IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-8458-2016
Date of decision:-11.2.2019

Jang Singh and another

...Petitioners

Versus

Smt.Dharamjit Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.G.S. Punia, Senior Advocate with
Ms.Harveen Kaur, Advocate
for the petitioners.

Mr.N.L. Sammi, Advocate
for the respondents.

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H.S. MADAAN, J.

This revision petition is directed against the order dated 28.9.2016 passed by Civil Judge(Jr.Divn.), Rajpura in Execution No.10 dated 2.3.2013 vide which such Court had disposed of the execution being fully satisfied against the judgment and decree sought to be executed.

Briefly stated, the facts of the case are that plaintiffs Jang Singh and Varinder Singh had brought a suit against Smt.Dharamjit Kaur and her two minor sons – defendants seeking possession by way of specific performance of agreement to sell dated 17.5.2005 and in the alternative for recovery of Rs.2 lacs i.e. Rs.1 lac as refund of the earnest money and Rs.1 lac as damages. After contest, the said civil suit was disposed of by Civil Judge(Jr.Divn.), Rajpura vide judgment and decree dated 8.2.2012 and a decree for alternative relief of recovery was passed.

The trial Court has not given details of the relief granted and simply mentioned in the judgment that suit of the plaintiffs was being decreed for alternative relief of recovery. However, in the decree-sheet the alternative relief is mentioned as suit for recovery of Rs.2 lacs i.e. Rs.1 lac paid to the defendants as advance at the time of execution of the agreement to sell and Rs.1 lac as damages and loss of interest and further interest at market rate of 2% per month on Rs.2 lacs.

The plaintiffs had challenged the judgment and decree passed by the trial Court by way of filing an appeal before learned District Judge, Patiala. However, that appeal was dismissed on 7.11.2012.

The decree holders filed an execution application for execution of decree. The JDs came up with an objection petition on the ground that in terms of Section 22(1)(B) of the Specific Relief Act, the decree holder is only entitled for the refund of the earnest money and the amount of compensation could only be allowed/awarded in certain cases and that it could be done only when the plaintiff claimed such compensation in his plaint and that while passing the decree no amount of damages and interest and future interest had been granted by the Court and further that interest claimed by the decree holder at the rate of 24% per annum was not justified more particularly when the JDs had already made payment of Rs.70,000/- on 19.7.2013 to the DHs out of earnest money of Rs.1 lac. That objection petition was contested by the decree holders stating that the alternative relief with interest sought in the plaint in the suit had been allowed by the trial Court as well as by the First Appellate Court and that Section 21 of the Specific Relief Act does not bar the alternative relief of money paid by the DH as advance and in the alternative relief sought to return of money @ 2% per month till realization. The decree holders prayed for dismissal of the objections.

The Executing Court disposed of the objections by following observations:

> *"I have heard the learned counsel for the parties and have also gone through the file with their able assistance. Admittedly, the judgment and decree was passed on 8.2.2012, vide which the suit of the plaintiffs was decreed for alternative relief of recovery and the parties are left to bear their own costs of these proceedings and alternative relief of the plaintiffs was recovery of Rs.2,00,000/- i.e. Rs.1,00,000/- paid to the defendants as advance at the time of execution of the agreement to sell and Rs.1,00,000/- as damages and loss of interest and further interest and with further interest of market rate of 2% P.M. on Rs.2,00,000 and issue was framed 4. Whether in the alternative the plaintiffs are entitled for the recovery of Rs.2 lacs with interest as prayed for? OPP and thereafter suit of the plaintiffs was decreed for alternative relief of recovery and the parties are left to bear their own costs of these proceedings as mentioned above. The JD/objector preferred an appeal qua the said judgment and decree dated 8.2.2012, passed by the then Civil Judge(Jr.Divn.), Rajpura Mrs.Poonam Bansal and the appeal filed by the JD/Objectors was dismissed on 7.11.2012*

and the judgment and decree under appeal was stand upheld and further perusal of the file shows that the DH Jang Singh has received a sum of Rs.70,000/- from JD as part payment of the decreetal amount on 19.7.2013. Furthermore, it is also settled proposition of law that the executing Court cannot go behind the decree and as per the judgment and decree dated 8.2.2012, the suit of the plaintiff/DH was decreed for alternative relief of recovery.

Resultantly in view of the facts and circumstances mentioned above, the objection petition filed by the DH/Objector stand disposed of accordingly. Now the warrant of attachment be issued for 16.4.2015.

The JDs challenged that order allowing the decree holder to collect interest @ 24% on the advance Rs.2 lacs. That revision petition bearing CR No.2768-2015(O&M) was disposed of by this Court vide order dated 9.2.2016 inasmuch as the revision petition was dismissed observing that order passed allowing the interest at the rate claimed by the plaintiffs was justified.

During the execution proceedings the impugned order was passed by Civil Judge (Jr.Divn.), Rajpura to the following effect:

"Today the case is fixed for calculation of interest. Perusal of file reveals that vide order dated 8.2.2012 the suit of the plaintiff was decreed with alternative relief of recovery. It is pertinent to mention here that the plaintiffs

have claimed alternative relief of recovery of Rs.2,00,000/- i.e. Rs.1,00,000/- paid to the defendants as advance given at the time of execution of the agreement to sell and Rs.1,00,000/- as damage and loss of interest along with future interest of market rate of 2% per month of Rs.2,00,000/- It is pertinent to mention here that the judgment debtors have till date paid amount of Rs.6,33,000/-. After calculation of the principal amount and interest amount alongwith costs, total amount comes to Rs.4,19,600/- which includes counsel fees and expenses for filing execution. However, the decree holders are claiming amount of Rs.7,00,000/- approximately by stating that they claimed recovery amount from the date of institution. Perusal of order dated 8.2.2012 clearly reveals that the Court has granted alternative relief of recovery from the date of the order as there is no specific order regarding the decreetal amount awarded from the date of institution. Even it was mentioned in the order dated 8.2.2012 that the parties are left to bear their own costs. However, the decree holders are claiming that they will not withdraw the present execution application and will claim amount in question from the date of institution of the main suit. Perusal of file reveals that till date judgment debtors have paid amount of Rs.6,33,000/- which was also admitted by the decree holders. As judgment debtor Dharamjit Kaur has paid more than the decreetal *amount, as such, she is at liberty to move appropriate application for claiming excess amount paid to the decree holders. On other side, decree holders are not intentionally withdrawing the present execution application despite of the knowledge that they have received excess of the decreetal amount. As such, at this stage, this Court finds no ground to adjourn the case with regard to remaining payment as claimed by the decree holder as judgment debtor Dharamjit Kaur has sufficiently paid amount in excess of the decreetal amount. Accordingly, the present application stands disposed of being fully satisfied. File be consigned to the judicial record room after due compliance.*

This order left the decree-holders aggrieved and they have approached this Court by way of filing the revision petition, notice of which was given to respondent – JDs, who have appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The whole problem arose due to casual and cursory approach adopted by the trial Court. The judgment passed by the trial Court shows non-application of mind. Of the judgment running into almost eight pages, seven pages are devoted to the facts and arguments advanced by the learned counsel. In para No.9 without giving proper reasoning, the Court has observed that the agreement was executed by Balkar Singh. No specific finding is there as to whether the plaintiffs were ready and willing to perform their part of contract and whether they were entitled to specific performance. No cogent and convincing reasons for denying specific performance have been given and further no finding has been given why the Court found plaintiffs to be entitled to refund of earnest money of Rs.1 lac and as to why the trial Court came to the conclusion that the plaintiffs were entitled to damages/interest to the tune of Rs.1 lac. No observation has been made that the plaintiffs had been prejudiced in any manner due to the defendants backing out of the agreement. Not even a word has been discussed that defendants had dragged their feet in the matter and were reluctant to comply with the terms and conditions of the agreement to sell and to come forward to execute the sale deed in favour of the plaintiffs. Why the defendants have been penalized by imposing damages/interest of Rs.1 lac has not been explained. How the trial Court jumped to the conclusion that the plaintiffs were involved in business of commission agency and defendants used to have loan from them and that agreement to sell was executed as a security of loan rather than with an intention to sell the land has been explained. Then the precise relief, which should have been granted has not been mentioned and it has been stated that the suit succeeds and the same is hereby decreed for alternative relief of recovery. The findings with regard to what was the principal amount, what was the interest thereon, the rate thereof, whether pendente lite interest was being granted, if so, at what rate have not been given. The plaintiffs had claimed interest @ 24% which is exorbitant by any stretch of imagination. The trial Court in a mechanical manner without giving a thoughtful consideration granted the same to plaintiffs. The principal amount being of Rs.1 lac, the interest at the most could be granted on the said amount but the trial Court granted interest on the principal amount as well as interest/damages also, that too at very inflated rate. Interestingly, there is no mention of grant of the future interest. Section 34 CPC is a relevant section, which for ready reference is reproduced as under:

> *34. Interest— (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit :*
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> *[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.*
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> *Explanation I.—In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).*
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> *Explanation II.—For the purposes of this section, a transaction is a*

commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

In the instant case, it was certainly not a commercial transaction and future interest @ 6% at the most could have been granted. In the judgment and decree, there is no mention of grant of future interest much less specifying that it was at the rate of 6% per annum. In terms of Section 34 CPC since the decree is silent with respect to payment of future interest, the same is deemed to have been declined.

The judgment and decree passed by the trial Court were challenged in an appeal but these aspects skipped the attention of the First Appellate Court. The matter came up before this Court by way of revision against order allowing the decree holder to collect @ 24% on advance of Rs.2 lacs. The defendants had filed the revision petition; the same bearing CR-2768-2015, which was dismissed by this Court on 9.2.2016. A perusal of the order goes to show that the amount of advance by the plaintiffs to the defendants has been mentioned to be Rs.2 lacs wherein it was actually Rs.1 lac. Taking the advance to be Rs.2 lacs, the order in question has been passed. The whole order is with regard to payment of Rs.2 lacs with interest @ 24% per annum. The claim of the plaintiffs for Rs.2 lacs with interest @ 24 % per annum was accepted. However, this order does not touch anywhere the payment of future interest. When dispute to that extent with regard to recovery of Rs.2 lacs with interest @ 24% per annum was set at rest by this Court; this without a mention therein that future interest was payable. This order cannot be taken to grant interest @ 24% per annum on the suit amount since in terms of Section 34CPC, future interest more than 6% could not be awarded unless it was a commercial transaction. It was certainly not a commercial transaction and as per this provision when there is no specific grant of future interest, the said relief is taken to have been refused and herein in the present case no such future interest was granted by the trial Court as is clear from the judgment and decree. Therefore, this order cannot be interpreted so as to grant of future interest @ 24% per annum on amount of Rs.2 lacs.

Resultantly, the impugned order is set aside. The execution application is ordered to be restored at its original number. The parties through their counsel are directed to appear before the Executing Court on 28.2.2019 at 10:00 a.m.. The Executing Court shall dispose of the application in accordance with law in light of the observations made in this order.

11.2.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No