(1989) 10 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 979 of 1989

Krishan Lal — APPELLANT

Vs

State Bank of Patiala and Others — RESPONDENT

Date of Decision : 27-10-1989

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 115, 34

Citation : (1990) CivCC 102 : (1992) 73 CompCas 660 : (1990) 97 PLR 132

Hon'ble Judges : A.L. Bahri, J

Bench : Single Bench

Advocate : Sunil Chadha, for the Appellant; P.D. Mehta and J.S. Narang, for the Respondent

Judgement

A.L. Bahri, J.—In this revision petition the judgment debtor challenges order dated March 3, 1989, passed by the executing Court (Sub Judge 1st Class, Sunam). rejecting his objections to the execution of the decree.

2. The State Bank of Patiala advanced a loan of Rs. 5000/- under an agreement of hypothecation for purchasing a ''mechanised cart''. The amount of loan having not been refunded, the Bank filed the suit for the recovery of the said amount with interest which was decreed. It was at the time of execution of the said decree that the judgment debtor Krishan Lal filed objections. He objected to the grant of future interest u/s 34 of the Code of Civil Procedure. According to him, the Court could not grant more than six per cent future interest. This objection did not prevail and the impugned order was passed which is under challenge.

3. On behalf of the petitioner, photostat copies of the letter of undertaking and an agreement for hypothecation have been produced under which the loan was advanced. The authenticity of these documents is not disputed by the counsel for the respondent-Bank. Even at the time of arguments, it was conceded that the loan was advanced for purchasing a ''mechanised cart''. The subject of the letter of under- taking indicates as under :-

"Agricultural finance tractor loan/tubewell loan Rs. 5000/-"

The terms and conditions of the agreement show that the amount advanced was to be spent for which the loan was taken. The third schedule refered to in this argeement provides as under :-

"THE THIRD SCHEDULE referred to above ; The tools equipments/fixtures/boats/ machines and other movables connected with the/relating to farming/rearing of cattle or flock/fishing/ sericulture/mechanised cart "

4. The contention of counsel for the petitioner is that since the loan in dispute was not taken for any commercial transaction, the civil Court had no jurisdiction to grant future interest more than six percent u/s 34, Civil Procedure Code, as the decree providing so was without jurisdiction and could be challenged in the execution. In support of this contention, reliance has been placed on the decision of this Court in Siri Chand and Anr. v. Central Bank of India, Yamunanagar (1988-1) 93 P.L.R. 473.

5. On the other hand, on behalf of the Bank, it hag been argued that when the civil suit was tried an issue was raised regarding the rate of interest which the Bank could charge. At that time it was not asserted that future interest could not be allowed more than six per cent by the Court. The executing Court, according to the counsel for the petitioner, could not go beyond the decree. In support of this contention, reliance has been placed on the decision of this Court in S.K. Engineering Works and Others Vs. New Bank of India, Batala,

6. I have heard the learned counsel for the parties. The decision in Messrs S. K. Engineering Works case (supra) cannot be applied to the case in hand. The loan in that case was advanced on pledge of goods which obviously was for a commercial transaction. The trial Court had decreed the suit in favour of the Bank with future interest at the rate of 11 per cent per annum on the decretal amount. It was held that the Bank was entitled to the contractual rate of interest The present is a, casa where the loan was not taken for commercial transaction Admittedly, the loan was taken for purchasing a mechanised cart by an agriculturist It is entirely different that this cart could be used also for carrying goods to the market for sale apart from its use for other domestic purposes, i e , carrying manure or fodder to the field or to the house Such like use of the cart cannot be considered to be commercial transaction for which the loan was taken. Section 34 of the Civil Procedure Cods reads as under :-

"34. Interest (i) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such ate as the court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged, on such principal sum for any period prior to the institution of the suit, (with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum), from the date of the decree to the date of the payment, or to such earlier date as the Court thinks fit.

(Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions,, "Explanation 1-In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) Explanation II- For the purposes of this section, a transaction is a commercial transaction if it is connected with the industry, trade or business of the party incurring liability.)"

The proviso, read with explanation (II of Section 34 as reproduced above, would not apply to the facts of the ease in hand The loan of Rs. 5000/- for the purchase of a mechanised cart cannot be remotely connected with a commercial transaction, connected with the industry. trade or business of the party incurring the liability As ruled in Siri Chand''s case (supra), it is the jurisdiction of the Court to pass an order for the grant of future interest at the time of passing the decree and if such an order is passed which is beyond the jurisdiction of the Court, same could be nullity and objection to that effect can be taken in the execution proceedings To the extent, as stated above, the decree of the civil Court cannot be executed against the judgment-debtor (petitioner).

7. For the reasons stated above, this revision petition is accepted; the order of the executing Court is set aside and the case is sent back to the executing Court to determine the amount of the decree which can be recovered from the judgment debtor taking in to consideration the observations made hereinbefore and to execute the decree accordingly. The parties through their counsel are directed to appear in the executing Court on December 1,1989. The will be no order as to costs.