(1989) 11 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3476 of 1987

Rajbir Jagpal Singh and Others — APPELLANT

Vs

Sandeep Kumar Singla — RESPONDENT

Date of Decision : 28-11-1989

Acts Referred:

Citation : (1990) 98 PLR 162

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

Bench : Single Bench

Advocate : C.B. Goel and R.C. Chauhan, for the Appellant; H.N. Mohtan and Harsh Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This is defendant''s second appeal against whom suit for recovery of Rs. 1,40,845 75 was decreed by the trial Court but instalments were allowed whereas in appeal filed by the plaintiff bank the said decree of the trial Court was set aside and a decree as contemplated under order 34 of the CPC was passed for sale of the hypothecated property.

2. Learned Counsel for the defendant appellant submitted that the defendants never contested the suit in the trial Court and, therefore, the suit was decreed and instalments were allowed. According to the learned counsel in such a situation no appeal was competent in the Court of District Judge, Gurgaon.

3. I do not find any merit in this contention. It was not a simple suit for recovery of money the suit was filed under Order 34 for sale of the hypothecated property. Since the trial Court failed to pass the said decree appeal was filed on behalf of the plaintiff-bank and that being so the decree has now been rightly passed by the lower appellate Court under Order 34 C.P.C.

4. Faced with this situation, learned counsel for the appellant submitted that the lower appellate Court has allowed interest at the rate of 12% per annum from the date of the suit till realisation which according to the learned counsel could

not be allowed. Only interest at the rate of 6% was permissible u/s 34 of the Civil Procedure Code. This contention has also no merit in view of the proviso added to section 34 which reads as under :--

"Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction the rate of such further interest may exceed 6% per annum but shall not exceed the contractual rate of interest or where there is no constractual rate, the rate on which moneys are lent or advanced by the nationalised Banks in relation to commercial transactions."

5. No other point has been urged. Consequently, the appeal fails and is dismissed with costs.