(1992) 09 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 393 of 1991

Mukhtiar Singh APPELLANT

Vs

Punjab National Bank and Others RESPONDENT

Date of Decision : 01-09-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 34
Contract Act, 1872 — Section 128

Citation : (1993) 103 PLR 260

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : None, for the Appellant; S.K. Taunque and K.K. Duggal, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—This revision-petition is against the order of the executing court dated 8-12-1990 whereby objections of the petitioner were dismissed.

2. Briefly put, the Punjab National Bank - the decree-holder-filed an execution application for recovery for a sum of Rs. 78,801.25 paise against the judgment-debtors the loanees as well as guarantors. The guarantor raised objection to the execution on the ground that his property cannot be attached/sold till the decree-holder has exhausted all his remedies against the resorted to in the present case.

3. Decree-holder put in appearance and controverted the averments made by the objectors. It was specifically stated that liability of the objector being a guarantor for the loan was joint and several and so the objector was estopped to say that decree-holder should take measures to recover from the guarantor till such time. The executing court considered the various objections raised by the guarantor, i. e. (i) not properly calculating the principal amount and interest amount separately (ii) objection of the judgment-debtor that attachment of agricultural land of the objector-guarantor-was against law ; (iii) no steps having been taken for attaching the property of the judgment-debtor/loanee which comprised of 3

machines, one electric motor and one takar ; and (iv) the award of future interest beyond 6%. The executing court found no merit in any of the submission made by the judgment-debtor and so dismissed the same.

4. Much emphasis has been laid by the counsel on identical pleas which did not find favour with the executing court. Though the various contentions again sought to be raised could be brushed aside with the simple observation that same is not amenable to the revisional jurisdiction of this court, yet in view of the fact that guarantor- petitioner-is to bear the burnt of the decree I have examined the matter in all its details.

5. The first submission of the learned counsel that it was incumbent upon the executing court to calculate separately the principal amount due and interest which has accrued thereupon in fact lay within the purview of the Court which granted the decree. It is not a matter which can be considered by the executing court. Since the petitioner who too is a judgment debtor did not file any appeal against the judgment and decree which is subject matter of the execution, this objection is without any merit.

6. Even the next contention that future interest could not be awarded exceeding 6% per anum in view of section 34 of the C PC. is too without any substance Admittedly, the loan was advanced for a commercial purpose and so the bar of interest @ 6% per annum is not applicable in sueh like case. Furture interest as agreed between the parties was fixed at 10 1/2 per annum. It is not the case of the judgment-debtor that decree holder has been awarded future interest at the rate exceeding the contractual rate of interest. As regards the objection of the guarantor that loanee''s machines have not been attached, was found to be against the facts on record.

7. The last submission of the petitioner that loan could be recovered from the guarantor after exhausting all the remedies against the principal debtor is too contrary to the language of section 128 of the Contract. Act. Section 128 of the Contract Act, the liability of the surety is extensive with that, of the principal debtor Surety becomes liable to pay the entire amount and his liability is immediate. In fact, unless some special case is made out by the surety, an action initiated against him by the decree-holder cannot be put off only on ground the principal is solvent. Since the liability of the surety is co-extensive, no objection by the guarantor is permissible on such like premises before the executing court. In the present case, the executing court indeed has examined the various aspects of the objections raised in minute detail and found no merit in any of these objections. I feel the impugned order of the executing court is perfectly legal and just in the circumstances of the case. Revision petition is devoid of any merit and is consequently dismissed. No order as to costs.