

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3032 of 2016 (O&M)

Date of decision: 19.04.2018

Anup Singh (since deceased through his LRs)

...Petitioner

V/s.

Harbans Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Varun Sharma, Advocate for the petitioner.

Mr. Tarun Sharma, Advocate for

Mr. R.S. Bajaj, Advocate for respondent No. 1.

KULDIP SINGH, J. (Oral)

Heard.

Impugned in the present revision is the order dated 29.02.2016 (Annexure P-3) passed by learned Additional Civil Judge (SD), Jalandhar in the execution proceedings vide which it was held that the interest on the decretal amount is payable till the date decree holder actually withdrew the amount i.e. on 17.06.2009 and till the date it was deposited in the Court i.e. on 10.11.2005. It comes out that decree for recovery of Rs.1,80,437/- alongwith 6% interest was passed in favour of decree holder against the judgment-debtor. During the executing proceedings, there was a dispute regarding calculation of the interest. The decree holder was calculating the interest till the date he withdrew the amount from the Court i.e. 17.06.2009 whereas the judgment-debtor was calculating the interest upto the date when he had deposited the amount in the trial Court i.e. 10.11.2005. The extract from the impugned order shows the dates of the payment:-

“An amount of Rs.86,539/- was deposited towards principal amount along with cost on 11.11.2006. Further, amount of Rs.10,000/- was deposited on 23.12.2005, 23.02.2006, 16.3.2006, 26.04.2006, 08.05.2006, 09.06.2006, 19.08.2006, 13.09.2006 and 11.10.2006. Thus, this amount is to be deducted towards the principal amount. Upon calculation, the total interest comes out to be Rs.9001/-. Amount of Rs.8600/- was already deposited in the Court on 03.05.2008, which was withdrawn by the decree holder. Thus, the balance amount of interest is Rs.401/-only. Therefore, judgment-debtor is ready to pay the amount of Rs.401/-.”

The learned Additional Civil Judge, Jalandhar was referring to Order XXI Rule 1 CPC. He relied upon sub Rule (2) which mandates that when the judgment-debtor deposits the amount in Court then the notice is to be issued to the decree holder either through the Court or directly by judgment-debtor through registered post. In this case, the judgment-debtor did not issue such notice. Therefore, the learned Additional Civil Judge, Jalandhar came to the conclusion that interest is payable when the amount was actually withdrawn by the decree holder. I am of the view that executing Court erred in holding so. Rule 1 sub Rule (2) merely requires that the notice of the deposit should be given by judgment-debtor either by himself or through the Court when the amount was deposited in the Court. It is also the duty of the Court to inform the decree holder that the amount has been deposited. Once the sub Rule (2) does not lay down that interest is payable till the amount is withdrawn by the decree holder in case no notice is issued by the judgment-debtor regarding the deposit of decretal amount, it cannot be held otherwise. The trial Court has apparently taken a wrong interpretation of sub Rule (2). Once the judgment-debtor deposited the amount in Court, the interest on the decretal amount will cease to operate.

As such it is held that no interest is payable from the date of deposit in the Court i.e. 10.11.2005 to 17.06.2009 when the amount was actually withdrawn by decree holder.

Accordingly, the revision is allowed and it is ordered that the interest from 10.11.2005 till 17.06.2009 amounting to Rs.38,436.40 is not payable.

Since the main petition has been allowed, the miscellaneous application pending, if any, stands disposed of.

(KULDIP SINGH)
JUDGE

19.04.2018

Divyanshi

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No