(1990) 12 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : C.R. No. 1577 of 1989

Punjab National Bank APPELLANT

Vs

Rajinder Kumar (Died) alias Rajinder Singh through his L.Rs RESPONDENT

Date of Decision : 05-12-1990

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1991) 99 PLR 340

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

Bench : Single Bench

Advocate : R.S. Cheema and Rajiv Trikha, for the Appellant; S.K. Mittal, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, C.J.—This petition is directed against the order of the executing Court dated 24.1.1989, whereby the interest allowed by the trial Court in the suit was varied.

2. The decree-holder bank got a consent decree against the defendants for recovery of Rs. 98542/ along with proportionate casts of the suit By virtue of the said decree the plaintiff bark was further entitled to interest at the rate of 12. per cent per annum from the date of institution of the suit till its realisation. According to the executing Court, the plaintiff-bank was entitled to interest at the rate of 6 per cent per annum after passing of the decree till realisation of the decretal amount.

3. The learned counsel for the decree holder submitted that the executing Court could not go beyond the decree. It was a consent decree passed on the basis of statement made by the deferdants by virtue of which they were allowed to make the payment by instalments. He farther submitted that whether it was commercial transaction or not was a question of fact which could be agitated in the Suit itself. No such objection was taken either in the suit or in the objection

petition filed by the judgment debtors. In the absence of any such objection, the executing Court bad no jurisdiction to vary the rate of interest. On the other hand, the learned counsel for the judgment- debtors-respondents submitted that the question regarding rate of interest could be gone into by the executing Court. In support of his contention, the learned counsel referred to Krishan Lal Vs. State Bank of Patiala and Others, ; Kaka Singh Vs. Chand Singh, and Sukhchain Singh Vs. Punjab and Sind Bank, He further submitted that the total amount has already been paid and, therefore, it was not a fit case to be interfered with in the revisional jurisdiction.

4. After hearing the learned counsel for parties and going through the case law cited at the Bar, 1 am of the view that since it was a conseat decree, the executing Court could not go behind the same. In any case, whether the transaction was a commercial one or not was a question of fact which was neither agitated before the civil court nor at the time of execution. In the absence of any such plea by the judgment-debtors, the executing Court had no jurisdiction to vary the rate of interest. The judgments referred to by the learned counsel have no applicability to the facts of the present case and are clearly distinguishable. Consequently, this petition succeeds and the impugned order is set aside. The decree-holder-bank will entitled to interest at the rate of 12.5 percent per annum as allowed by the trial Court, while passing the decree.

