(1994) 02 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1148 of 1989

Chhaju Ram APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 08-02-1994

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1994) 107 PLR 67

Hon'ble Judges : S.K. Jain, J;G.R. Majithia, J

Bench : Division Bench

Advocate : R.K. Gupta, for the Appellant; Ashok Gupta, for the Respondent

Judgement

G.R. Majithia, J.—This judgment disposes of Regular Second Appeals Nos. 1148 of 1989 and 970 of 1990 and Civil Revisions No. 3655 and 3656 of 1989, 287 of 1991,589 of 1989 and 2385 of 1992.

2. Regular Second Appeal No. 1148 of 1989 is directed against the judgment and decree of District Judge, Jind affirming , on appeal, those of Additional Senior Subordinate Judge, Jind, passing a decree for recovery of Rs. 1,75,826.90 in favour of State Bank of India, Jind (for short, the Bank) and allowing it to recover future interest at the rate of 11 per cent per annum on the principal sum from the date of filing of the suit till realization.

3. Regular Second Appeal No. 970 of 1990 is directed against the judgment and decree of District Judge, Jind, modifying, on appeal, the judgment and decree of the trial Judge decreeing the suit of the Bank for the recovery of an amount of Rs. 1,48,842.80 and allowing future interest at the rate of 12.5 percent per annum on the amount of Rs 44,300/- from the date of filing of the suit till realization.

4. In civil Revision No. 3655 of 1989, the Executing Court, while allowing the objection petition filed by the judgment-debtor, observed thus:-

"For the aforesaid reasons, I partly accept this objection petition and hold that the decree dated 29.10.1986 awarding interest at the rate of 11 1/2% per annum is not executable and that the plaintiff/decree holder shall be entitled to interest pendente lite and future interest at the rate of 6% per annum only."

5. In C.R. 3656 of 1989 the Executing Court While allowing the objection petition filed by the judgment-debtors against the execution of decree dated November 8, 1986, observed thus:-

"For the aforesaid reasons, I partly accept this objection petition and hold that the decree dated 30-9-1986 awarding interest at the rate of 12 1/2% per annum is not executable and that the plaintiff/decree holder shall be entitled to interest pendente lite and future interest at the rate of 6% per annum only."

C. R. Nos. 287 of 1991 and 589 and 2385 of 1992 have been filed by the judgment-debtors against the orders of the Executing Court dismissing their objections u/s 47, Civil Procedure Code, against the execution of the decrees. In the decrees, future interest had been allowed at the rate of 11% per annum from the date of filing of the suit till realization of the decretal amount."

R.S.A. No. 1148 of 1989 came up for motion hearing before a learned single Judge on September 8, 1989 and the following order was passed:-

"Admitted to D.B. in view of the difference of opinion between the judgments of this Court in 1989 P.L.J. 329 and 1987 (1) CLJ. 778 vis-a-vis 1989 (1) P.L.R. 460 and Gulab Ram Subhash Chander and Others Vs. Kharaitilal and Others, , and some other High Courts which support the later view.

Since the point is likely to arise in bank cases every day, it will be desirable to constitute a Division Bench as early as possible and for that matter, orders of Hon''ble Chief Justice be obtained.

R.S.A. No. 970 of 1990 came up for motion hearing on July 10, 1990 and while admitting the appeal the motion Bench directed that the appeal be set down for hearing with R.S.A. No. 1148 of 1989.

6. When the civil revision petitions Nos. 3655 and 3656/89 came up for motion hearing, the learned Single Judge Passed the following order on April 16, 1991 :-

"The sole point raised in this revision petition is, whether the interest beyond 6 per cent per annum u/s 34 of the Code of Civil Procedure, or the agreed rate from the date of decrees till payment it to be granted especially in case of suits filed by the Banks for recovery of loans advanced by them in terms of loan documents. Mr. Gupta, appearing for the petitioner has brought to my notice various judgments reported as 1989 PLJ 329 and 1988 PLJ 351 taking one view and Raj Kumar Vs. Girdharilal, , and 1989 SLJ 772 taking a contrary view. It has also been brought to my notice that this matter has already been admitted to a Division Bench in Regular Second Appeal No. 1148 of 1989. wherein G.C. Mittal, J., (as his Lordship then was) passed the following order:-

"Admitted to D.B. in view of difference of opinion between the judgments of this Court reported as 1989 P.L.J. and 1987 1 CLJ. vis-a-vis Gulab Ram Subhash Chander and Others Vs. Kharaitilal and Others, and some other High Courts which support the latter view. Since the point referred to above is likely to arise in bank cases every day, it will be desirable to constitute a Division Bench as early as possible for adjudication of the matter and for that matter the orders of the Hon''ble Chief Justice be obtained."

In this view of the matter, the present revision petition is directed to be heard along with R.S.A. No. 1148 of 1989 stated to be already admitted to Division Bench.

In C.R. No. 287 of 1991 and 2385 of 1992, the Motion Bench while admitting the petitions directed that the same be disposed of with R.S.A. No. 1148 of 1989.

In C.R. No. 589 of 1992, the learned Single Judge directed that the revision petition be disposed of with R.S.A. No. 1148 of 1989.

7. It is now these second appeals and the revision petitions have been placed before us for disposal.

8. Learned counsel for the appellants in the regular second appeals did not challenge the correctness of the findings arrived at by the first appellate Court on any issue except the issue regarding grant of interest.

9. In Civil revisions (C.R. Nos. 3355 and 3356 of 1989), learned counsel for the Bank Submitted that the Executing Court could not go behind the decree. The petitioners/judgment debtors in the other revision petitions challenged the orders of the Executing Court disallowing their objections and holding that the decree-holder is entitled to recover future interest at rate awarded in the decree.

10. The precise question which arises for determination is whether the trial Judge was right in awarding interest pendente lite and future interest on the Principal amount claimed in the suit.

11. The matter is not res Integra. This Court in Devinder Kumar and Another Vs. Syndicate Bank and Others, , the judgments and decrees of the Courts below were modified and the case was remitted to the trial Court for passing a fresh decree in terms of the following directions given in paragraph 22 of the judgment:-

" For the reasons stated above, we hold that the plaintiff-Bank will be entitled to recover interest pendente lite and future interest to be determined as under:-

(i) Interest pendente lite is payable on the principal sum adjudged, but no interest is payable on the amount of interest adjudged on such principal sum.

(ii) Future interest will be awarded on the contractual rate of interest and if the contractual rate of interest is not established, at the rate at which the monies are lent or advanced by the nationalised banks in relation to commercial transactions. In he present case, the loan was advanced by the Bank and as such it is a commercial transaction."

12. The judgments and decrees of the Courts below are modified in the light of the rule of law laid down in Davinder Kumar''s case (supra). The appeals are disposed of accordingly.

13. The fairness to Shri Ashok Gupta, learned counsel for the Bank, his submission that the Executing Bank, his submission that the Executing Court could not go behind the decree deserves to be disposed of expressly. The question was dealt with Jagdish Chander Vs. Punjab National Bank, , wherein the judgement in Krishan Lal Vs. State Bank of Patiala and Others, , was approved. This Court held that the Executing court could go into the question, in execution proceedings, whether future interest was awarded in conformity with the provisions of Section 34, CPC or not.

14. The orders passed in Civil Revisions are accordingly set aside and the cases are remitted to the executing Court for disposing of the objections petitions in the light of the above observations. The parties through their learned counsel are directed to appeal before the Executing Court on March 4, 1994. The Executing Court will dispose of the objections within one month thereafter.