(2003) 05 P&H CK 0108

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 633 of 1994

Naranjan Singh APPELLANT

Vs

Bank of India, Rajpura RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Citation : (2004) 1 ICC 416 : (2003) ISJ 367 : (2004) 2 LJR 156 : (2003) 4 RCR(Civil) 247

Hon'ble Judges : Satish Kumar Mittal, J

Advocate : Mr. Vikash Negi, Advocate.Mr. B.S. Bhatia, Advocate., Advocates for appearing Parties

Judgement

Satish Kumar Mittal, J.

1. The instant revision petition has been filed by the judgmentdebtors against the order dated 9.10.1993 passed by the Executing Court vide which their objections qua the charging of interest at the rate of more than 6% on the decretal amount, has been dismissed.

2. The case of the petitioners is that they had taken a loan of Rs. 25,500/ from the respondentbank for the purchase of a tractor. The said loan having not been repaid, the respondentbank filed a suit for recovery and sale of the mortgaged property under Order 34 of the Code of Civil Procedure (hereinafter referred to as `the Code''). The said suit was decreed and a decree of Rs. 29,311.95 was passed with costs and interest at the rate of 10.5% per annum with effect from the institution of the suit till realization of the decretal amount. The said decree became final between the parties, as no appeal against the same was filed by the petitioners or by the respondentbank.

3. At the time of execution of the aforesaid decree, the petitioners filed objections to the said decree. The objections of the petitioners were that they had taken the loan from the respondentbank for purchase of a tractor which was for an agricultural purpose. Therefore, in view of the mandatory provisions of

Section 34 of the code, the Court should not have granted interest pendente lite and future interest at the rate of more than 6% on the decretal amount. Awarding of interest on the decretal amount at the rate of 10.5% per annum is totally contrary to the provisions of Section 34 of the Code. Hence, the decree granted by the Court was without jurisdiction and a nullity. The Executing Court cannot execute such decree since the decree under execution provides for an interest at the rate of 10.5% per annum from the date of institution of the suit till the realization of the decretal amount, which is contrary to the provisions of Section 34 of the Code and Rule 11 of Order 34 of the Code.

4. The Executing Court vide impugned order dismissed the aforesaid objections filed by the petitioners while holding that the Executing Court has no jurisdiction to go behind the decree and to see whether the interest on the decretal amount was granted rightly or wrongly. Since the decree between the parties became final as no appeal was filed by the petitionersjudgment debtors against the rate of interest awarded by the Court, the Executing Court cannot go behind the decree and award a lesser interest on the decretal amount. The said order of the Executing Court has been impugned in the instant revision petition.

5. After hearing the arguments of the learned counsel for the both the parties, I am unable to accept the sole contention raised by the learned counsel for the petitioners that awarding of interest at the rate of 10.5% per annum on the decretal amount by the Court in respect of the loan transaction, which is alleged to have taken place for agricultural purpose, is not permissible under Section 34 as well as under Order 34 Rule 11 of the Code; and the Executing Court is not bound to execute such decree where the excess interest pendente lite and future interest has been granted in favour of the respondentbank. The petitionersjudgment debtors did not challenge the aforesaid decree, including part of the decree for which interest at the rate of 10.5% was granted to the decreeholders, by filing an appeal, and the said decree become final between the parties. The question whether the loan was raised for agricultural purpose or for any other purpose could have been raised by the petitioners in the main suit by taking such plea and proving the same. If such plea could have been taken, the Court in the main suit would have returned a finding and would also have considered the question as to at what rate the interest is to be allowed to the decreeholders. But the Executing Court has no power or jurisdiction to go behind the decree and go into such question whether the interest was properly granted or not; and to modify the decree passed by the Court in the main suit. I am unable to accept the contention of the petitioners which they have canvassed on the basis of a decision of this Court in Jagdish Chander v. Punjab National Bank and others, 1994(1) PLR 211 : 1994(1) RRR 209 (P&H) that the Executing Court can go behind the decree qua the part of interest awarded in the main suit and refuse to execute a decree for recovery of interest pendente lite and future interest beyond 6%. It is well settled, as held by the Apex Court in Rameshwar Dass Gupta v. State of U.P., 1996(4) S.C.T. 575 : 1997 ISJ (Banking) 13 (S.C.) that the Executing Court cannot travel beyond the order or decree under

execution. It gets jurisdiction only to execute the decree in accordance with the procedure laid down under Order 21 of the Code. The Executing Court cannot exceed its jurisdiction while granting interest when no interest has been granted in the decree or while reducing the interest to the rate of interest granted in the decree. This Court in M/s. Tilak Raj Ashok Kumar v. Union Bank of India, 1998(3) RCR(Civil) 551 has held that it is well settled that the Executing Court has no jurisdiction to vary or modify the rate of interest granted in the decree and is bound to execute the same as it is, except in cases where the decree sought to be executed is void and a nullity. If the judgmentdebtor is aggrieved against the grant of interest on excessive rate, he should avail his remedy of appeal and get the main decree modified, but it is not open for him to raise such objection before the Executing Court to reduce the rate of interest. Similarly in Fauja Singh v. Punjab National Bank, Ludhiana, 1998(3) RCR(Civil) 553, it has been held by this Court that the Executing Court is bound to execute the decree as it is and it has no jurisdiction to modify or vary the decree unless it is shown that the decree is without jurisdiction or is otherwise not capable of being executed. Similar view was taken by this Court in Inderjit v. Punjab National Bank, 1999 ISJ (Banking) 507.

In view of the aforesaid legal and factual position. I find no merit in the instant revision petition and the same is hereby dismissed.

Revision dismissed.