(1999) 08 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : S.A.O. No. 21 of 1991

Sushil Chand APPELLANT

Vs

Punjab and Sind Bank and Others RESPONDENT

Date of Decision : 25-08-1999

Acts Referred:

Citation : (1999) 3 CivCC 499 : (2000) 124 PLR 329 : (1999) 4 RCR(Civil) 219

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : T.S. Gujral, for the Appellant; H.S. Giani, for the Respondent

Judgement

R.L. Anand, J.—This is civil appeal and has been directed against the judgment dated 28.2.1991 passed by the District Judge, Hoshiarpur, who accepted the appeal of the Punjab and Sind Bank (hereinafter called the ''Bank'') and remanded the case to the trial Court for a fresh decision in the light of the observations made in the judgment which I will re-produce in the later portion of this order.

2. Let me give a few facts of this case in order to make the things clear.

The Bank filed a suit under Order 34 C.P.C. for the realisation of the amount as well as for the sale of the property which was mortgaged with the bank by way of equitable mortgage. The Bank claimed a sum of Rs. 72,205.28 due as on 15.7.1986 and this amount, according to the Bank, was to be realised by the sale of hypothecated taxi besides the sale of a house belonging to defendant No. 1, Sushil Chand, who mortgaged the property with the Bank as a security by way of equitable mortgagee.

The notice of the suit was given to the defendants, Defendant No. 1 admitted the claim of the Bank and only prayed that he may be allowed to pay the amount by way of installments. Defendant No. 2 Ram Singh did not appear before the trial Court. Resultantly, the trial Court passed a decree in favour of the Bank for a sum of Rs. 72,705.28 with costs against both the defendants, who were liable to pay the same jointly and severally. A preliminary decree was also passed in respect of the house under equitable mortgage with the Bank and the same was ordered to be made final for the sale of the mortgaged property besides recovery through sale of hypothecated vehicle if the defendants failed to pay the decretal amount on the scheduled dates. The amount of Rs. 75,205.28 along with interest @ 6% per annum was payable to the Bank starting from 30.10.1988 in equal quarterly instalments ending upto 30.7.1989. It was also made clear by the trial Court that if the defendants committed default in making the payment of the instalments on any scheduled date, it will give the right to the Bank to realise the amount in lump sum.

The Bank was not satisfied with the judgment and decree passed by the trial Court on the ground that the trial Court has not awarded interest in proper manner. The judgment and decree of the trial Court was interfered with the first appellant Court by holding that since both the transactions were commercial, therefore, the future interest should be paid in accordance with the terms agreed and not at the rate 6% per annum.

Moreover, the trial Court was not justified in ordering for the repayment of the amount to the Bank by way of instalments as it was beyond the scope of Order 34 C.P.C. With above observations, the learned District Judge, Hoshiarpur remanded the case to the trial Court to give a fresh decision and pass a a preliminary decree under Order 34 C.P.C. and this time defendant No. 1 Sushil Chand is aggrieved by the judgment passed by the learned District Judge, Hoshiarpur.

3. I have heard Mr. T.S. Gujral, Advocate on behalf of the appellant, Mr. H.S. Giani, Advocate on behalf of the respondent-Bank and with their assistance I have gone through the records of this case.

4. The true facts are that the bank advanced the loan to the defendants. It was a commercial transaction. In this view of the matter, the defendants were liable to pay the agreed rate of interest in terms of the mortgage deed and in terms of the documents of loan of the Bank. On the date of the institution of the suit, a sum of Rs. 75,205.28 was due as on 15.7.1986 and in these circumstances this amount snail carry interest at the agreed rate upto the date of the decree. From the date of the decree till payment the appellant shall pay interest @ 6% per annum.

5. Resultantly, this appeal stands disposed of with the observations that a final decree is passed in favour of the Bank holding that the Bank shall be entitled to a sum of Rs. 75,205.28 along with agreed rate of interest from 15.7.1986 upto 26.7.1988 and at the rate of 6% per annum from 27.7.1988 onwards till the entire payment is made. Of course, the bank will give credit of all the amount which has been received in the account of the judgment-debtor.

