
(2005) 05 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1215 of 1990

Indian Overseas Bank

APPELLANT

Vs

Surjit Singh and Others

RESPONDENT

Date of Decision : 13-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 4
Constitution of India, 1950 — Article 227

Citation : (2006) 1 BC 172 : (2005) 141 PLR 265

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : O.P. Goyal and Parmod Goyal, for the Appellant; J.S. Chaudhary and Sumeet Sharma, for the Respondent

Final Decision : Allowed

Judgement

Viney Mittal, J.—On a request made by the learned counsel for the petitioner, the present petition is treated to be a petition filed under Article 227 of the Constitution of India.

2. The plaintiff bank is the petitioner before this Court. A suit for recovery of Rs. 2,53,569/- was filed by the plaintiff bank under the provisions of Order 34 Rule 4 of the Code of Civil Procedure. It was claimed by the plaintiff bank that the defendants had mortgaged their property for securing the loan and as such the defendants had failed to repay the amount therefore, the plaintiff bank was entitled to recover the aforesaid amount by sale of the mortgaged property.

3. The learned trial Court vide judgment and decree dated April 6, 1987 held that the defendants had indeed taken the amount from the plaintiff bank. During the course of trial, the defendants also appeared and admitted that they had executed the mortgage deeds in question relied upon by the plaintiff bank. However, while passing the decree, the suit of the plaintiff bank was decreed merely for a recovery of the aforesaid amount. No decree was passed with regard to sale of the mortgaged property. Subsequently, an application dated

April 15, 1988 was filed by the plaintiff bank claiming that the aforesaid decree was liable to be modified since the suit filed by the plaintiff bank was for the recovery of the amount by the sale of mortgaged property. The aforesaid application filed by the plaintiff bank has been dismissed by the learned trial Court vide order dated December 2, 1989. Primarily, the application has been dismissed on the ground that since no appeal had been filed against the judgment and decree dated April 6, 1987 by the plaintiff bank and the aforesaid application filed by the plaintiff bank was in fact a review application which had been filed after the expiry of a period of 30 days from the date of decree, therefore, the said application was barred by limitation.

4. I have heard the learned counsel for the parties at some length and have also gone through the records of the case.

5. It does appear from the pleadings contained in the plaint, which has been produced before me, and the findings recorded by the learned trial Court that the suit in fact was filed by the plaintiff bank for recovery of an amount by way of sale of the mortgaged property. However, while passing the decree, the suit was merely decreed for recovery of amount. When an application had been filed by the plaintiff bank for modification of the aforesaid judgment, the same would actually amount to a correction of clerical mistake or an accidental omission. In these circumstance, the application filed by the plaintiff bank could not have been rejected by the learned trial Court merely on account of the same having been filed after the expiry of 30 days from the date of decree.

6. Accordingly, the present revision petition is allowed and the order dated December 2, 1989 passed by the learned trial Court is set aside. The learned trial Court shall consider the aforesaid application afresh and pass an order keeping in view the prayer made by the plaintiff bank in accordance with law. After passing the aforesaid order, the decree passed by the learned trial Court shall be amended accordingly. The order in the aforesaid application, as aforesaid, shall be passed by the learned trial Court on or before December 31, 2005.

7. Since the defendant-respondents were restrained from alienating ,the mortgaged property till further orders by this Court, vide order dated May 11, 1990, the aforesaid restrain order shall continue to operate till the final disposal of the application by the learned trial Court.

8. The parties through their learned counsel have been directed to appear before the learned trial Court on July 20, 2005.

9. Copy of the order be given dasti on payment of usual charges.