

(1991) 02 P&H CK 0120
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2268 of 1990

Smt. Usha Sachdeva and Another

APPELLANT

Vs

Life Insurance Corpn. of India

RESPONDENT

Date of Decision : 13-02-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, Order 34 Rule 4, 115

Citation : (1991) 99 PLR 579

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

Bench : Single Bench

Advocate : A.P. Bhandari, for the Appellant; B.R. Mahajan and Rajesh Girdhar, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, C.J.—This revision petition is directed against the order of the executing Court dated May 21, 1990. whereby the objections filed on behalf of the judgment debtors were dismissed.

2. The Life insurance Corporation of India filed the suit for the recovery of Rs. 22,305 20, on the basis of the mortgage deed in their favour, under Order XXXIV Rule 4, Code of Civil Procedure, (hereinafter called the Code). The said annum was claimed with future interest at the rate of 15 per cent, per annum and fire insurance premium etc The suit was decreed as the claim was admitted on behalf of the defendants. In execution proceedings, the judgment debtors took the objection as to the future interest as allowed in the decree. The executing Court rejected the same on the ground that the interest was awarded by the Court at the agreed rate of interest.

3. The learned counsel for the petitioners submitted that future interest could not be allowed more than 6 per cent on the decretal amount and in support of the contention relied upon Makhan Singh v. Union Sank of India (1988) 95 P.L.R. 703. On the other hand, the learned counsel for the decre -holder automated

that the interest is to be calculated under order XXXIV Rule 11 of the Code and that being so, the provisions of Section 34 of the Code as such were not applicable to the suit based upon a mortgage. Reliance in this behalf is placed on *State Bank of India v. M/s. Neeru Plastics, Ludhiana* (1984) 86 P.L.R. 382.

4. After hearing the learned counsel for the parties, I do not find any merit in this revision petition

5. Admittedly, the suit was filed for the recovery of the amount on the basis of the mortgage deed for a preliminary decree under Order XXXIV Rule 4 of the Code. Order XXXIV Rule 11 of the Code inter alia provides that in any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as provided therein. thus, the provisions of Section 34 of the Code are not attracted to such a suit Moreover, the decree was passed on the basis of the admission made by the defendants before the trial Court and, therefore, this objection was no more available to him in execution proceedings.

6. Consequently, this revision petition fails and is dismissed with costs. The parties are directed to appear before the executing Court on March 12, 1991.