(1997) 07 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 295 of 1989

State Bank of India APPELLANT

Vs

Ram Kumar and Another RESPONDENT

Date of Decision : 04-07-1997

Acts Referred:
Banking Regulation Act, 1949 — Section 21A
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1998) 1 CivCC 13 : (1998) 1 CivCC 13 : (1997) 117 PLR 571 : (1998) 1 RCR(Civil) 109

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : S.C. Nagpal, for the Appellant; V.K. Jain and J.L. Malhotra, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—A suit for recovery filed by the plaintiff petitioner was decreed by the trial court for a sum of Rs. 79,108.90 against the defendants together with costs, and interest at the rate of 12-1/2 per annum from the date of filing of the suit i.e. 25.11.1985 till the date of the decree and future interest at the same rate from the date of decree till realisation of the decreetal amount. The petitioner-bank sought execution of the decree by filing an execution application. Before the executing court, learned counsel for the judgment-debtors made a submission that despite the decree that future interest was to be charged at the rate of 6% per annum. The above submission was made on the strength of the judgment of this Court in Srichand v. Central Bank of India (1988)93 P.L.R. 473 on which a strong reliance was placed. Learned executing court accepted the submission, reduced the rate of interest payable by the judgment debtors to 6% from 12-1/2% per annum as was originally granted by the trial court, by its order dated 1.10.1988 and this is how the plaintiff has filed the present revision petition against the above order of the executing court.

2. Learned Counsel for the petitioner submitted that the impugned order is illegal as the executing court could not go behind the decree and Was bound to execute the same as it is. According to the learned counsel, the order under revision reserves to be set aside. Learned counsel for the respondents, on the other hand sought to justify the impugned order.

3. After hearing learned counsel for the parties and perusing the impugned order, I am of the opinion that the contention of the learned counsel for the petitioner has merit. Trial Court passed a decree for the recovery of Rs. 79,108.90 paise with interest at the rate of 12-1/2% per annum from the date of filing of the suit i.e. 25.11.1985 till the date of decree and future interest at the same rate from the date of decree till realisation of the decretal amount. It is not in dispute that the decree has attained finality. Plaintiff-appellant took out execution wherein an objection was raised by the judgment debtors to the effect that despite the decree, granting interest at the rate of 12-1/2% per annum the executing court could reduce the rate of interest to 6%. The executing court accepted the objection and reduced the rate of interest as noticed above. This in my view was not open to the executing court to do in view of a judicial pronouncement in M/s Shree Bharat Laxmi Wool Store and Ors. v. Punjab National Bank and Anr. (1982) 84 P.L.R. 472. this view is further supported by CPC (Amendment) Act, 1976, wherein u/s 34 it is provided that in case of commervial transactions, the contractual rate of interest should be allowed.

4. Apart from above, in view of the provisions of theProvisions of Section 21A of the Banking Regulation Act, 1949 as inserted by Amending Act 1 of 1984, a trassaction between a banking company and its debtor is not liable to be reopened by any Court on the ground that the rate of interest chareged by the banking company in repect of that transaction is excessive. Thus in view of the provisions afroresaid, the plaintiff-bank, i.e. the decree holder is entitled to contractual rate of interest which was granted by the court decreeing the suit and this could not be interfered with or reduced the executing court as has been done in the present case.

5. For the reasons stated above this revision allowed and the impugned order dated 1.10.1988 passed by the executing court is set aside. No costs.