IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.2349 of 2011 (O&M)
Date of decision:12.01.2015

Surinder Kumar

....Petitioner

Versus

State Bank of India & others

......Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.K.K.Gupta, Advocate, for the petitioner.

Mr.Vikas Chatrath, Advocate, for respondent No.1.

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G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition, filed by the judgment debtor, is to the order dated 12.03.2011 (Annexure P4), passed by the Civil Judge (Jr.Divn.) Ambala City, whereby the Executing Court has directed the judgment debtor to make the payment as per the previous calculations submitted by the respondent-Bank, which amounts to payment of compound interest.

The facts of the case would go on to show that the respondent-Bank filed a suit for recovery of ₹66,716.30 along with the agreed rate of interest against the petitioner and respondents No.2 & 3. The suit was decreed on 15.05.1997 and the defendants were held liable to pay the abovesaid amount @ 13.5% per annum, to be calculated from the date of the institution of suit till its actual realisation. Relevant portion of the decree reads as under:

> "The suit is decreed with costs and a decree for recovery of Rs. 66716.30 Ps. along with interest @ 13 ½% per annum to be calculated on the suit amount from the date of institution of the suit till its actual realization is granted in favour of plaintiff and against the defendants who are held jointly and severally liable to pay the entire decreetal amount."

Objections were filed by the judgment debtors under Section 47 read with Order 21 Rule 58 CPC. The Executing Court accepted the plea that the judgment debtor was liable to pay interest, as has been claimed by the Bank. The Executing Court, vide order dated 14.09.2010 (Annexure P2), dismissed the objections and directed that calculations furnished by the decree holder was according to the terms and conditions agreed between the parties and took the view that the Court could not reduce the amount of interest agreed to be paid *inter se* the parties. The petitioner approached this Court in CR No.6333 of 2010 and this Court remanded the matter to the Executing Court on 29.09.2010 (Annexure P3), to calculate the decretal amount in accordance with the decree which has been passed in favour of the decree holder. Relevant observations read as under:

> "In view of the submissions so made by learned counsel for the petitioner, this revision petition is disposed of with a direction to the Executing Court (Civil Judge, Sr. Division, Ambala City) to calculate the decretal amount in accordance with the decree, which has been passed in favour of the decree-holder, if there is no settlement between the parties after passing of the decree, and the amount so calculated shall be paid by the judgment debtor within one week of the making of those calculations.
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> The revision petition is disposed of accordingly."

Resultantly, the impugned order has been passed whereby the Executing Court has again gone into the issue that if instalments were not paid timely, compound interest was to be charged by the Bank and therefore, the calculations furnished earlier were justified and directed the petitioners to make the payments as per the previous calculations. Relevant observations read as under:

> "As per the directions of the Hon'ble High Court, the JD has to make the payment within one week from making of these calculations. Hence, JD is granted one week time for making the payment to the DH-Bank as per the previous calculations submitted

by the DH-Bank. The application is disposed of accordingly."

Counsel for respondent No.1 has submitted that there were observations in the judgment that the plaintiff-Bank was entitled to recover the amount along with the agreed rate of interest.

The said argument cannot be accepted. The relevant portion of the decree has been reproduced above. The rate of interest was also subject matter of consideration and specific issue as to what was the rate of interest and the entitlement of the plaintiff to charge on the loan amount by the defendant, onus of which was on the Bank, had been framed by the Court. Inspite of the said issue having been framed, the interest was only granted as per the decree, by granting simple interest. The Executing Court is only to take the decree to its logical end and has no jurisdiction to go into the judgment and the reasoning. If there was any mistake in the decree, the Bank could have got it rectified but that was not done. It is settled principle that the Executing Court cannot go beyond the decree as has been noticed vide the impugned order dated 12.03.2011 and also keeping in mind the earlier orders passed in CR No.6333 of 2010 dated 29.09.2010. Reliance can be placed upon the judgment of the Apex Court in ***M/s Century Textiles Industries Ltd. Vs. Deepak Jain & another 2009 (5) SCC 634***, wherein it has been held as under:

> "13. There is no quarrel with the general principle of law and indeed, it is unexceptionable that a court executing a decree cannot go behind the decree; it must take the decree according to its tenor; has no jurisdiction to widen its scope and is required to execute the decree as made. However, the question which falls for consideration in the present case is that when a specific issue regarding the identity of the judgment-debtor had been raised and entertained by the High Court in the first Civil Revision Petition, decided on 21st August, 2002, and the Court having remitted the matter to the Executing Court, the enquiry conducted by the Executing Court in furtherance of the said direction, could its order be said to be without jurisdiction?"

In similar circumstances, the Apex Court in ***Haryana Vidyut Parsaran Nigam Ltd. & another Vs. Gulshan Lal & others 2009 (13) SCC 354*** noticed that where the issues have been framed and the Court, inspite of that, declined the interest and once that was so, the Executing Court was precluded from making such indepth scrutiny regarding the entitlement of the plaintiff. Reference to claim made in the plaint but also to the defence set up by the judgment debtor was not to be resorted to and it was held that the Executing Court had to execute the decree and cannot go behind the decree. Relevant observations read as under:

> "20. As indicated hereinbefore, for the purpose of allowing an objection filed on behalf of a judgment debtor under Section 47 of the Code of Civil Procedure, it was incumbent on him to show that the decree was ex facie nullity. For the said purpose, the court is precluded from making an indepth scrutiny as regards the entitlement of the plaintiff with reference to not only his claim made in the plaint but also the defence set up by the judgment - debtor. As the judgment of the Trial Court could not have been reopened, the correctness thereof could not have been put to question.
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> It is also well-known that an Executing Court cannot go behind the decree. If on a fair interpretation of the judgment, Order and decree passed by a court having appropriate jurisdiction in that behalf, the reliefs sought for by the plaintiff appear to have been granted, there is no reason as to why the Executing Court shall deprive him from obtaining the fruits of the decree.
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> In Deepa Bhargava v. Mahesh Bhargava [2008 (16) SCALE 305], this Court held as under:
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>> "11...An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. A default clause contained in a compromise decree even otherwise would not be considered to be penal in nature so as to attract the provisions of Section 74 of the Indian Contract Act."
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> 21. It is also not a case where this Court can exercise its jurisdiction under Article 142 of the Constitution of India to mould

> an order. The decree passed by the learned Trial Court has attained finality. Whether rightly or wrongly, the judgment of the learned Trial Judge has been affirmed by this Court. It is one thing to say that no right having crystalised in favour of a party to the lis, this Court can mould the relief appropriately, but it is another thing to say that despite the decree being found to be an executable one, this Court will refuse to direct execution thereof.
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> 22. We are not oblivious of the fact that the respondents legally would not have been entitled to the reliefs prayed for by them. However, as a decree has been passed, we do not intend to go behind the same. The Executing Court shall, it goes without saying, execute the decree strictly in terms thereof."

Accordingly, keeping in view the above principle, this Court is of the opinion that the order passed by the Executing Court dated 12.03.2011 is not justified and is liable to be quashed.

Accordingly, order dated 12.03.2011 is hereby quashed. The Executing Court is directed to reconduct the exercise and the Bank shall file its calculations on the basis of the decree by only calculating simple interest. Whatever amount has been deposited by the petitioner, same shall be adjusted.

Revision petition stands allowed in the abovestated terms.

12.01.2015 (G.S.SANDHAWALIA)
sailesh JUDGE