(2001) 08 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 4753 of 1994

Satpal and Brothers — APPELLANT

Vs

Punjab National Bank, Thanesar and Another — RESPONDENT

Date of Decision : 03-08-2001

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2002) 2 CivCC 206 : (2001) 4 RCR(Civil) 741

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Pritam Saini, for the Appellant; Rajesh Garg, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This is a civil revision filed by the petitioners judgment-debtors (for brevity, ''the judgment-debtors'') against the order of the executing Court dated 23rd November, 1994. The Executing Court while rejecting the objections of the judgment-debtors concluded that the decree-holders-respondents (for brevity, ''the decree-holder'') was entitled to interest on the total amount of Rs. 13,387.10 paise although the same includes the interest.

2. The brief facts of the case are that the judgment-debtors had availed a cash credit hypothecation limit upto Rs. 15,000/- on 13th November, 1979 for purchase of cloth etc. for their shop. The decree-holder had sanctioned the said facility to the judgment-debtors on interest at the rate of 13% per annum with quarterly rests under the terms and conditions of hypothecation agreement and a demand pronote dated 13th November, 1979. As a collateral security, the judgment-debtors furnished the guarantee of equitable mortgage by mortgaging the house belonging to one Smt. Vidya Wati and the registered title deed was deposited with the decree-holder on 13th November, 1979. The decree-holder filed a suit against the judgment-debtors for recovery of outstanding amount of Rs. 6,789.50 paise as principal amount and Rs. 6,597.60 paise as interest from the defendants. The averments made by the decree-holder are mentioned in

paragraph 8 of the plaint and the same read as under: -

"8. That according to the bank record and statement of account maintained by the plaintiff in regular course of business, the amount due with interest upto 31st December, 1982 from the defendants comes to Rs. 6,789.50 paise as per copy of account enclosed. Besides the said amount of Rs. 6,789.50 paise a sum of Rs. 6597.60 paise is also due on account of interest from 1st January, 1983 to 2nd December, 1984. Thus, a sum of Rs. 13387.10 paise is due and recoverable from the defendants upto date."

3. The trial court passed the decree on 29th May, 1986 and directed that the decree-holder was entitled to a sum of Rs. 13,387.10 paise by sale of mortgaged property and the decree reads as under:-

"Plaint presented on:4th February, 1984. This suit coming on this day for final disposal before me (U.B. Khanduja, HCS,Sub judge, 1st Class, Kurukshetra) in the presence of Sh. D.P.Goyal, Advocate for the plaintiff and Sh. S.C.Sharma, Advocate for the defendants.

It is ordered that the suit of the plaintiff bank is decreed with costs to the effect that the plaintiff bank is entitled to a sum of Rs, 13,387.10 paise by sale of the mortgaged property, described above, from the sale of hypothecated goods and in case of deficiency the balance amount shall be realised from the other property of the defendants. The plaintiff bank is also entitled to recover interest at the rate of 13% p.a. of the principal amount with quarterly rest with effect from 4th February, 1984 till the realisation of the amount."

4. A perusal of the decree shows that the decree-holder was entitled to recover interest at the rate of 13% p.a. on the principal amount with quarterly rests w.e.f. 4th February, 1984 till its realisation. In the execution application, the decree-holder made a claim before the Executing Court that it was entitled to charge interest at the rate of 13% p.a. on the whole of the decretal amount of Rs. 13,387.10 paise. However, the contention of the judgment-debtors was that the Executing Court cannot go behind the decree-and the principal amount has to be considered in view of the decree passed, namely interest at the rate of 13% p.a. on the principal amount. The Court while passing the decree after specifying the amount of Rs. 13,387.10 paise, specifically ordered the recovery of interest at the rate of 13% p.a. on the principal amount which is clearly described in paragraph 8 of the plaint by the decree-holder itself.

5. As the amount involved was trivial in nature and substantial amount stood already paid, I have passed an order on 27th July, 2001 directing Sh. Rajesh Garg, learned counsel for the decree-holder i.e. Punjab National Bank was prepared to accept a lump sum amount to settle the accounts finally. However, at the commencement of the hearing, the learned counsel showed the inabilility of the decree-holder to agree to any such settlement.

6. 1 have heard Sh. Pritam Saini, learned counsel for the petitioners and Sh.

Rajesh Garg, learned counsel for the respondent.

7. Sh. Pritam Saini, learned counsel has argued that the Executing Court cannot go behind the decree and embark upon re-determination of decree. For this proposition, he cites the decision in the cases of Tilak Raj Ashok Kumar and Ors. v. Union Bank of India 1999 1 P.L.R. 49 and Fauja Singh v. Punjab National Bank, Ludhiana 1999 1 P.L.R. 103. He submits that the terms of the decree clearly demonstrate that interest @ 13% p.a. was to be recovered on the principal amount with quarterly rests w.e.f. 4th February, 1984. Sh. Saini assailing the impugned order argues that the reasoning adopted by the Executing Court is full of errors inasmuch as the Executing Court has ordered payment of interest on the principal amount and the amount of interest claimed. His second submission is that the decree-holder is entitled to contractual rate of interest and not penal rate of interest. For this proposition, he relied upon the decision in the case of Punjab National Bank v. Malkiat Kaur and Ors.. 2001 A.L.J. 24.

8. Sh. Rajesh Garg, learned counsel for the decree-holder argued that the principal sum should be the amount for which the suit is filed and not the one which is borrowed. According to the leaned counsel, the suit was filed for recovery of an amount of Rs.13,387.10 paise, although the principal sum was Rs. 6,789.50 paise. In support of this proposition, he cites the decision in the case of Bank of Baroda v. Jagannath Pigment and Chem. and Ors. 1996 1 P.L.R. 193 (S.C.) and also the decision in the case of Punjab and Sind Bank v. Jain Rice Mills 2000 I.S.J. 12.

9. I have thoughtfully considered the respective submissions of the learned counsel and find that the Executing Court committed jurisdictional error by going behind the decree. The decree clearly stipulated that the decree-holder was entitled to recover interest @ 13% p.a. on the principal amount with quarterly rest w.e.f. 4th February, 1987 till realization of the amount. The judgment cited by Sh. Rajesh Garg are not attracted to the controversy in the present revision petition. In the case of Punjab and Sind Bank (supra) the words used in the decree were not interest "on principal amount" as it is in the present case. In that case the words used in the decree were interest "on the amount" i.e. the amount decreed. In the last paragraph of the said judgment, this distinction becomes apparent which is as under:-

"Admittedly, the judgment debtors made payments in pursuance of the decree but the dispute has been arisen with regard to the interest. The Executing Court had held that the decree holder is entitled to the interest @ 12.4% p.a. on the principal amount which was advanced to the judgment-debtors. Whereas the interpretation sought by the bank is that the bank is entitled to interest @ 12.5% p.a. on the decretal amount of Rs. 2,55,993.30. I concur with the submission raised by the bank because the words used by the trial court are "The plaintiff bank will be further entitled to charge interest on the amount @ 12.5% p.a. from the date of institution of the suit till realisation." The trial Court has never stated that the bank shall charge interest @ 12.5% on the amount of principal. Rather the words on the amount shall relate to the decretal amount i.e. Rs. 2,55,993.30. In these circumstances the interpretation which has been given by the learned Executing Court in the terms of the decree is erroneous. It is the settled principle of law that the executing Court cannot go behind the decree. The bank will be entitled to charge further interest @ 12.5% p.a. on (he awarded amount of Rs. 2,55,993.30 and the costs as per compromise. The interest wilt be calculated @ 12.5% p.a. for the date of the institution of the suit." In so for as the other judgment rendered by their Lordships of the Supreme Court in the case of Bank of Karoda ''s case (supra) relied on by Sh. Garg is concerned, the same has hardly any bearing on the controversy in hand, in that case, their Lordships of the Supreme Court held as under: -

"The High Court accepted the contention and modified the decree in that it held that further interest should be calculated on the sum borrowed vis-a-vis Rs. 1,20.675.59 paise, and not the principal sum adjudged i.e. Rs. 1,66,759.20 paise. Counsel for the appellant-bank stated that this approach of the High Court runs counter to this Court decision in Corporation Bank Vs. D.S. Gowda and Another, The respondents though served have not chosen to enter an appearance and contest this appeal.

The premise on which the High Court based its impugned decision no longer holds the field in view of the decision in Corporation Bank. 1994 I.S.J. 594. Therefore, the said decision of the High Court must be reversed and the decision of the trial Court restored. The appeal is allowed accordingly with no order as to costs."

10. The aforementioned observations of their Lordships clearly indicate that it was the decree of the Court which was subject matter of appeal and the same is modified by the High Court, it was not the decree in execution that had become final as the facts in the present case are. If the decree holder was aggrieved by the terms of the decree, it was open to it to challenge the decree before the Appellate Court. Having not done that, the decree holder cannot now say that the decree be interpolated in the light of the observations made by their Lordships in Bank, of Baroda''s case(supra) and the provisions of Section 34 of the Code alone, although the decree itself is absolutely clear. This is not within the jurisdiction of the executing Court. In my opinion, once the terms of the decree are absolutely clear and it only stipulated payment of the total amount claimed and granted interest on the principal amount alone, then the decree holder cannot be heard to say that interest on the whole amount is to be paid. Therefore, 1 do not find any substance in the argument of Sh. Garg.

11. The judgment cited by Sh. Saini lends substantial support to his argument. It is trite to observe that the Executing Court cannot go behind the decree and in that context, both the judgment cited by Sh. Saini support this proposition. It may be mentioned that the judgment in Tilak Raj''a case (supra) cited by Sh. Saini is based on the judgment of the Hon''ble Supreme Court rendered in the case of State of Punjab and others Vs. Krishan Dayal Sharma, also find that the

decision in the case of Punjab National Bank (supra) also supports the proposition that the decree holder is entitled to contractual rate of interest and not the penal rate of interest.

12. It is appropriate to mention that while issuing notice of motion, this Court has stayed further recovery from the judgment debtors on 9th December, 1994 and the revision petition was admitted on 21st February, 1995. That interim order is continuing till date.

13. In view of the reasons above, this revision petition succeeds and the impugned order of the trial court dated 23rd November, 1994 is set aside with a direction to the Executing Court to calculate the interest of the principal amount of Rs. 6,789.50 paise @ 13% p.a. with quarterly rests w.e.f. 4th February, 1984. The amount so calculated minus the amount already paid by the judgment-debtors becomes recoverable from the judgment-debtor. The same may be recovered by the decree holder in accordance with the terms of the decree.

