

(1990) 05 P&H CK 0026

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2931 of 1989

J.C. Woollen Mills and
Others

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision: May 15, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 6A, Order 41 Rule 1, 115

Citation: (1991) 2 ILR (P&H) 258 : (1990) 98 PLR 339 : (1990) 2 RCR(Rent) 382

Hon'ble Judges: J.V. Gupta, Acting C.J.

Bench: Single Bench

Advocate: M.L. Sarin and Jaishree Thakur, for the Appellant; R.K. Chhibber and M.M. Chaudhary, for the Respondent

Judgement

J.V. Gupta, Acting C.J.

This revision petition is directed against the order of the Executing Court dated June 6, 1990, whereby the application for amendment of the judgment and decree filed under Sections 151/152 C. P. C. was allowed.

2. The bank filed the suit on July 18, 1978 for the recovery of Rs. 1,32,769.80 paise. The suit was for the recovery from the defendants as well as by sale of the mortgaged property. The said suit was decreed on November 24-1980. The decree passed was on the following term; "In view of the observations made above, the suit of the plaintiff for the recovery of Rs. 132,769.80 paise is hereby ordered to be decreed in favour of the plaintiffs and against the defendants with costs of the suit. The plaintiff is also entitled to recover future interest on the said amount at the rate of Rs. 13 per cent per annum from the date of the institution of the suit till the realisation of the entire decretal amount. Decree sheet be prepared and the file be consigned to the record room after necessary completion and in due course of time." The execution of the said decree was sought on August 21, 1984. During the

pendency of the execution application, the present application under Sections 151/152 C. P. C. dated August 9, 1988 was filed seeking correction of the judgment and the decree by the decree-holder Bank. There were two specific issues whether any equitable mortgage of the properties was created and by whom and in respect of which property; and if his issue is proved, what was the mortgage amount due and against which property. Since both these issues were decided in favour of the plaintiff decree holder the decretal amount was recoverable by sale of the mortgaged property. However, according to the decree holder this was not so mentioned in the decree-sheet and, therefore, the decree was not in conformity with the judgment. The said application was contested on behalf of the judgment debtor, inter alia, on the ground that the executing Court could not go beyond the decree and the decree was in accordance with the judgment as contained in its last paragraph. The executing Court came to the conclusion that in view of the fact that in para No. 23 of the judgment dated 24-11-1980, the sub Judge held that defendants Nos. 2 and 3 both deposited the sale deeds with intent to create equitable mortgage as collateral security for repayment of loan by defendants 2 and 3. It was held that the decree should have been for the recovery of suit amount by sale of mortgaged properties. Consequently, in the interest of justice the application was allowed and ordered the amendment of the decree dated 24-11-1980 to the effect that the suit amount be recovered against the defendants-judgment debtors by sale of mortgaged properties mentioned in the judgment. Dissatisfied with the same, the judgment debtors have filed this petition in this Court.

3. Learned counsel for the petitioners submitted that the executing Court could not go beyond the decree, the application was barred by time; that the decree was in accordance with the last paragraph of the judgment as provided under Order 20, Rule 6-A C. P. C. and in any case, even if the amendment was to be made, a preliminary decree could be passed under Order 34, Rules 4 and 5 C. P. C., so that the judgment debtors could file an appeal against the said decree.

4. On the other hand, learned counsel for the decree-holder submitted that since it was a clerical omission and the decree was not in accordance with the judgment particularly keeping in view the finding under issues Nos. 8 and 9, the necessary correction has been rightly made by the Executing Court. According to the learned counsel the Executing Court has the power to amend the decree. In support of this contention reference was made to [Balwant Singh and Another Vs. Jagdish Singh, Cheema](#), and Dalip Singh v. Inder Singh 1970 P.L.J. 673. Arguments were also raised that since substantial justice has been done, this court should not interfere in revisional jurisdiction.

5. After hearing the learned counsel for the parties, I am of the considered view that no such amendment could be allowed to be made by the Executing Court. Such an amendment, if any, could be sought by the plaintiff from the Court which decreed the suit. Order 20, Rule 6-A, Civil Procedure Code, provides, the last paragraph of the

judgment shall state in precise terms the relief which has been granted by such judgment. It further provides that an appeal may be preferred against the decree without filing a copy of the decree and in such a case the last paragraph of the judgment shall for the purposes of Rule I of Order XLI, be treated as the decree. In any case, the amendment sought in the decree could not be made in execution proceedings because the judgment debtors in that case have a right of appeal against the decree which may be passed after amendment. The course adopted by the decree-holder for seeking amendment of the decree in execution proceedings was not in accordance with law. The amendment sought is of a substantial nature and the amendment, if any, could be allowed by the Court which passed the decree, so that the aggrieved party may file an appeal against the decree which may be passed after the amendment.

6. Consequently, this revision petition succeeds and the impugned order is set aside with no order as to costs. However, it will not debar the plaintiff decree-holder to seek amendment of the decree or to seek any other remedy which may be available to him under the law.