
(1997) 12 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3445 of 1994

Amrik Singh and Others

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 12-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1998) 118 PLR 402

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : Ompal Singh, for the Appellant; Ashok Gupta, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Garg, J.—Plaintiff-respondent filed a suit for recovery of money against the defendant-petitioners. Suit was decreed by the trial court vide judgment and decree dated 8.11.1986. The suit was decreed for Rs.6,447.66 with costs and future interest at the rate of 10% per annum. The decree became final as no appeal was taken there against. In execution of the decree, judgment debtors took objection that interest could not be granted at the rate of 10% per annum. The objections were accepted. Aggrieved there against, Bank filed a revision petition which was allowed and the matter was remitted to the execution court to decide the matter afresh in view of the deceasing reported as Devinder Kumar and Another Vs. Syndicate Bank and Others, . The matter was thereafter taken up by the executing court and vide order dated 20.5.1994 it came to the conclusion that the transaction in question was a commercial transaction and the rate of interest would be as agreed between the parties i.e. 10-1/2% per annum for the purposes of future interest. It consequently disposed of the objections accordingly. Hence, this revision petition at the instance of defendant-objectors.

3. Learned counsel for the petitioners submits that the loan was taken for agricultural purpose and thus the Court below has erred in granting interest at the rate of 10-1/2% per annum instead of 6% per annum.

4. Learned counsel for the respondent-decree holder, on the other hand, submits that the transaction was a commercial one and under the terms of the loan documents petitioners were liable to pay interest at the rate of 10-1/2% per annum. Learned counsel further submits that in any event, the executing court has no jurisdiction to go behind the decree and it is only the appellate Court which could vary the rate of interest and not the executing court. In support of his submission, learned counsel placed strong reliance on the decision of the apex Court in case reported as State of Punjab and others Vs. Krishan Dayal Sharma, .

5. After hearing learned counsel for the parties, I am of the opinion that the executing Court is bound to execute the decree as it is and it has no jurisdiction to modify or vary the decree unless it is shown that the decree is without jurisdiction or is otherwise void. Learned counsel for the petitioners has not been able to show either of the two. The executing Court vide the impugned order has only held that the judgment-debtors are liable to pay interest which was granted under the decree. This rate of interest has also been arrived at after keeping in view the judgment of this Court in Devinder Kumar's case (supra). In that view of the matter, I find no merit in this revision petition and dismiss the same.