
(1993) 04 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1201 of 1991

Mohinder Singh

APPELLANT

Vs

Union Bank of India and Another

RESPONDENT

Date of Decision : 08-04-1993

Acts Referred:

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

Citation : (1993) 104 PLR 249

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : O.P. Sharma, for the Appellant; V.K. Vashisht, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—Union Bank of India filed a suit for recovery of certain amount against the petitioner. The suit was decreed for a sum of Rs. 13,301.45 P. with costs. The Bank was also allowed future interest at the rate of 12 percent per annum from the date of institution of the suit till the date of realisation of decretal amount. However, the payment was not made by the petitioner. The Bank preferred execution of the decree, to which the petitioner preferred Objections by stating that the amount of interest cannot be more than six percent per annum in view of the provision of Section 34 of the Code of Civil Procedure. He therefore, claimed that decree to that extent has to be passed and he is only liable to pay interest at the rate of 6 per cent per annum. Objections preferred by the petitioner were dismissed. The petitioner has now impugned the said order in the present revision petition.

2. Mr. O. P. Sharma, learned counsel appearing for the petitioner has vehemently argued that the Bank is not entitled to claim interest at the rate of 12 per cent per annum. He made a reference to Section 84 of the CPC as well as to a judgment of this Court rendered in *Makhan Singh v. Union Bank* (1989) 95 P.L.R. 703, wherein it was held that interest not exceeding 6 per cent per annum can be paid.

3. On the other hand, Mr. V. K. Vashisht, learned counsel appearing for the respondent, has submitted that the executing Court cannot go beyond the decree once the interest was allowed at the rate of 12% per annum, and the respondent is entitled to recover the same.

4. After hearing learned counsel for the parties, I find that this matter is squarely covered by a Division Bench judgment of this Court rendered in *The State of Punjab Vs. Inspector Sham Nath*, wherein it was held that the executing Court cannot assume jurisdiction to grant interest in execution proceedings, which has not been granted by the Court deciding the suit. In this judgment, the Division Bench of this Court placed reliance on the following observations of the apex Court made by it in the case *State of Punjab v. Krishan Dayal Sharma*, S. L. P. (C) No. 3116 of 1990.

"The Executing Court is bound by the terms of the decree, it cannot add or alter the decree on its notion of fairness or justice. The right of the decree-holder to obtain relief is determined in accordance with the terms of the decree. The Execution Court has referred to a number of decisions where interest had been granted on the arrears of salary and pension. The Execution Court failed to appreciate that in those decisions directions for payment of interest had been issued by the Court while granting relief for reinstatement or payment of arrears of salary or pension. None of those decisions relate to the grant of interest by the execution Court. No doubt 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 this view the executing Court in the instant case acted in excess of its jurisdiction in awarding interest to the respondent-judgment-debtor".

Keeping in view the judgment of the Supreme Court in *Krishan Dayal Sharma's* case, (supra) and Division Bench judgment of this Court in *Inspector Sham Nath's* case (supra), the Executing Court cannot redetermine the interest. If the petitioner was aggrieved against the order granting interest at the rate of 12 per cent per annum, the only remedy available with him was to go in appeal. Such objections cannot be raised in execution, particularly when the decree between the parties has become final. The judgment relied upon by the counsel for the petitioner stands impliedly over-ruled by the Division Bench judgment of this Court in *Inspector Sham Nath's* case (supra) and, therefore, the petitioner cannot derive any help from the judgment of this Court in *Makhan Singh's* case (supra).

5. Consequently, the revision petition is dismissed with no order as to costs.