Practice there. The challenge in revision now being founded upon the plea that this ground for ejectment no longer survives as the said son of the landlord had since taken up employment as Doctor at a government hospital in Hisar.

(2) The elder son of the landlord Arun Kumar Munjal, is indeed working at the General Hospital, Hisar, since January 5, 1988, but, as explained by the landlord in his affidavit filed in this Court, this was merely an *ad hoc* appointment for six months terminable at 24 hours notice on a candidate selected by the Haryana Public Service Commission, reporting to duty.

(3) Such being the nature of the appointment held by the said son of the landlord, it can by no means be taken to spell out an intention contrary to that put-forth by the landlord in seeking the ejectment of his tenant, namely; that he requires the premises to enable his son to set up his medical practice there.

(4) On a practical plane too, it will be seen that the application for eviction was filed as far back as 1984 and the landlord has yet to obtain possession of the premises and over four years have since gone by. Such delays, in such cases, are unfortunately so common now. This being so, it will indeed be imputing absurdity to law if it is construed to imply that by the son taking up employment during the pendency of these proceedings, the relief sought by the landlord was put in jeopardy thereby. Surely, the son was not expected to sit idle with infinite patience, for several years till he got possession of the premises.

(5) There is thus no merit in this revision petition which is accordingly hereby dismissed.

S.C.K.

Before D. V. Sehgal, J.

PUSHPMALA JAIN,—*Petitioner.*

versus

BANK OF BARODA AND OTHERS,—*Respondents.*

Civil Revision No. 2002 of 1987.

October 26, 1988.

Code of Civil Procedure (V of 1908)—Ss. 47, 60(1) (ccc), 0.38, Rls. 5 and 11—Limitation Act (XXXVI of 1963)—Art. 137—Decree affirmed in appeal—Execution thereof—Period of limitation for filing objections under S. 47 of the Code—Whether runs from the date of the decree.

Held, that the provisions of S. 47 of the Code of Civil Procedure, 1908 can be invoked only after a decree is passed. Adjudication of any dispute between the parties during the period preceding the decree would be a dispute during the pendency of the suit and would not come within the abmit of s. 47 of the Code.

(Para 5).

Held, a bare reading of O. XXXVIII, Rl. 11 of the Code leads to the reasonable construction that the moment the decree is passed in favour of the plaintiff, the attachment before judgment shall operate as attachment in execution of the decree and it shall be operative as such from the date of decree and not before it. Hence, it has to be held that the prescribed period of limitation for filing an application under s. 47 of the Code starts from the day the decree was passed.

(Para 6).

Petition under section 115 *of the Civil Procedure Code for the revision of the order of the Court of Shri J. D. Chandna HCS, Senior Sub Judge Rohtak dated* 16*th May*, 1987 *dismissing the objection petition.*

Ashok Bhan Sr. Advocate with A. K. Mittal, *for the Petitioners.*

Puneet Jindal, Advocate, *for the Respondent.*

JUDGMENT

D. V. Sehgal, J.

(1) This revision petition is directed against the order dated 16th May, 1987 passed by the learned Senior Sub-Judge, Rohtak, in the course of execution of a decree dated 5th January, 1983 passed by the trial Court, which was affirmed in appeal by the learned District Judge on 23rd July, 1984. The execution of the said decree was sought by the Bank of Baroda respondent No. 1 claiming a sum of Rs. 10,91,280 from the judgment debtors. It is not in dispute that during the pendency of the suit, the property of the objector-petitioner was attached before judgment by the trial Court in the year 1979.

(2) The petitioner filed the instant objection petition during the pendency of the execution proceedings in the year 1984 claiming that the property in dispute is a residential house situated in Sarai Mohalla, Rohtak. She and her sons are putting up their residence in the said house. She is a widow having no other

source of income. She, therefore, claimed that the property being a residential house was exempt from attachment. This objection petition has, however, been dismissed by the learned Executing Court,—*vide* the impugned order.

(3) It is not in dispute that the evidence on the record clearly brings out that the ground floor and the first floor of the besides a shop forming part of the building are on rent with tenants. In fact, the Bank decree-holder, respondent No. 1, is the tenant on the ground and the first floors while one room in the shape of a Baithak is being used as a shop by another tenant. In view of a Full Bench judgment of this Court in *Ude Bhan and others* v. *Kapoor Chand and others* (1), the portion of the building which is let out cannot be considered in occupation of the petitioner as a residential house within the meaning of section 60(1) (ccc) of the Code of Civil Procedure (for short 'the Code'). So far as this legal position is concerned, there can hardly be any dispute.

(4) The learned counsel for the petitioner contends that as regards the remaining property which consists of the second floor, the Executing Court has erred in exercise of its jurisdiction while dismissing her objection petition. Her objections have been dismissed on two scores. Firstly, that these had been filed long after the expiry of the period of limitation prescribed by Article 137 of the Limitation Act, 1963. Secondly, that the petitioner has not been able to prove that she along with her children is residing on the second floor of the building which is not let out to tenants.

(5) Mr. Ashok Bhan, the learned Senior Advocate, appearing on behalf of the petitioner, submits that the period of limitation for filing the objections under section 47 of the Code would start from the date of the decree of the Appellate Court, i.e. 23rd July, 1984. The limitation could not start from the date of attachment before judgment, as till the decree was passed no objection under section 47 of the Code could be filed. I find force in this submission. The order of attachment before judgment under Order XXXVIII, rule 5 of the Code is aimed at securing the interests of the plaintiff in case the suit is ultimately decreed in his favour. Section 47 of the Code provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the excecution, discharge or

(1) 1966 P.L.R. 591.

satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Thus, the provisions of section 47 of the Code can be invoked only after a decree is passed. Adjudication of any dispute between the parties during the period proceeding the decree would be a dispute during the pendency of the suit and would not come within the ambit of section 47 of the Code.

(6) Order XXXVIII, rule 11 of the Code, provides that where property is under attachment before judgment and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property. A bare reading of this provisions leads to its reasonable construction to the effect that the moment the decree is passed in favour of the plaintiff, the attachment before judgment shall operate as attachment in execution of the decree and it shall be operative as such from the date of the decree and not before it. In my view, therefore, the prescribed period of limitation for filing application under section 47 of the Code the petitioner started on 5th January, 1983 when the decree was passed. The objections of the petitioner were, therefore, well within time.

(7) The learned Executing Court has observed that the petitioner has not been able to bring on record evidence in the form of ration-card, voters list birth certificates of the children, etc. to show that she is residing on the second floor of the building in dispute.

(8) I have gone through the evidence adduced on the record by the parties. The evidence of the petitioner is positive to the effect that she along with her children is residing on the second floor of the building in dispute. All that could be addressed to her in cross-examination was that during partition of family property her children got separate shares but no question was addressed to her to the effect that she or her children are living in a house other than the second floor of the building in dispute. No doubt, Shri C. L. Kalra D.W. 1, who had been Manager of the Branch of the decree holder Bank at Hissar, stated that he had not seen the petitioner along with her children residing on the upper part of the building in dispute where the Branch of the Bank is located, but he could not tell in cross-examination as to where the petitioner and her children were residing or who else

was residing on the second floor of the building in dispute. On due appreciation of the evidence on the record, it is clear that the petitioner has led unimpeachable evidence that she is residing with her children on the second floor of the building in dispute, which is consequently exempt from attachment and sale in execution of the decree under section 60(1) (ccc) of the Code.

(9) Consequently, I allow this revision petition and hold that the second floor of the building in dispute is exempt from attachment under section 60(1) (ccc) of the Code and the same cannot be sold in execution of the decree. There shall, however, be no order as to costs. The executing Court shall now proceed with the execution application in accordance with law.

R.N.R.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX HARYANA AND CHANDIGARH, ROHTAK,—*Applicant.*

versus

M/S ANAND RUBBER AND PLASTICS (P) LTD,—*Respondent.*
Income Tax Reference No. 82 to 84 of 1978.

November 7, 1988.

Income Tax Act (XLIII of 1961)—S. 256(1)—Assessee incurring heavy losses—Rear shed of factory given on lease—Rental income—Whether can be treated as business income.

Held, that the entire premises were being used by the assessee for running its factory but due to heavy losses, the production was reduced with the result to minimise losses the rear portion was temporarily leased out as a commercial asset. Hence, the Tribunal was right in considering the income as business income. Moreover, on the peculiar facts of this case we are of the opinion that hardly any question of law arises and largely it is a question of fact.
(Para 6).

Reference under Section 256(1) of the Income Tax Act, 1981 by the Income Tax Appellate Tribunal Chandigarh Bench for the