

Before : I. S. Tiwana, J.

TARIA,—Petitioner.

versus

AMAR SINGH AND ANOTHER,—Respondents.

Civil Revision No. 1902 of 1990.

17th December, 1990.

*Code of Civil Procedure, 1908 (V of 1908)—S. 34—Scope of—Pertains to the jurisdiction of Court to award future interest—Transaction not commercial—Grant of future interest at more than 6 per cent—Such interest without jurisdiction—Decree null and void to that extent.*

Held, that the decree in question did not relate to any commercial transaction and, therefore, the proviso to S. 34 of the Code of Civil Procedure, was not attracted to the facts of this case in any manner. In the light of this conclusion, it is patent that the interest at a rate higher than six per cent could not be granted by the Court for the period subsequent to the passing of the decree. Since the provisions of S. 34 of the Code of Civil Procedure are not procedural in nature and, in fact, deal with the jurisdiction of the Court to order or direct payment of interest, the said provision could not possibly be ignored and to that extent it has been ignored, the decree is rendered null and void.

(Para 6)

*Petition u/s 115 C.P.C. for revision of the order of the Court of Shri A. K. Verma, HCS, Sub Judge, 1st Class, Dadri, dated 24th April, 1990 rejecting the objections filed by the judgment-debtor and adjourning the case to 21st July, 1990 for report.*

*Claim : Objection under Order 21 & 98 read with section 60 CPC.*

*Claim in Revision : For reversal of order of Lower Appellate Court.*

S. C. Rathore, Advocate with Raj Mohan, Advocate, for the Petitioners.

S. C. Kapoor, Advocate with Naresh Katyal, Advocate, for the Respondents.

#### ORDER

I. S. Tiwana, J.

(1) The petitioner impugnes the order of the executing Court, dated 24th April, 1990, whereby his petition under section 47 of the Code of Civil Procedure, for nullifying the decree sought to be executed against him, was dismissed.

(2) Concededly, he suffered a money decree in favour of the respondent and the relevant operative part of the same is reproduced as under:

“This suit is coming on 18th July, 1988 for final disposal before me (Shri R. K. Bishnoi, HCS, Sub-Judge 1st Class, Dadri), in the presence of Shri Mange Ram, Advocate, counsel for the defendant. It is ordered that the suit of the plaintiff succeeds and is decreed with costs. A decree for a sum of Rs. 5,564 is passed in favour of the plaintiff and against the defendants with interest at the rate of Rs. 1.5 per cent per month from the date of the filing of suit till the date of actual realisation.”

The Court has held that the decree is not violative of Section 34 of the Code of Civil Procedure, in any manner, and proceeded to execute it.

(3) Mr. Rathore, appearing for the petitioner, contends rather vehemently that in the light of the clear language of section 34, Code of Civil Procedure, providing that no further interest subsequent to the passing of the decree can be allowed at a rate higher than 6 per cent, the impugned decree was clearly a nullity as it lays down that the defendant-judgment debtor would be liable to pay interest at the rate of 1.5 per cent per month from the date of the filing of the suit till the date of actual realisation of the amount.

(4) On the other hand, the stand of Mr. Kapoor, learned counsel for the respondents, is that since the objection as to the jurisdiction of Court to pass the decree does not appear on the face of the decree it cannot be held to be nullity. According to the learned counsel, the Court could grant a higher rate of interest as has been done in terms of the proviso to section 34 of the Code of Civil Procedure. In a nut shell, the stand is that in the instant case the liability of the judgment debtor may well have arisen from a commercial transaction and, therefore, the impugned decree is perfectly valid and the Court cannot go behind the decree to examine whether the controversy in the suit related to a commercial transaction or was founded on any other ground.

(5) Having given my thoughtful consideration to the entire matter in the light of the submissions of the learned counsel I, however, find that the stand of the respondent decree-holder deserves to be repelled. By now, it is well laid down that the Court executing a decree cannot go beyond the decree between the parties or their representatives; it must take the decree according to its tenor,

Punjab Woollen Textiles Firm Amritsar and others v. Bank of India  
(I. S. Tiwana, J.)

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and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties. (See A.I.R. 1970 Supreme Court 1475). Equally well laid down is the law that while construing a decree the Court is entitled to look into the pleadings and the judgment that precede it. (See A.I.R. 1960 Supreme Court 388).

(6) Examining the facts in the light of these principles, it is patent from the records that the decree in question did not relate to any commercial transaction and, therefore, the proviso to section 34 of the Code of Civil Procedure, was not attracted to the facts of this case, in any manner. In the light of this conclusion, it is patent that the interest at a rate higher than six per cent could not be granted by the Court for the period subsequent to the passing of the decree. Since the provisions of section 34 of the Code of Civil Procedure are not procedural in nature and, in fact, deal with the jurisdiction of the Court to order or direct payment of interest, the said provision could not possibly be ignored and to the extent it has been ignored, the decree is rendered *null and void*. For this view I seek support from an earlier pronouncement of this Court in *Siri Chand and another v. Central Bank of India Yamunanagar and another* (1). Therefore, I allow this petition to the limited extent that the executing Court shall not realise interest at a rate higher than six per cent for the period subsequent to the date of passing the decree to the date of realisation of the amount. Thus, the impugned order of the executing Court is set aside as indicated above. No costs.

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S.C.K.

Before : I. S. Tiwana, J.

PUNJAB WOOLLEN TEXTILES FIRM AMRITSAR AND OTHERS,  
—Petitioners.

versus

BANK OF INDIA,—Respondent.

Civil Revision No. 1918 of 1990.

13th February, 1991.

*Code of Civil Procedure, 1908 (V of 1908)—S. 2 cl. 2—Indian Contract Act, 1872—Ss. 74—Consent decree in a suit for recovery—Bank choosing to accept certain amount by way concession—Absence*

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(1) 1988 (1) P.L.R. 473.