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(1998) 05 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1672 of 1991

Oriental Bank of Commerce — APPELLANT

Vs

Shri Chandu and Others — RESPONDENT

Date of Decision : 12-05-1998

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 4

Citation : (1998) 119 PLR 798

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : Ravinder Chopra and R.S. Chohan, for the Appellant; Ram Chander, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—Plaintiff-petitioner filed a suit for the recovery of Rs. 76,362.26 against the respondents by averring that the respondents took a loan of Rs. 55,000/- from the plaintiff-bank and executed certain loan documents. Since the amount was not repaid despite demand, the plaintiff-bank filed a suit for recovery. During the pendency of the suit, defendant No. 1 and his counsel made a statement in the Court admitting the claim of the plaintiff. It was, however, prayed that the decretal amount may be ordered to be paid in instalments. The trial Court thus in view of the statement of defendant No. 1 and his counsel decreed the suit against the defendants by judgment and decree dated 25.5.3987 for the recovery of Rs. 76,362.26 paise with costs and with future interest at the rate of 12.5% per annum to be calculated on the balance principle amount from the date of filing of the suit till the date of realisation. The defendants were allowed to make payment in instalments as detailed in the judgment. It was further ordered that in default of payment of any instalment in time the plaintiff shall have the right to recover the balance amount in lump sum by executing the decree and by selling the mortgaged land and the hypothecated tractor. It appears that the amount was not paid as ordered by the trial Court and the plaintiff ultimately sought execution of the decree by filing execution application. In execution proceedings, the defendants filed objections alleging inter alia, that since the loan was raised for the purchase of a tractor and thus it was a loan for agricultural purpose, therefore, the trial Court could grant interest only at the rate of 6% per annum from the date of decree. The executing court considered the objections filed by the judgment debtors and allowed the same by its order dated 9.3.1993 whereby it reduced the rate of interest from 12.5% as granted by the trial Court to 6% per annum from the date of decree. The executing Court came to the conclusion as under :-

"The suit was filed under Order 34, Rule 4, CPC but the decree was passed for payment of decretal amount by way of instalments. The first instalment was for Rs. 50,000/- payable on or before 30.11.1987. JDs have failed to pay any of the instalments.

Since the loan was raised for the loan was raised for the purpose of tractor i.e. for agricultural purpose, it is observed that JDs are liable to pay interest only at the rate of 6% per annum from the date of the decree. The objection petition of the JDs is decided accordingly."

It is in these circumstances, the decree-holder bank has filed this revision, petition challenging the above order of the executing court.

2. Learned counsel for the petitioner submitted that the trial court granted interest at the rate of 12.5% per annum on the principal amount from the date of filing of the suit till the date of realisation but the executing court erred in reducing the rate of interest to 6% per annum from the dale of decree as it had no jurisdiction to do so. Learned counsel for the petitioner in support of his submission placed reliance on a judgment of the Supreme Court in N.M. Veerappa Vs. Canara Bank and Others, .

3. After hearing learned counsel for the parties and perusing the impugned order. I am of the opinion that the contention has merit. 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 void or not capable of being executed. Learned counsel for the respondents has not been able to show either of the three. In this view of the matter, this petition is allowed and the impugned order is set aside. No costs.

