(1997) 10 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 4801 of 1994

Central Bank of India — APPELLANT

Vs

Durga Parshad Ishwar Chand and Others — RESPONDENT

Date of Decision : 13-10-1997

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, 115

Citation : (1998) 118 PLR 94 : (1998) 1 RCR(Civil) 465

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

Bench : Single Bench

Advocate : R.K. Aggarwal, for the Appellant; Rajesh Sikriwala, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—Central Bank of India, the petitioner herein filed a suit for the recovery of Rs. 73, 221.10 including interest upto 21.2.1984 by way of sale of mortgaged property of defendants 2 and 3. The suit was contested and was ultimately decreed by learned Senior Sub Judge Kurukshetra by judgment and decree dated 19.12.1987 for the recovery of Rs. 73, 221.10 with interest and costs. The plaintiff-bank was also held entitled to future interest. The trial court decreeing the suit awarded future interest on the amount of Rs. 73,221.10 at the rate of 16% per annum (simple) from the date of filing of the suit till the date of recovery.

2. Decree passed by the trial court became final as no appeal there against was taken by either of the parties. The bank took out execution. Judgment-debtors raised objections to the execution application. The objection petition was dismissed by the executing court. In revision being C.R. No. 1135 of 1993 taken by the judgment-debtors against the order dismissing the objection petition the following order was passed by this Court on 10.1.1994 :-

"Dismissal of objections petition of the judgment debtors gave rise to the present revision petition. On notice of motion having been issued, the respondent-bank decree holder has put in appearance.

Learned counsel for the parties have been heard and the record perused.

Learned counsel for the petitioners contended that a decree in the sum of Rs. 73, 221.10 paise along with simple interest at the rate of 16% per annum was passed against, the petitioner and that if the amount is calculated on that basis, it would come about Rs. 1.75 lacs and the petitioners having already paid Rs. 1.75 lacs. execution could not be taken out for the recovery of Rs. 1.16 lacs. According to the leaned counsel, the amount had been wrongly calculated by ignoring the decree. Confronted with this situation, learned counsel for the respondent-bank on re-calculation submitted that a sum of Rs. 72,528.74 paise was due from the judgments debtors in terms of the decree as in the first week of July, 1993 and not Rs. 1.16 lacs. In other words, it was contended that the amount had been wrongly calculated for seeking execution. Another sum of Rs. 20,000/- had been tendered by the petitioners during the pendency of this revision petition for adjustment against the decretal amount. That being so, there would be a balance of Rs. 52,528.74 paise as on July 1, 1993, besides interest thereon till date. There being some dispute about the calculation of the amount the executing court will re-determine the amount in terms of the decree according to law and thereafter execute the same. This revision stands disposed of with the above observations and directions."

3. The matter was thereafter taken up by the executing court for calculating the amount as the judgment debtors submitted that the amount of interest has been wrongly calculated and the bank is entitled to interest only on the principal amount advanced and no more. This contention of the judgment debtors found favour with the executing court and it came to the conclusion that the decree holder is entitled to future interest only on the principal sum adjudged and not on the principal and the interest as on the date of the decree. According to the executing court, the judgment debtors had taken a loan of Rs. 30,000/- only from the plaintiff-bank and therefore, the plaintiff was entitled to interest at the rate of Rs. 16% per annum (simple) on the sum of Rs. 30,000/- only and no more.

4. It is this order of the executing court passed on 27.8.1994 in the execution application which is under challenge in this revision petition at the instance of the plaintiff-decree holder.

5. Learned counsel for the petitioner submitted that the executing court acted illegally and with material irregularity in coming to the conclusion that the plaintiff-bank is entitled to future interest only on the principal amount advanced to the defendants. According to the learned counsel, the plaintiff-bank is entitled to interest at the rate of 16% per annum (simple) on the sum of Rs. 73,221.10 as awarded by the court decreeing the suit. Learned counsel further submitted that the executing court had no jurisdiction to go behind the decree and was

bound to execute the same as it is. The executing court by saying that the decree holder is entitled to interest only on the amount of Rs. 30,000/- has changed the terms of the decree which had become final and it has thus interfered with the decree while executing the same.

6. Learned counsel for the respondents on the other hand submitted that the executing court while executing the decree could modify the judgment and decree, the execution of which is sought, and could grant future interest only on the amount of loan advanced and no more. Learned counsel further submitted that in view of Rule 11 of Order 34 of the Code of Civil Procedure, the executing court could grant such interest as was just and reasonable and this is precisely what has been done by the executing court.

7. After hearing learned counsel for the parties and on a consideration of the matter, I am of the opinion that this revision deserves to succeed. In the first instance the above objection was not raised by the judgment debtors when the matter first came before this Court and the revision petition filed by the judgment debtors was disposed of. Even otherwise, I am of the opinion that the executing court cannot go behind the decree and is bound to execute the same as it is except in cases where it comes to the conclusion that the decree sought to be executed is void, uncertain and vague and is thus not capable of being executed or that the decree is without jurisdiction. In all other cases, the executing court is bound to execute the decree as it is. The only remedy available to the judgment debtors in such situations is to take the matter in appeal against the decree and get the same modified, varied or reversed in appeal. The decision of the Supreme Court in State of Punjab and others Vs. Krishan Dayal Sharma, can be cited with advantage in that behalf, where in it was observed that the courts have power to award interest on the arrears of salary or pension or other amount to which a Government servant is found entitled having regard to the facts and circumstances of the case but that power cannot be exercised by the Execution Court in the absence of any direction in the decree. In Bai Shakriben (dead) by Natwar Melsingh and Others Vs. Special Land Acquisition Officer and Another, , it was again held that the executing court or the Reference Court cannot go behind the decree and amend the same and the omission to award additional amount, solatium and interest under the amended provisions does not amount to clerical or arithmetical mistake. In State Bank of India v. Indexport Registered and Ors. (1992) 75 CC 1, it was held that "the guarantor in the present suit never took any plea to the effect that his liability is only contingent if the remedies against the principal debtors fail to satisfy the dues of the decree-holder. If such a plea had been taken and the court trying the suit had considered the plea and given any finding in favour of the guarantor, then it would have been a different position. But, in the present case, on the face of the decree, which has become final, the court cannot construe it otherwise than according its tenor. No executing court can go beyond the decree. All such pleas as to the rights which the guarantor had, had to be taken during trial and not after the decree while execution is being levied."

8. The plea that interest was payable only on Rs. 30,000/-, the amount initially borrowed by the judgment debtors, was not taken in the suit and in any case even if such a plea had been taken, it was for the judgment debtors to take the matter in appeal and get it settled there. In the facts of this case, it is not open to the judgment debtors to raise a plea before the executing court and seek relief on a plea which was neither raised in the trial court nor at any stage in the appeal.

9. In view of the authoritative pronouncement of the Supreme Court in the judgments noticed above, I am of the clear view that the executing court was not right in coming to the conclusion that the judgment debtors are liable to pay future interest on the amount of Rs. 30,000/- and not On Rs. 73,221.10 paise. The revision petition is, therefore, allowed and the impugned order of the executing court is set aside, and the matter is remitted to the executing court to determine the amount due to the decree-holder as per the decree. The executing court shall take steps to recover the amount to be so determined in accordance with law subject to adjustment of any amount that may be found to have already been paid by the judgment debtors.

10. From the. order of the executing court, I find that the execution application was filed in March, 1988 and the judgment debtors have taken about ten years by raising frivolous objections, not only once but twice, and still the decree has not been satisfied. In this view of the mater, the revision petition is allowed with costs and the judgment debtors are burdened with costs which I assess at Rs. 1000/-. The executing court shall now determine the amount and execute the decree within a period of four months and if need be, may be by adjourning the matter on week to week basis. The parties through their counsel are directed to appear before the executing court on 5.11.1997.

