In the High Court of Punjab and Haryana at Chandigarh

CM Nos. 12353-12354-C of 2018 in/and
RSA- 323 of 2016
Date of Decision: 25.2.2019

Kulwinder Singh

---Appellant

versus

Punjab and Sind Bank and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Arun Singla, Advocate
for the appellant

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Rekha Mittal, J.

CM No.12353-C of 2018

Prayer in this application is for condoning delay of 168 days in filing the application for recalling order dated 16.1.2018.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 168 days in filing the application for recalling order dated 16.1.2018 stands condoned.

Disposed of accordingly.

CM No.12354-C of 2018

Prayer in this application is for recalling order dated 16.1.2018 where by the appeal was dismissed in default.

In view of averments made in the application supported by an affidavit of Sh. Arun Singla, Advocate, counsel for the applicant-appellant and arguments advanced, application is allowed, order dated 16.1.2018 is recalled and the appeal is restored to its original number and stage.

Disposed of accordingly.

<u>Main case</u>

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for recovery filed by the Punjab and Sind Bank (hereinafter to be referred as "the bank") was decreed by the trial court vide judgment and decree dated 30.5.2015 that came to be affirmed by the Additional District Judge, Ambala on 9.10.2015.

Counsel for the appellant (principal loanee) has assailed the judgments primarily on two counts. It is argued that the bank has filed a suit invoking Order 34 Rules 4 to 6 of the Code of Civil Procedure (in short "the Code") but no preliminary decree was passed by the trial court rather a final decree was passed whereby the bank was held entitle to recover Rs. 8,24,595/- inclusive of interest calculated upto 20.12.2011 with pendente lite and future interest @ 9% pr annum from the date of filing of the suit till realization.

Since the courts have not passed a decree with regard to realization of the decretal amount by sale of property stated to be mortgaged with the bank, no useful purpose would have been served by passing a preliminary decree in compliance with the provisions of Rule 4 of Order 34 of the Code. In this view of the matter, contention raised by counsel is not meritorious and accordingly rejected.

Another submission made by counsel is that the court has allowed future interest @ 9% per annum as against the provisions of Section 34 of the Code. The loan was raised from a bank with terms and conditions agreed upon in respect of liability of the loanee to repay the loan alongwith interest at the stipulated rate. As such, I do not find merit in contention of the appellant that future interest @ 9% per annum allowed by the courts is at a higher rate and needs reduction.

No other point has been raised.

For the foregoing reasons, the appeal sans merit and accordingly dismissed in limine.

(Rekha Mittal)
Judge

25.2.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No