(8) In the result, the writ petition fails and the same stands dismissed. There is no order as to costs.

J.S.T.

Before Swatanter Kumar, J

GURDEV SINGH & ANOTHER,—*Petitioners*

versus

PUNJAB NATIONAL BANK & OTHERS,—*Respondents*

C.R. No. 4569 of 97

6th February, 1998

Code of Civil Procedure, 1908—S. 34, Orders 21 & 34 and Rl. 11—Bank's suit for recovery decreed alongwith interest at the rate of 12.5% p.a.—Mortgage property—Tractor—Admittedly used not simpliciter for agricultural purposes but on commercial basis—Objection of judgment debtor that interest could not be decreed in excess of 6% p.a. on the loan uptenable—Executing Court cannot go behind decree—Decree having become final could not be varied in execution—Judgement debtor's revision liable to be dismissed.

Held, that the executing Court has to execute the decree strictly in adherence to the terms of decree passed and complete the execution by recording satisfaction of the decree. The decree has to be executed in terms of the provisions of Part II read with Order 21 of the Code of Civil Procedure. The effect of cumulative reading and scheme of these provisions is that the powers of the executing Court are restricted in their nature and scope. The executing Court would have no jurisdiction to go behind the decree and alter its terms and conditions, which could either be altered and changed by the Appellate Court or by the same Court which passed the decree in accordance with law.

(Para 10)

Further held, that altering the terms of the decree must be clearly understood in contrast of construing a decree or interpreting a decree or giving clarity to its terms and conditions. In the garb of the later, the Court cannot create a new decree which is neither intended nor passed by the Court of competent jurisdiction. It is a settled rule of law that what is not permissible directly in law cannot be permissible directly in law cannot be permitted to be achieved indirectly as well. Executing Court can provide clarity, interpret or construe the decree, while keeping the decree as passed by the Court of competent jurisdiction intact and undisturbed. While exercising its jurisdiction if the executing Court in the guise of these

ingredients materially alters the terms and conditions of the decree to the prejudice of any of the parties to the decree, which ought to have, if at all, falls in the domain of Courts of competent jurisdiction, i.e. appellate or the Court passed the decree, certainly the executing Court would outgress its jurisdiction as an executing Court.

(Para 11)

Further held, that a definite prayer was made in the plaint which was contested by the defendant. The Court decided the issue and granted the relief of interest at the rate of 12.5% per annum and passed the decree in terms thereof. The said decree has become final and binding between the parties. The Executing Court would not be in its jurisdiction to come to the conclusion whether the rate of interest awarded by the Court of competent jurisdiction, while passing the lawful decree, was correct or incorrect.

(Para 15)

Further held, that the application filed by the objector ought to have been dismissed at the very threshold as being not maintainable.

(Para 16)

Further held, that agriculture simplicitor generally may find shelter under the explanation carved out under the proviso, but where agriculture is clubbed with the commercial activity, the protection must go. In the present case, definite stand has been taken by the bank that the mortgage/hypothecated property has been used for commercial purpose being the tractor was used by the borrower in fields of other persons for which he had earned money purely on commercial basis. To this stand nothing was placed on record before the trial Court in rebuttal. So, taking the facts of this case on their face value, it is a clear case where the petitioner would not be entitled to the benefit of the exception because tractor was not being used for agriculture purposes simplicitor and had been used as a regular source of income purely on commercial basis.

(Para 18)

Further held, that the Legislature intentionally has not introduced any non-obstante clause in the Code. The language of Section 34 neither opens nor even mentions 'notwithstanding anything contained to the contrary under the provisions of the Code in any other law'. Infact, it does not even mention that anything contained to the contrary in any contract between the parties. In my humble view to read a non-obstante clause into the provisions of S. 34 to frustrate the protection available to the parties under Order 34 of the Code would be an interpretation impermissible in law. The contract between the parties to charge a specific rate of interest *per se* cannot be held to be a void contract or a contract which is opposed to public policy. If parties have entered into a contract (mortgage

deed) the process of law would enforce the contract rather than frustrate the provisions thereof, specially in absence of any legislation principle or subordinate, in support thereof.

(Para 22)

ASHOK JINDAL, Advocate,—*for the Petitioner*

J.S. BHATTI, Advocate,—*for the Respondent.*

JUDGEMENT

Swatanter Kumar, J.

(1) Limitation and scope of powers exercisable by executing Court while executing a decree passed by the Court of competent jurisdiction is the precise question that falls for consideration of the Court in this revision petition.

(2) The facts giving rise to this revision petition fall in a very narrow compass. Respondent-plaintiff Punjab National Bank had filed a suit for recovery of Rs. 1,80,507 as principal with interest in the Court of competent jurisdiction at Sirsa on 21st February, 1990. The suit was contested by the petitioner-defendants. The learned trial Court ultimately passed a decree on 4th January, 1993 against the defendants and in favour of the plaintiff. The relevant part of the decree reads as under :—

> "It is ordered that the suit of the plaintiff bank for recovery of Rs. 1,80,507 succeeds and hereby decreed with cost in favour of the plaintiff bank and against the detendants jointly as well as severally with future interest @ 12.5% per annum which shall be calculated on the principal amount from the date of filling of the present suit i.e. 21st February, 1990 till the realisation of the decretal amount. I accordingly pass a preliminary decree to the effect that the defendants shall pay the decretal amount within three months from the date of passing of this judgement. In default of the defendants, the plaintiff bank shall be entitled to apply for a final decree thereby directing that the mortgaged property or a sufficient part thereof the tractor which was hypothecated by sold, and the proceeds of the sale (after deduction there from of the expenses of the sale) be paid into court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, paid to the defendants, or other persons entitled to receive the same."

(3) It may be noticed here that in the plaint and specially in the prayer clause the plaintiff had claimed interest at the rate of 12.5% per annum based on the plea of mortgage in consonance with the provisions of Order 34 of the Code of Civil Procedure. The Court even in the last para of the judgement had clearly granted future interest at the rate of 12.5% per annum on the amount of principal calculated from the date of filing of the suit till the realisation of the decretal amount. On these basis the trial Court had passed the aforestated decree granting the relief to the bank as aforestated.

(4) As the judgement debtor-petitioners failed to pay the decretal amount and in accordance with the terms of the decree, the Bank is stated to have filed the execution petition for a recovery of Rs. 2,31,931.50. It is during the pendency of the execution proceedings for recovery of the aforestated amount that an application was filed by the judgement debtor-petitioners stating that excess amount has been claimed in the decree. Their submission was that the decree-holder could not claim interest in excess of 6% per annum as the loan was taken for agricultural purposes. In support of this contention reliance was placed upon the case of *Krishan Lal* v. *State Bank of Patiala* (1).

(5) This application filed by the objector petitioner was contested by the bank. According to the bank they were entitled to recover the contractural rate of interest as it is a suit for recovery based on mortgage.

(6) The learned executing Court *vide* its order dated 6th October, 1997 dismissed the application of the objector and directed the amounts to be recovered by auctioning of the mortgaged property and fixed dates for the said purpose. It is this order of the executing Court dated 6th October, 1997 which has been impugned in this revision petition.

(7) The contention of the learned counsel for the petitioners is that the learned trial Court ought not to have granted 12.5% interest as claimed by the plaintiff, but could only grant future interest at the rate of 6% per annum. Further it is contended that the loan was for agricultural purposes and keeping in view the judgement of this Court in *Krishan Lal's case* (supra) the decree of the trial Court in so far as it granted interest in excess of 6% is a nullity.

(8) On the other hand, the learned counsel appearing for the decree-holder herein while supporting the order of the executing Court has argued that :—

(a) The executing Court has no jurisdiction to go behind the decree

(1) 1990 P.L.J. 249

and to alter its terms to the prejudice of one of the parties to the decree;

(b) The loan in question was based on a specific contract between the parties and is a suit for recovery founded on a mortgage. Therefore, the interest chargeable would be 12.5% and not 6%.

(c) That in any case even the tractor in question was used for a commercial purpose because the borrower was using the tractor to plough other fields and was charging money for the same. As such the exception carved out under the provisions of Section 34 of the Code is not applicable to the facts and circumstances of the present case.

(9) It is clear from the above submissions of learned counsel for the parties that the basic question which arises out of the controversy in the present revision is whether the executing Court can at all go behind the decree and alter its terms and conditions. It has become necessary to advert to this discussion in view of the submission of the learned counsel for the bank that the application in the present form was not even maintainable before the executing Court.

(10) Under Section 38 of the Code, a decree has to be executed either by the Court which passed the decree or by the Court to which it is sent for execution.

The executing Court has to execute the decree strictly in adherence to the terms of decree passed and complete the execution by recording satisfaction of the decree. The decree has to be executed in terms of the provisions of Part-II read with Order 21 of the Code. The effect of cumulative reading and scheme of these provisions is that the powers of the executing Court are restricted in their nature and scope. The executing Court would have no jurisdiction to go behind the decree and alter its terms and conditions, which could either be altered and changed by the Appellate Court or by the same Court which passed the decree, in accordance with law.

(11) The legislative intent and meaningful rule of interpretation must necessarily avoid un-necessary and multifarious litigation. The decree which finally determines the controversy between the parties must attain its finality in the real sense of the term and would not be open to alteration of the term and would not be open to alteration in execution. In the case of *Jai Narain* Versus *Kedar Nath,* (2) the Supreme Court had held that Court cannot go into question of executability of decree. An executing Court must take the decree as it stands

(2) A.I.R. 1956 S.C. 359

for the decree in binding and conclusive between the parties to the suit. *(Topan mal Chhota Mal* Versus *Kundu Mal Ganga Ram (3).*

(12) Altering the terms of the decree must be clearly understood in contrast of construing a decree or interpreting a decree or giving clarity to its terms and conditions. In the garb of the later, the Court cannot create a new decree which is neither intended nor passed by the Court of competent jurisdiction. It is a settled rule of law that what is not permissible directly in law cannot be permitted to be achieved indirectly as well. Executing Court can provide clarity, interpret or construe the decree, while keeping the decree as passed by the Court of competent jurisdiction intact and undisturbed. While exercising its jurisdiction if the executing Court in the guise of these ingredients materially alters the terms and conditions of the decree to the prejudice of any of the parties to the decree, which ought to have, if at all, falls in the domain of Courts of competent jurisdiction, i.e. appellate or the Court passed the decree, certainly the executing Court would outgress its jurisdiction as an executing Court.

(13) For exemple, executing Court may look into the proceedings to find out the correct meaning of the decree and consequently may provide some clarity to the decree and may construe the decree to effectively implement the decree *Bhavan Vaja and others* Versus *Solanki Hanuji Khodaji Mansang and another* (4). But the executing Court cannot entertain an objection that decree is incorrect in law or on facts *Vasudev Dhanjibhai Modi* Versus *Rajabhai Abdul Rehman* (5). The above view has been reiterated by the Hon'ble Supreme Court of India consistantly. The scheme of the code with specific emphasis to the provisions relatable to the powers of the executing Court can no way be interpretted to vest it with the power of nullifying or altering a lawful decree.

(14) The principles aforestated are not open to any disarray. Permitting an executing Court to alter the terms of the decree would be opposed to all settled canons of Civil Jurisprudence. A decree which has been passed and has not been assailed in the regular appeals, which were available to the parties against whom the decree was passed, such party cannot be permitted to abuse the process of law before the executing Court to alter the decree, which has attained finality in all respects. The parties have a remedy of applying for review in accordance with law. The review of a decree has to be by a Court which passed the decree and such a jurisdiction would not be available to the Executing Court in execution proceedings. The channels of remedies available to a litigant must be exploited in their respective fields without transgression of basic and inherent jurisdiction vis-a-vis the other. The settled doctrine of finality of proceedings would stand minatory if the interpretation suggested by the objector is accepted.

(3) A.I.R. 1960 S.C. 388
(4) A.I.R. 1972 S.C. 1371
(5) A.I.R. 1970 S.C. 1475

(15) Aforestated well established principles of law have been reiterated with approval by the Hon'ble Supreme Court of India in a very recent judgment in the case of *Rameshwar Das Gupta* Versus *State of U.P. and another*(6), where commenting upon somewhat similar question, the Court held as under:—

> "It is well settled legal position that an executing Court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21, CPC.
>
> XX XX XX
>
> The question that arises is whether the executing Court could step out and grant a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution? In our view, the executing Court has exceeded its jurisdiction and the order is one without jurisdiction and is hereby a void order. It is true that the High Court normally exercises its revisional jurisdiction under Section 115, CPC, but once it is held that the executing Court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, we do not find any illegality in the order passed by the High Court in interfering with and setting aside the order directing payment of interest.

(16) Approaching the facts of the present case on the basis of the above enunciated principles the Court cannot overlook the facts that the suit in question was a mortgage suit based on a specific contract between the parties.

A definite prayer was made in the plaint which was contested by the defendant. The Court decided the issue and granted the relief of interest at the rate of 12.5% per annum and passed the decree in terms thereof. The said decree has become final and binding between the parties. The executing Court would not be in its jurisdiction to come to the conclusion whether the rate of interest awarded by the Court of competent jurisdiction, while passing the lawful decree, was correct or incorrect.

It could only enter into the computation with reference to pleadings etc. and may deal with other anciliary question relating to the satisfaction of the decree as passed by the Courts. The controversies of the afore-kind could only be the subject matter of a review or appeal, as the case may be. The Court passing the decree does not for all purposes looses its jurisdiction and in any case the Code specifies definite provisions for giving jurisdiction which passed the decree,

(6) A.I.R. 1997 S.C. 410

or the Appellate Court in case of an appeal. Reference can be made to the case of *Mohinder Singh* Versus *Gurdial Singh and another*(7).

(17) In view of the above discussion. I would have no hesitation in holding that the application filed by the objector ought to have been dismissed at the very thresh-hold as being not maintainable.

(18) Provisions of Section 34 of the Code do provide the rate of interest which the Court may grant to a decree holder while passing the decree on account of interest pendente lite and future interest. Proviso to Section 34 carves out an exception to the effect that if the transaction is a commercial transaction, the rate of future interest may exceed 6%, but shall not exceed the contractual rate of interest. The expression commercial transation has been explained under explanation (ii) to sub-section (1) of Section 34 of the Code. According to this a transaction is a commercial transaction if it is connected with the industry, trade or business of the partly incurring the liability.

(19) Agriculture simplicitor generally may find shelter under the explanation carved out under the proviso, but where agriculture is clubbed with the commercial activity, the protection must go. In the present case difinite stand has been taken by the bank that the morgage/hypothecated property has been used for commercial purpose being the tractor was used by the borrower in fields of other persons for which he had earned money purely on commercial basis. To this stand nothing was placed on record before the trial Court in rebuttal. So, taking the facts of this case on their face value, it is a clear case where the petitioner would not be entitled to the benefit of the exception because tractor was not being used for agriculture purposes simplicitor and had been used as a regular source of income purely on commercial basis. The judgment of this Court in the case of Krishan Lal (supra) as well as the case of *Jagdish Chander* Versus *Punjab National Bank and others* (8) would be of no help to the present petitioners because in these cases the stand of the petitioner was not that the borrower had not breached the contract. He had used the hypothecated items purely for a transaction which could be termed as commercial transactions.

(20) Another factor which needs to be pondered as a necessary corollary is the effect and application of the provisions of Section 34 in face of the clear provisions of Order 34 of the Code. Provisions of Order 34 is a self-contained Chapter within the Code itself. The suits relating to mortgage are filed, persued, decreed and the decree executed under the provisions of this order. A clear distinction has been made by the Legislature in the ordinary suits of recovery and

(7) 1997 (1) Indian Civil Cases 803
(8) 1994 P.L.J. 304.

the mortgage suits filed under this special Order. Rule 11 of Order 34 clearly postulates what interest is payable in relation to such suits which are controlled under the provisions of Order 34 of the Code. The said rule specifically stipulates the extent and manner of the interest which the Court may award pendente lite and future. Rule 11 of Order 34 of the Code has a restricted and limited application to the morgage suits only, while Section 34 is a provision of larger scope and application. The provisions of Order 34 would apparently be specific and special provisions in relation to the general provisions contained in the Code, more particularly, Section 34 of the Code. In the case of *Punjab National Bank* Versus *Ram Darshan Singh and others*(9), a Bench of this Court had the occasion to discuss in some elaboration this question. While relying upon the judgment of the Supreme Court in the case of *State of Punjab* vs. *Krishan Dayal Sharma,* (10), the Court held as under:—

> "The decree specifically stated that the amount could be recovered by sale of mortgaged property. This is, thus, a decree under Order 34 and the provisions of Rule 11 of Order 34 would apply and not the provisions of Section 34 of the Code of Civil Procedure. This is the view which has been taken in Chanan Singh's case (supra). Thus, the Court granting the decree rightly determined the principal amount and the rate of interest payable thereon, which was the agreed rate between the parties."

(20) Similar view was taken by this Court in the cases of *Ishwar Singh* vs. *United Commercial Bank,* (11) and *Santa Singh* vs. *Punjab National Bank,* (12) .

(21) A bare reading of the provisions of Section 34 and Order 34 Rule 11 of the Code admit no conflict between them. They are distinct and different provisions which must operate in their own field without being meddlesome to the sphare of the other. Mortgage suits are based upon a special contract. The terms and conditions of the mortgage including the rate of interest is the essence of contract between the parties, but for the terms and conditions contained therein the banker would not have advanced loan to the borrower. The contract provides for a specific rate of interest and if such a rate of interest is awarded by the Court after due deliberations at the time of passing of the decree, it cannot be altered or

(9) (1994-2) P.L.R. 122
(10) A.I.R. 1990 S.C. 2177
(11) 1996 ISJ (Banking) 114
(12) 1996 ISJ (Banking) 114

varied by the executing Court. The relief which is declined or granted by the Court of competent jurisdiction, which passed the decree, cannot be frustrated to the disadvantage and prejudice of the other party by the executing Court, because under no circumstances the executing Court sits in appeal over the judgment and decree passed by the Court of competent jurisdiction.

(22) The Code of Civil Procedure is a procedural law and cannot be compared as such to the provisions of a substantive penal or criminal law. The provisions of Section 34 have been carefully worded by the law makers. The Legislature intentionally has not introduced any non-obstante clause in the Code. The language of Section 34 neither opens nor even mentions notwithstanding anything contained to the contrary under the provisions of the Code in any other law. In fact it does not even mention that anything contained to the contrary in any contract between the parties. In my humble view to read a non-obstante clause into the provisions of Section 34 to frustrate the protection available to the parties under Order 34 of the Code would be an interpretation impermissible in law. The contract between the parties to charge a specific rate of interest per se cannot be held to be a void contract or a contract which is opposed to public policy. If parties have entered into a contract (mortgage deed) the process of law would enforce the contract rather than frustrate the provisions thereof, specially in absence of any legislation principle or subordinate, in support thereof. In the case of *Gurnam Singh* vs. *UCO Bank*, (13), a Bench of this Court held as under:—

> *"In Everest Industrial Corporation and other* v. *Gujarat State Financial Copn. AIR 1987 S.C. 1950* the Apex Court has held that even under the Code of Civil Procedure the question of interest payable in mortgage suits filed in Civil Courts is governed by Order 34 Rule 11 of the Code and not by section 34, which may be applicable only to cases of personal decrees passed under Order 34 Rule 6 of Code.
>
> In the present case, admittedly the judgment-debtors-petitioners mortgaged their land as a security for the due payment of the advanced loan. Thus, it is obvious that it was not a loan for agriculture purpose only and in such cases the provisions of section 34 of the Code are not applicable but interest is chargeable under Order 34 Rule 11 of the Code."

(23) It will be pertinent to make reference at this stage to a very recent judgment of the Hon'ble Apex Court in the case of *N.M. Veerappa* vs. *Canara Bank and others*, (14). Where the Hon'ble Supreme Court held that Section 34

(13) 1997 ISJ (Banking) 482
(14) J.T. 1998 (1) S.C. 221

has no application to the mortgage suits which are controlled by Order 34 Rule 11 of the Code and Court could only exercise its discretion within the limits provided thereunder.

(24) In view of the detailed discussion. the submissions raised on behalf of the respondent/bank merit acceptance, while those raised on behalf of the petitioners need to be rejected. The learned executing Court has rightly held that the Bank was entitled to the rate of interest granted to it under the decree and such rate of interest could not be varied to 6% per annum instead of 12.5% per annum, which was decreed by the Court. The order does not suffer from jurisdictional or other error apparent on the face of the record which would call for any interference by this Court in exercise of its revisional jurisdiction.

(25) No other point was raised by either of the counsel in these proceedings.

(26) Inevitable conclusion of the above discussion is that present revision petition has no merit and the same is hereby dismissed. Though without any order as to costs.

R.N.R.

Before Swatanter Kumar, J

ANUP SINGH & ANOTHER—*Petitioners*

versus

CHANDER KANT PRUTHI & OTHERS,—*Respondents*

C.R. No. 54 of 1998

5th March, 1998

Code of Civil Procedure, 1908—Order 1 Rl.10—Suit for specific performance—Transferee purchases land from vendor—Whether can be impleaded as a party to the suit.

Held, that once the parties are already in Court and dispute relates to the same subject matter and the parties claim their interest and rights through the same party, it would be proper to adjudicate and determine the disputes completely and finally. When the Court comes to the conclusion that such a party is necessary for complete and final determination of the controversy, the applicant should normally be impleaded as party to the proceedings. Avoidance of multiplicity of litigation alone by itself may not be ground for impleadment, but it is certainly a relevant factor which must weight in the mind of the Court while deciding such an application because prevention of such unnecessary multiplicity of litigation is the very foundation and spirit of the procedural law like the Code of Civil Procedure.

(Para 6)