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**(2007) 11 UK CK 0034**

**In the Uttarakhand High Court**

**Case No : Writ Petition No. 2316 (M/S) of 2007**

Hoturam Tejbhan and Others

APPELLANT

Vs

District Judge and Others

RESPONDENT

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**Date of Decision : 20-11-2007**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, Order 21 Rule 66, Order 6 Rule 17, 151, 152

**Citation : (2007) 4 UC 75**

**Hon'ble Judges : Prafulla C. Pant, J**

**Bench : Single Bench**

**Advocate : Alok Singh, assisted by, Dharmendra Barthwal, for the Appellant; D.S. Patni, for the Respondent**

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## **Judgement**

Prafulla C. Pant, J.—Heard learned Counsel for the parties.

2. By means of this writ petition, the Petitioners have challenged the order dated 10-10-2007, passed by learned District Judge, Haridwar, in civil revision No. 85 of 2007, whereby revision against the order dated 16-09-2007, passed in execution case No. 04 of 2000, by Civil Judge (Sr. Div.), Haridwar (Executing Court) is entertained. By order dated 16-09-2007, the executing court rejected the application 54A (wrongly mentioned as 44A, seeking amendment in the execution application), moved by Respondent No. 3.

3. Brief facts of the case are that Respondent No. 3- Bank instituted suit No. 58 of 1990 against the Petitioner (Defendant) for recovery of Rs. 3,39,604.90 along with interest @ 16% per annum with quarterly rests. The suit, after hearing the parties, was decreed on 24-09-1999, for a sum of Rs. 3,39,604.90 with interest @ 16% per annum only. (In other words, no interest was awarded with quarterly rests for the period of pendency of suit and till amount recovered). It appears that decree was put to execution for recovery of Rs. 9,10,433/- (which included the interest decreed) and execution case No. 04 of 2000, was registered. It appears that during execution, the decree holder and judgment debtor entered

into compromise on 30-03-2007 and under the settlement a total sum of Rs. 11,04,639 (said amount included interest accrued during period of execution) was paid through four drafts (No. 000991 dated 27-02-2007, No. 001065 dated 07-03-2007, No. 001323 dated 04-04-2007, No. 468748 dated 01-03-2007) by the judgment debtor. Consequently, an application was moved on 05-04-2007, for recording satisfaction of decree under Order XXI Rule 2 read with Rule 66(d) and Section 152 of the Code of Civil Procedure, 1908 (a copy of which is annexure-6 to the writ petition). Meanwhile, an amendment application 54A was moved (in execution case) by the decree-holder on 29-05-2006, a copy of which is Annexure-4 to the writ petition, praying under Order VI Rule 17 and Section 152 of Code of Civil Procedure., seeking recovery of interest with quarterly rests. After hearing the parties, the executing court rejected the application on the ground that it has no power to go behind the decree and recover interest with quarterly rests. It was this order, which was challenged by the Respondent No. 3 before revisional court and the revision was admitted.

4. Learned Counsel for the Petitioner argued that neither the order passed by executing court suffers from any jurisdictional error nor is there any illegality, which requires interference by the revisional court. He further argued that the pecuniary jurisdiction of the District Judge is to entertain revision only of valuation to the tune of Rs. 5,00,000/- and no more. While the execution sought relates to recovery of Rs. 9,10,433/-.

5. Having heard learned Counsel for the parties, this Court finds that the order dated 16-09-2007, passed by executing court in execution case No. 04 of 2000, neither suffers from any jurisdictional error nor is there any illegality. It is settled principle of law that the executing court cannot go behind the decree passed by the trial court. In other words, it has to execute the decree, as passed by the trial court. It is also settled principle of law that where suit is instituted for certain relief and the same is not decreed in respect of part of the claim, the suit stands dismissed to that extent. Here in the present case, Respondent No. 3 Bank (Plaintiff) instituted suit for recovery of Rs. 3.39,604.90 with 16% interest per annum with quarterly interest. But the trial court vide its judgment and decree dated 24-09-1999, decreed said suit No. 58 of 1990, for Rs. 3,39,604.90 along with 16% interest per annum thereon-Meaning thereby, the trial court did not decree the suit for the interest sought to be recovered with quarterly rests. That being so, while the suit was expressly decreed for Rs. 3,39,604.90 and 16% interest per annum thereon from the date of institution of suit till the recovery is made, the amendment in execution case to recover interest with quarterly rests was not permissible. No doubt, the trial court could have decreed the suit with interest as agreed between the creditor and the debtor but since it did not pass the decree in respect of the interest "with quarterly rests" and the Plaintiff never filed any appeal against that decree, the decree passed by the trial court, attained its finality.

6. Strangely, an application dated 09-08-2007 (a copy of which is annexure- 7 to

the writ petition), has moved by Respondent No. 3 bank (Plaintiff), after eight years of the decree, u/s 152 read with Section 153 and Section 151 of the Code of Civil Procedure, 1908, for correction of the decree praying that the interest awarded should be clarified to be "with quarterly rests". Section 152 of the Code of Civil Procedure, 1908, permits the court to rectify clerical or arithmetical mistakes in judgments and decrees arising therein due to accidental slip or omission. Since said application is yet to be decided by the trial court this Court is not inclined to comment in the matter further.

7. As far as the application for recording satisfaction of the execution of the decree is concerned, the said application is also awaiting final orders of the executing court. The only application for the amendment in execution case for recovery of interest with quarterly rests has been rejected by the executing court. I have already observed that since the executing court cannot go behind the decree passed by the trial court, as such, the order passed by the executing court in this regard suffers from no illegality.

8. Therefore, this writ petition is allowed. The impugned order dated 10-10-2007, passed by revisional court (District Judge, Haridwar) and the proceedings in civil revision No. 85 of 2007, are quashed.