

(1998) 04 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3405 of 1991

Tilak Raj Ashok Kumar and Others

APPELLANT

Vs

Union Bank of India

RESPONDENT

Date of Decision : 30-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11
Constitution of India, 1950 — Article 227

Citation : (1999) 1 CivCC 405 : (1999) 121 PLR 49 : (1998) 3 RCR(Civil) 551

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

Bench : Single Bench

Advocate : Arun Jain, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Garg, J.—Respondent-bank filed a suit for recovery against M/s Tilak Raj and others. Suit was decreed ex-parte by the trial Court by judgment and decree dated 22.1, 1985. The defendants thereafter moved an application dated 3.3.1987 under Order 9 Rule 13 of the Code of Civil Procedure. This application was also dismissed by the trial Court by order dated 28.11.1990. The matter was not taken up any further and the ex-parte decree and the order dismissing the application for setting aside the ex-parte decree attained finality.

2. The petitioners thereafter filed a petition under Article 227 of the Constitution of India for an appropriate direction to the executing Court as the plaintiff had in the meantime taken out execution to calculate the amount due to it, by taking the rate of Interest at 6% per annum and not as per the decree passed by the trial Court on 22.1.1985.

3. Some amount was paid by that the judgment debtors to the decree holder in terms of the interim orders passed by this Court.

4. learned counsel for the petitioners submitted the judgment and decree of the trial Court granting contractual late Of Interest while decreeing the suit in favour

of the plaintiff is palpably wrong and the interest beyond 6% per annum from the date of decree till payment could not be granted.

5. Learned counsel for the decree-holder on the other hand submitted that, the decree passed on 22.1.1985 has attained finality and the executing court, or this court in exercise of jurisdiction under Article 227 of the Constitution of India cannot vary the rate of Interest granted by the court decreeing the suit. The only remedy available to the defendant-petitioner is to get the order regarding interest varied or modified only in appeal against the original decree,

6. After hearing learned counsel for the petitioners and on a consideration of the matter, I am of the opinion that this petition has no merit and the same deserves to be dismissed. It is by now well settled that the executing court has no jurisdiction to vary or modify the rate of interest and is bound to execute the same as it is except in cases where it comes to the conclusion that the decree sought to be executed is void, uncertain and vague and is thus not capable of being executed or that the decree is without jurisdiction. In all other cases, the executing court is bound to execute the decree as it is. The judgment debtors if aggrieved against the decree qua the interest part or otherwise, the only remedy available to them is to take the matter in appeal and get the same modified. It is not open to the executing court to reduce or enhance or even vary the rate of interest. Support for this view can be had from the judgment of the Supreme Court in *State of Punjab and others Vs. Krishan Dayal Sharma*, . In this view of the matter, I see no ground to interfere in exercise of jurisdiction under Article 227 of the Constitution of India. The revision petition is consequently dismissed. No costs.