning or the Rehabilitation authorities. In each of these cases the inescapable fact is that on the relevant date, that is, at the time of attachment, the portion of the house, which is sought to be attached, is not in the occupation of the judgment-debtor. As stated above, even in the case of requisitioning which is a much stronger case than one in which the tenant was inducted in the house by the Rehabilitation authorities prior to its purchase by the judgment-debtor—it was held by a Division Bench in *Birch* v. *Siri Raj and others* (Execution First Apeal No. 35 of 1957) that the requisitioned portion of the disputed house would not be exempt from attachment and sale in execution of the decree.

Though Mr. S. K. Jain stressed two legal maxims (1) that the act of the sovereign authority does not prejudice the rights of any person and (2) that the Government does not favour one subject to the harm of another; but he confessed his inability to cite any case law in which these supposed legal maxims were applied to concrete cases, and of course with our socio-economic legislation of modern time it is much too late in the day to appeal to

the once sacroscant rights of private property. Under the third question of reference it is not the direct result of the letting out by the competent authority of which grievance is being made but an indirect consequence which ensues because there is a decree against the owner of the property which is ordinarily to be satisfied by attachment and sale of his immovable property. So this theoretical argument does not advance the cases of the appellants any further.

In the result, I would answer the third question also in the negative.

Letters Patent Appeal No. 120 of 1963 will now go to the Letters Patent Bench and the two Execution Second Appeals Nos. 450 and 812 of 1963 to the learned Single Judge for disposal in accordance with the above answer.

MEHAR SINGH, J.—I agree. Mehar Singh, J.

PANDIT, J.—I have gone through the judgment prepared by my learned brother Capoor, J., but, with great respect to him, I have not been able to persuade myself to agree with the answer proposed by him to question No. 3 in the order of reference, though I am in agreement with the replies suggested to the first two questions. I am of the opinion that in a particular case where the letting of the property by a judgment-debtor is not voluntary, but is the result of some order of a Competent Authority, as for example, the Requisitioning or the Rehabilitation Authority, then that property would still be considered to have been occupied by him within the meaning of section 60(1)(ccc) of the Code of Civil Procedure. This section reads thus— Pandit, J.

"S. 60. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings * * * *

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

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sites thereof and the land immediately appurtenant thereto necessary for their enjoyment) belonging to a judgment-debtor other than an agriculturist and occupied by him."

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In order to get the benefit of the provisions of this section, a non-agriculturist-judgment-debtor has to prove (a) that the property in question is his main residential house or other buildings attached to it and (b) that the same is occupied by him. Whether a particular property is the main residential house of a judgment-debtor is a pure question of fact and has to be determined on the facts and circumstances of each case. Then the question arises whether the same is being occupied by him or not. The literal meaning of the word "occupy" with reference to some property is to be in its physical possession, but that is not its only meaning as P. Ramanatha Iyer in his book "The Law Lexicon of British India" at page 897 has said—

> "The word 'occupy' is a word of uncertain meaning. Sometimes it indicates legal possession in the technical sense, as when occupation is made the test of rateability; and it is in this sense that it is said that the occupation of premises by a servant, if such occupation is subservient and necessary to the service, is the occupation of the master. At other times occupation denotes nothing more than physical presence in a place for a substantial period of time."

It has, therefore, to be seen in what context the word "occupy" is being used. For that purpose, one has to find out the object of the enactment by examining its provisions and then decide as to what meaning should be given to it. This is what was held by the Supreme Court in *Kanwar Singh and others* v. *The Delhi Administration* (13)—

> "Several meanings of word 'abandoned' have been given in dictionaries. Different meanings again have been given to it in different statutes. Therefore, the meaning to be attached to the word would depend upon the context in which it is used.
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> * * * * *

It is the duty of the Court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of the legislature, which is to suppress a mischief, the Court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief."

Let us now examine what was the object of the Legislature in enacting section 60(1)(ccc). This sub-section was introduced in the Code of Civil Procedure by section 35 of the Punjab Relief of Indebtedness Act, 1934 (Act 7 of 1934). As the preamble of this Act shows, the same had been brought on the statute book to provide for the relief of indebtedness in Punjab and to amend the law governing the relations between debtors and creditors. The various provisions of this Act would show that ample relief had been given to the debtors. For instance, the Debt Conciliation Boards had been set up, which had been empowered to bring about an amicable settlement between the debtors and the creditors. Further, the Rule of Damdupat was introduced by which the decree-holders could not be given decrees for more than twice the amount found by the Courts to have been actually advanced to the debtors. By section 35 of this Act, it was for the first time that the non-agriculturist-judgment-debtors were also given the relief by introducing section 60(1)(ccc). The object of this provision was that at least one main residential house of the judgment-debtor should be exempt from attachment and sale in execution of a decree against him. Previously, it were only the agriculturist-judgment-debtors, who were being benefited by section 60(1)(c) which laid down that their houses and other buildings belonging to and occupied by them were exempt from attachment and sale. In their case, all their houses, which were occupied by them, could not be attached by the decree-holder. In the case of non-agriculturist-judgment-debtors, it is only one main residential house to which exemption has been granted. Tek Chand, J., in *F. Ganga Ram-Kishore Chand* v. *Jai Ram-Bhagat Ram* (17), has also held that the object of section 35 of the Punjab Relief of Indebtedness Act, 1934, which amended section 60(1) of the Code of Civil Procedure, appeared to be to leave every debtor in possession of one

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residential house for his habitation, though the Act was a measure which was designed in the main to relieve agricultural indebtedness in the Punjab on the lines of similar steps taken by Provincial Legislatures in other parts of India. Keeping this intention of the Legislature in mind, one has to find out as to what meaning should be given to the words "occupied by him" as appearing in section 60(1)(ccc). Does it mean that in all types of cases the non-agriculturist-judgment-debtors should be in 'actual physical possession' of the main residential house? In a case where he himself voluntarily lets out a part of his residential house, one can say that he does not need it for himself and in that event he may not be said to be in occupation of the same for the purpose of section 60(1)(ccc). But in those cases where he has not voluntarily let out some portion of his main residential house and the letting in has been the result of some Competent Authority, as for example, a Requisitioning or the Rehabilitation Authority, he should not be made to suffer for the same and it cannot be held that he is not in occupation of that portion. If literal meaning was to be given to the words "occupied by him", then the object and the purpose of the Punjab Relief of Indebtedness Act would be defeated, because the non-agriculturist-judgment-debtor will be deprived of his even one main residential house for no fault of his. But for the order of the Competent Authority, he would not have let it out. Why should the order of a Competent Authority, though under some statute, prejudice the rights of the non-agriculturist-judgment-debtor under section 60(1)(ccc)? It could not be the intention of the Legislature to give relief to a non-agriculturist-judgment-debtor by one enactment and to take away the same by another statute. This would obviously be the result, if the interpretation, as suggested by the learned counsel for the decree-holders, is given to the words "occupied by him" in section 60(1)(ccc). In my opinion, a liberal construction should be given to the words "occupied by him", otherwise, it would defeat the very object for which this sub-section was introduced in the Code of Civil Procedure. In my view, in the case of non-voluntary letting the non-agriculturist-judgment-debtor should be deemed to be in occupation of the main residential house. It is not in every case that the person who is in actual possession of premises, is considered to be in occupation thereof. In certain cases where the servants are in possession, the occupation is considered to be

that of their masters. While interpreting the word "occupation" occurring in section 99(2) of the Cantonment Act, 1924, the Supreme Court in the *Cantonment Board, Ambala Cantonment* v. *Dipak Parkash and others* (11), observed thus—

> "It is worth noticing that while section 65(1) speaks of actual occupation by the owner and makes the tax primarily leviable on the owner if he is the actual occupier, Section 99(2) uses the words 'in the occupation of the Central or any State Government' and not 'in the actual occupation of the Central or the State Government'. Even so, it has been argued by Mr. Sen that the word 'occupation' without anything more, should ordinarily be interpreted as actual occupation. While this may be correct, we find it difficult to agree that when a person, entitled to actual occupation by reason of his lease permits another to occupy it, then it ceases to be in the actual occupation of the person so permitting. Where the Central or the State Government after obtaining the lease under Section 7 leases it out to any person, it is itself not entitled to actual occupation but has to put the sub-lessee into occupation. In such a case, it may be reasonably said that the Government has ceased to be in occupation. In the case where the Government after taking the lease merely gives a licence to some person to come and live in it, it is entitled to take away the permission at any time and thus to come into possession itself.
>
> We can see no reason for thinking that in such a case the fact that the person to whom possession has been given is residing in the building, makes it any the less the actual occupation of the Government. If that was so, the fact that the Military Officer may be away for months together and the members of his family or his servants are residing would make the building cease to be in occupation of the Military Officer. That is on the face of it absurd. In our opinion, where the person entitled to occupy permits some other person to be in the building, he is in actual occupation through such other person.

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> Accordingly, we are of opinion that the building in question was in occupation of the Central Government through the Military Officer whom it has permitted to reside in it."

From this ruling, it will be seen that even though the licensee was actually in occupation of the building still it was deemed to be in the occupation of the licensor. This shows that there is no merit in the contention of the learned counsel for the decree-holders that literal interpretation should be given to the words "occupied by him" and only those persons, who are in actual physical possession of the main residential house should be deemed to be in occupation thereof. The exception in the case of a licensor has been approved by the Supreme Court. If there can be one exception, there is no reason why there cannot be a similar one in other cases as well, especially when that exception serves the object of a particular enactment. As I look at the matter, an exception has to be made in the cases of those non-agriculturist-judgment-debtors, who are made to part with their occupation of the portions of their residential houses on account of the orders of the Competent Authorities under the various Acts. Those judgment-debtors did not voluntarily give up their possessions and, therefore, should not be deprived of the benefits given to them by the Legislature by introducing section 60(1)(ccc). As already mentioned above, they should also be deemed to be in occupation of those portions of the main residential houses as well and their one main residential house should not be attached and sold in execution of the decree. A contrary view was taken by a Bench decision of this Court in *L. Birch* v. *Siri Raj and others,* Execution First Appeal 35 of 1957, decided by Dulat and Dua, JJ., on 14th January, 1960. In that authority, one-half of the main residential house of a judgment-debtor was requisitioned by the Government and was in actual occupation of a Government Officer. It was held that the exemption under section 60(1)(ccc) did not extend to the portion that had been requisitioned. Dulat, J., who wrote the judgment in that case, and with whom Dua, J., agreed, observed—

> "Counsel then pointed out that in any case, one-half of the house is not in the actual occupation of the judgment-debtor's representatives, that

is, the portion which has been requisitioned, and the exemption cannot extend to that portion. There is force in this contention. Mr. Sodhi's answer to this part of the case is that the portion requisitioned was not voluntarily let out or given away by the judgment-debtor or his legal representatives and compulsory requisition by Government against the wishes of the owner should not deprive him of the benefit of section 60(1)(ccc), the suggestion being that we should ignore the fact and hold that in law the requisitioned portion is still in the occupation of Lenon Birch. I do not see how it is possible to overlook the facts in this manner, the fact being that the requisitioned portion is not in the occupation of Lenon Birch. Mr. Sodhi suggested that the real meaning of section 60(1)(ccc) is that one main residential house belonging to every person is to be immune from attachment, and that actual occupation does not very much matter and its mention in clause (ccc) is more or less incidental. I am unable to accept this view or to hold that certain words occurring in clause (ccc) of section 60(1) are redundant. Nor is it possible to agree that the whole house would be exempt from attachment even if only a portion of it is shown to be in the actual occupation of the judgment-debtor. In my opinion, therefore, the exemption would apply only to that portion of the residential house which is in the actual occupation of the judgment-debtor, or, as in the present case, his legal representatives, and, since Lenon Birch is shown to be in the occupation of one-half of the house, the exemption would apply only to that one-half, the other half, that is the portion requisitioned by Government being subject to attachment and sale in execution of the decree."

These observations have been made after applying the literal meaning to the word "occupation", which, as I have already held above, cannot be made applicable in all types of cases covered by section 60(1)(ccc). With great respect to the learned Judges, I am unable to agree with

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the view expressed by them. Besides, this interpretation of the word "occupation" given by Dulat, J., goes counter, if I may say so with great respect, to his own earlier decision in *Daulat Ram Narula* v. *Smt. Sheela and others*, Execution First Appeal No. 21 of 1958, decided on 8th April, 1959. In that case, a portion of the main residential house had been let out by the judgment-debtors to some tenants, who were running shops therein. An argument was raised that the portion, which was in occupation of the tenants as shops, could not be exempt from attachment and sale under section 60(1)(ccc). This contention of the decree-holder was repelled by the learned Judge, who held—

> "Nor can I hold that the house is not in the occupation of the judgment-debtors, merely because the shops, which cannot be used otherwise, have been let to tenants. In my opinion, therefore, the exemption relied upon by the executing Court applies in this case and the entire house is exempt from attachment."

My answer to the third question, therefore, is that it would certainly make a difference if the letting was not voluntary, but the result of the order of a Competent Authority, as for example, the Requisitioning or the Rehabilitation Authority. In such cases, the non-agriculturist-judgment-debtor would be deemed to be in occupation of the entire house within the meaning of section 60(1)(ccc) of the Code of Civil Procedure.

B.R.T.

FULL BENCH

Before Inder Dev Dua, Shamsher Bahadur and R. S. Narula, JJ.

M/S RAM LAL-JAGAN NATH,— *Petitioners*

versus

THE PUNJAB STATE AND ANOTHER,—*Respondents*

Civil Revision No. 189 of 1964.

1966

March, 4th.

Arbitration Act (X of 1940)—S. 2(a) and (b)—Arbitration clause—Whether must use the words "arbitrator" or "arbitration" to constitute arbitration agreement—Arbitration—Meaning, purpose,