
(1989) 11 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1646 of 1989

Parshotam Dev Dhir and Co. and Another	APPELLANT
Vs	
New Bank of India and Others	RESPONDENT

Date of Decision : 07-11-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 4, Order 41 Rule 6, 115

Citation : (1990) 97 PLR 382

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : Satya Parkash Jain, for the Appellant; Raj Kumar, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This revision petition is directed against the order of the District Judge, Ju(sic), dated May 18, 1989, whereby at the time of the admission of the appeal, the execution of the money decree was stayed. If the judgment debtors furnished Bank guarantee equivalent to the decretal amount before the executing Court within a month failing which the stay order was to stand vacated automatically.

2. At the time of the motion bearing, it was contended that the impugned order is based upon the non consideration of Order XXXIV" Rule 4 sub rule (1) and Order XLI Rule 6, Code of Civil Procedure, (hereinafter called the Code)

3. The learned counsel for the petitioners submitted that since the decree is based upon the property mortgaged, sufficient security was already there with the Bank decree-holder and, therefore,, the question of furnishing Bank Guarantee did not arise. According to the learned counsel, the decretal amount could be realised from the sale of the mortgaged property. On the other hand, the learned counsel for the decree-holder Bank submitted that the decree is only for recovery of the amount and is not under order XXXIV Rule 4. as provided" under the Code Moreover, argued the learned counsel, Order XLI Rule 6 is

attracted, before the executing Court and not in the appellate Court where the appeal is pending.

4. After hearing the learned counsel for the parties, I do not find any merit in this revision petition.

5. It is not a decree under Order XXXIV Rule 4 of the Code, for sale of the property mortgaged, It is a simple decree for recovery of money and, therefore, the provisions of Order XXXIV Rule 4 of the Code are not applicable. Order XLI Rule 6 of the Code inter alia provides that where an order; is made for the execution of a decree from which an appeal is pending, the Court which passed the decree, shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property. Therefore, it is evident that such a plea if any may be available before the executing Court. Consequently, this revision petition fails and is dismissed with costs. However, since the operation of the impugned order was stayed by this Court at the time of the motion hearing, the petitioner judgment debtors are allowed one month from today to comply with the impugned order.