
(1990) 10 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1039 of 1990

S. Surinder Singh

APPELLANT

Vs

Smt. Sudesh Rani and Others

RESPONDENT

Date of Decision : 30-10-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, 115, 34

Citation : (1991) 99 PLR 436

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : B.R. Mahajan, for the Appellant; V.K. Jain and S.K. Vij, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—When in satisfaction of a money decree, comprising principal and interest, the judgment -debtor is permitted to pay the decretal amount in instalments, how is the amount paid in such instalments to be appropriated ? In other words, is the amount first to be adjusted against interest and costs and the principal or first against Principal and then interest and costs. Here in lies the controversy raised in this petition.

2. On July 31, 1982, a decree for Rs. 85,500/- was passed against the judgment debtor alongwith interest thereon at the rate of 12 per cent per annum from the date of the suit to the date of the decree and thereafter future interest was payable at the rate of 6 per cent per annum The appeal filed against this decree was dismissed by the lower appellate court on October 20, 1984 and now the matter is pending in this Court in Regular Second Appeal. By an interim order passed by this Court, the decretal amount was allowed to be paid in instalments. The total amount paid so far is Rs. 2,05,500/-. According to the judgment-debtor, the amount actually payable was Rs. 1,83 674 40 paise and he was thus entitled to a refund of Rs. 21,715-60 paise. The case of the decree-holder, on the other hand, was that the judgment debtor still owed him another Rs. 42,066/-

This difference in calculation between the parties being founded upon the manner of appropriation of the amounts paid by the judgment-debtor. It appears that whereas the judgment debtor first adjusted the amounts paid against principal, the decree holder did so against interest and hence this disparity in their claims. The trial Court agreeing with the judgment-debtor has returned the; finding that the judgment-debtor was entitled to refund of an amount of Rs. 21,215 60 paise.

3. The answer to the controversy raised lies in the interpretation of the provisions of Rule 1 of Order 21 of the Code of Civil Procedure. This provision of law came up for consideration Punjab National Bank, Delhi and etc. Vs. Prem Sagar Choudhary and Others, where it was held that payments received by the decree-holder from the judgment debtor have to be applied first towards that part of the decretal amount which bears interest and then against the other amounts." In other words, in a case like the present, payments have first to be appropriated against principal and then interest. Respectfully agreeing with this view the finding of the trial Court to this effect must clearly be upheld and affirmed

4. The next question that arises for consideration is with regard to payment of future interest, namely ; whether such interest was payable only on the principal amount found due from the judgment-debtor or on the entire amount decreed, that is, the principal amount and the interest thereon. Here too, the law is well settled as laid down in Food Corporation of India v. Samaria Co operative Marketing-cum Processing Society Ltd., Samaria Mandi 1987 P.A.J. 108 that as per the provisions of Section 34 of the Code of Civil Procedure, future interest is payable only on the principal sum adjusted. It cannot, therefore, be claimed against the interest awarded on such principal amount.

The order of the trial Court thus warrants no interference in revision. It is accordingly hereby upheld and affirmed and this petition is dismissed with costs. Counsel fee Rs. 500/.