
(1988) 02 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 488 of 1987

Siri Chand and Another

APPELLANT

Vs

Central Bank of India and Another

RESPONDENT

Date of Decision : 23-02-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1988) 02 P&H CK 0052

Hon'ble Judges : S.P. Goyal, J

Bench : Single Bench

Advocate : N.C. Jain and Mr. K.S. Vij, for the Appellant; aj(sic) Kumar Aggarwal and Mr. Kapil Dev, for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

S.P Goyal, J.—The Respondents filed a suit for recovery of Rs. 55,832.87 on account of principal amount and interest, together with, future intrrest at the rate of 41/2% over and above the Reserve Bank of India rate, with monthly restes from the date of the filing of the suit till its realisation, and a decree was, accordingly, passed in its favour. In execution of the decree, some immovable and movable properties of the judgment-debtors were sold, resulting in the recovery of Rs. 128076 00.

2. The present petition u/s 47 of the CPC (hereinafter referred to as the Code) was filed by the judgment-debtors for setting aside the auction and in the alternative for determining the amount due to the decree-holder. Although many-grounds were urged in the objection petition, but two of them which survive for decision of this petition are: -

1. That from the date of decree, interest could not be allowed at more than 6% per annum and that too on the principal amount, and
2. That no compound interest could be allowed.

3. The Executing Court rejected both the objections, being of the view that it could not go behind the decree. Aggrieved thereby, the judgment-debtors have come up in this revision.

4. The provisions of section. 34 of the Code are not procedural in nature and in fact confer a jurisdiction on the Court, which, but for that provision would not be there. So was held by the Supreme Court in *Seth Thawardas Pherumal Vs. The Union of India (UOI)*, , and by a Division Bench of this Court in *State of Punjab Vs. Surrinder Nath Goel*, . It is, therefore, obvious that the Court has the jurisdiction to grant interest after the filing of the suit only in accordance with the provisions of Section 34 of the Code and any order made in contravention thereof would be without jurisdiction. Once it is held that any judgment or decree passed in contravention of Section 34 of the Code would be without jurisdiction, it would be open to challenge even in execution proceedings, being a nullity and void decree. A similar view expressed by a Division Bench of Orissa High Court in *V. Radreenaryan Murty Raju v. Epari Venuqopalam* I. L. R. 1979 (1) Cutt 577 and *P. D. Desai, C. J., in Laxmi Furniture and Saw Mills, Simla Vs. Himachal Pradesh Financial Corporation, Simla*, .

5. The trial Court for its view that the Executing Court could not go behind the decree, relied on two Supreme Court decisions in *Topanmal Chhotamal Vs. Kundomal Gangaram and Others*, *Vesu Dev Dhanji Bhai Modi v. Raja Bhai Abdul Rehman* A. I. R. 19 O. S. C. 1475, but none of them has any bearing on the present case. In both these decisions, orders passed under the Rent Control Acts were found to be within jurisdiction and so it was held that the Executing Court could not go behind the decree. Similarly, the two decisions relied upon by the learned Counsel for Respondent in *Kaushalya Devi and Others Vs. Shri K.L. Bansal*, and *Bahadur Singh and Another Vs. Muni Subrat Dass and Another*, were rendered on different fact and as such provided no support to his contention. In *Vasu Dev Dhanji Bhai Modi's* case (supra), it was held that if the question regarding the jurisdiction of the Court depended upon the investigation of facts, the Execution Court would have no jurisdiction to entertain such an objection. The decision in *Bahadur Singh's* case (supra) rather negatives the contention of the learned Counsel for the Respondent, in as much as the decree for ejectment passed in contravention of Section 13(1) of the Delhi and Ajmer Rent Control Act, 1952, was held to be without jurisdiction and a nullity. It was only with respect to the objection to the validity of the award that the Executing Court was held to be incompetent to entertain an objection once it was made rule of the Court and a decree passed in accordance therewith The Executing Court, therefore, wholly went wrong in rejecting the objections of the judgment-debtors by relying on the above-noted two decisions of the Supreme Court, and thereby illegally refused to exercise jurisdiction vested in it.

6 On merits, the learned Counsel for the Respondent could not urge any argument against the objections raised that the Court could neither grant interest at the rate of more than 6% on the Principal amount nor could it allow

compound interest This petition is, consequently allowed and the two objections noticed above are sustained. The case is remanded to the Executing Court for determining the amount due to the decree-holders in accordance with the rule laid down above and to pass appropriate orders. No costs.