

Neutral Citation No. - 2023:AHC:232453

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 4456 of 2023

Petitioner :- Ravindra Singh Sirohi

Respondent :- Ranjeet Singh Sirohi

Counsel for Petitioner :- I. N. Singh, Janardan Yadav

Counsel for Respondent :- Chetan Chatterjee

Hon'ble Jayant Banerji, J.

1. Heard Shri I.N. Singh, along with Shri Janardan Yadav, learned counsel for the petitioner and Shri Chetan Chatterjee, learned counsel appearing for the sole respondent.

2. This petition has been filed challenging the orders dated 20.07.2019, 20.04.2022 and 04.03.2023 passed by the court in Execution Case No.07 of 2006 that is stated to be pending in the court of the Additional District Judge, Court No.15, District Saharanpur.

3. It appears from the record of this petition that Original Suit No.133 of 1978 was filed by the decree holder-respondent against the judgment debtor/petitioner and two other persons, namely Rajendra Singh son of Sukhbir Singh and Satpal Singh Sirohi son of Subedar Dharm Singh. Pursuant to the judgement and order, the suit was decreed on 27.08.1979. The defendant No.1 namely Rajendra Singh was directed, that as per contract regarding the suit property, after accepting a sum of Rs.10,000/- within two months from the date of decree, to execute the sale deed. The defendant Nos. 2 and 3 were also directed that they also execute the sale deed. The decree also provided that the plaintiff would be entitled to cost from the defendant Nos. 1 and 2.

4. It appears that thereafter the aforesaid decree was subject to challenge before this Court in First Appeal No.386 of 1979 and an

interim order dated 11.09.1979 was passed. The interim order is as follows:-

“Issue notice.

We direct that until furthers orders the respondents shall not take steps to compel the appellants to join the sale deed as has been directed in the decree under appeal provided the appellants furnish adequate security to the satisfaction of the trial court for the due performance of the decree as contemplated under order 4 Rule 5 of C.P.C within a period of one month from today's date.”

5. Thereafter, the aforesaid interim order dated 11.09.1979 was modified by this Court by means of order dated 06.02.1980. The modified interim order read as follows:-

“Heard counsel for the parties. In super session of the interim order dated 11.09.1979, it is directed that the decree for specific performance of the contract of sale shall not be put into execution, provided that by the 30th of June, 1980, the appellants deposit a sum of Rs.4000/- (four thousand) in the execution court and continues to deposit Rs.4000- every year by the end of June of that year. The amount so deposited can be withdrawn by the respondent no.1 on furnishing adequate security to the execution court. The deposit for the year 1981 shall be deposited by the end of June 1981 and the deposits for future years by the 30th June of that year. It is clarified that the decree for costs in not stayed.

In case of any default, this stay order shall stand automatically vacated.

6. It is stated by learned counsel for the petitioner that the aforesaid first appeal filed by the judgment-debtor was dismissed on 29.03.2019. It is stated that in the meanwhile, Execution Case No.07 of 2006 was filed before the executing court.

7. In the execution proceedings, an application dated 07.05.2019 bearing paper No.81-C was filed for accepting the enclosed tender for depositing Rs.10,000/- as provided in the decree.

8. By an order dated 20.07.2019, after considering the objections filed by the decree-holder, the application 81-C was allowed and it was directed that within 3 days the amount of Rs.10,000/- be deposited by the tender in the court towards satisfaction of the decree. Thereafter, no attempt was made by the petitioner/ judgment-debtor to challenge the

aforesaid order dated 20.07.2019. Instead, an application 95-C was filed for recall of the order dated 20.07.2019. The aforesaid application was objected to by the decree-holder and came to be rejected by an order dated 20.04.2022 passed by the executing court.

9. The judgment-debtor yet again filed an application 120-C seeking recall of the order dated 20.07.2019. After considering the objections, by the impugned order dated 04.03.2023, the application was rejected.

10. The contention of learned counsel for the petitioner is that in the first appeal, there was no interim order staying the deposit of the amount of Rs.10,000/- in terms of the decree. It has further been stated that the application 81-C dated 07.05.2019 did not disclose any substantial ground that could have merited the passing of the order impugned dated 20.07.2019. Learned counsel has referred to the provisions of Section 28 of the Specific Relief Act, 1963 and judgments of the Supreme Court in the matter of **Ramakutty Gupta Vs. Avara**¹; **V.S. Palanichamy Chettiar Firm Vs. C. Alagappan and Another**²; and **P. Shyamala Vs. Gundlur Masthan**³.

11. Learned counsel for the respondent has drawn the attention of the Court to the interim order dated 11.09.1979 and the modified interim order dated 06.02.1980 passed by this Court in the first appeal to contend that perusal of the same reflected that execution of the decree other than the aspect of cost was stayed in its entirety. It is stated that under the circumstances, the question of rescission of contract for default would not arise, given the fact that soon after the first appeal was dismissed, the application 81-C was filed along with a tender for deposit of the amount of Rs.10,000/- as decreed. It has further been contended that the order dated 20.07.2019 allowing the application 81-C filed by the decree-holder submitting the tender for deposit of the amount mentioned in the decree was never challenged in an appropriate proceeding and has attained finality. It is further stated that the repeated applications that were filed by the petitioner, being paper No.95-C and paper No.120-C, were

1 AIR 1994 SC 1699

2 AIR 1999 SC 918

3 AIR 2023 SC 1224

misconceived inasmuch as they were filed for recall of the order dated 20.07.2019. Learned counsel has referred to the rationale accorded by the executing court in its order dated 20.07.2019 while allowing the application 81-C to contend that the consideration and analysis of the executing court cannot be faulted.

12. Section 28 of the Specific Relief Act reads as follows:-

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.— (1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief

as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

- (a) the execution of a proper conveyance or lease by the vendor or lessor;
 - (b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.
- (4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.
- (5) The costs of any proceedings under this section shall be in the discretion of the court.”

13. Sub-section (1) of Section 28 aforesaid deals with the consequence that would meet the purchaser or the lessee who does not pay the purchase money or other sum which the court has ordered him to pay. The aforesaid sub-section provides that in that eventuality, the vendor or lessor may apply in the same suit in which the decree is made to have the contract rescinded. When such an application is made, the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require. Under sub-section (2), where a contract is rescinded under sub-section (1), the consequences that would visit each party to the contract, find reflection in clauses (a) and (b) thereof. Under sub-section (3), whether the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court has the discretion, on an application made in the same suit, to award the purchaser or lessee such further relief as he may be entitled to.

14. The contents of the decree dated 27.08.1979 have already been mentioned above. The orders of this Court in the first appeal, staying execution of the decree, are self-evident and perusal of the same leave no manner of doubt that other than the cost that was directed to be paid under the decree, it was conditionally directed that the decree for specific performance of the contract of sale shall not be put in execution.

Therefore, the contention of the learned counsel for the petitioner that this Court in the first appeal had not stayed the payment of purchase money as decreed, is not correct. The first appeal was dismissed on merits on 29.03.2019 and, thereafter, the application 81-C dated 07.05.2019 was filed. In the application of 07.05.2019 that is enclosed as Annexure-5 to this petition, it is stated that the High Court in the first appeal had stayed the effect of the judgment and decree, which appeal came to be dismissed on 29.03.2019, and the decree-holder of Original Suit No.133 of 1978 is entitled to get the decree dated 27.08.1979 executed and, accordingly, the specified amount of Rs.10,000/- which was enclosed with the tender alongwith the application, be accepted in the interest of justice.

15. In the impugned order dated 20.07.2019, the executing court, while considering the application 81-C and the objections thereon, considered the background of the case, noted the arguments and observed that the decree-holder had paid a sum of Rs 10,000/- on 22.11.2005 but the same was not certified by the court and as such it cannot be said to be a valid payment under the provisions of Order 21 Rule 2, sub-rules (1) and (3), CPC and rejected the objection, paper no. 89-C/1, in which objection it was stated that on 22.11.2005, the judgment-debtor had executed a receipt for Rs.10,000/- of the outstanding amount which was filed by the decree-holder as paper no. 17-C and, therefore, the decree-holder cannot again tender the sum of Rs.10,000/- by means of the application 81-C. Accordingly, the application 81-C filed by the decree-holder was allowed and he was directed to pay a sum of Rs.10,000/- by means of a tender in satisfaction of the decree. It is admitted to the petitioner that apart from filing two recall applications, bearing nos. 95-C and 120-C, which sought recall of the very order dated 20.7.2019, the order of 20.7.2019 was not challenged before another court by way of revision, etc. The executing court, in my opinion, has well considered the aforesaid two recall applications in its orders dated 20.4.2022 and 4.3.2023, respectively, and rejected them. I find no error in the aforesaid orders.

16. As far as the judgment relied upon by the learned counsel for the petitioner is concerned, in **Ramankutty Guptan** (supra), while

considering the question that whether an application under Section 27 of the Specific Relief Act is maintainable on the execution side in a decree passed in the same suit by the appellate court, the Supreme Court observed that an application for extension of time for payment of balance consideration may be filed even in the court of first instance or in the appellate court in the same suit, as the decree of the trial court stands merged with that of the appellate court, which decree was under execution. The Supreme Court observed that phrase “in the same suit” would mean in the suit itself and not in the execution proceedings. It was observed that it was equally well settled law that after passing the decree for specific performance, the court does not cease to have any jurisdiction. The court retains control over the decree even after the decree has been passed. It was held that it was open to the court to exercise the power under Section 28(1) of the Specific Relief Act, either for extension of time or for rescinding the contract as claimed for. The aforesaid judgment is of no help to the petitioner.

17. The judgment in **V.S. Palanichamy Chettiar Firm** (supra) is also of no assistance to the petitioner. The facts of the case were that the appellant entered into two separate but similar agreements for sale with the respondent decree-holders. The suits filed for specific performance of the contract of sale were decreed in favour of the decree-holders with direction to them to deposit the balance amount of consideration and with a further direction to the judgment-debtor to execute the sale deeds. The suits were decreed on 31.1.1983 and the balance amount of consideration was to be paid on or before 31.3.1983. The appeals filed in the High Court were dismissed on 28.2.1985. While dismissing the appeals, no extension of time was granted to the judgment-debtor for depositing the balance amount of consideration.

The decree-holders filed applications for execution of the decrees of specific performance of contract after five years of the decrees of the trial court and three years after dismissal of the first appeal. One of the contentions of the judgment-debtor was that the decree-holders had failed to deposit the balance amount of consideration in terms of the decrees.

The execution applications were dismissed by holding that the decree-holders did not pay the amount of balance consideration within time. In the revisions filed before the High Court, the matter was remitted to the executing court with a direction to treat the applications as interlocutory applications in the execution proceedings while observing that the executing court has got power to extend the time.

The Supreme Court considered the provisions of clause (c) of Section 16, as well as Section 28 of the Specific Relief Act, and a reference was made to a judgment of the Supreme Court that provided that the court can see that even where time is not the essence of the contract, the plaintiff must perform his part of the contract in reasonable time and by looking at all the relevant circumstances including the express terms of contract and the nature of the property. The Supreme Court, observed that the provisions to grant specific performance of the agreement are quite stringent and equitable considerations come into play. The court has to see all the attendant circumstances, including whether the vendee has conducted himself in a reasonable manner under the contract of sale. It was observed that it is not the case of the decree-holder that on account of any fault on part of the judgment-debtor, the amount could not be deposited as per the decree. While considering that no explanation was forthcoming as to why the balance amount of consideration could not be deposited within the time granted by the court, and why no application was made under Section 28 of the Specific Relief Act seeking extension of time, the Supreme Court observed that if time is granted, that would be going beyond the period of limitation prescribed for filing of the suit for specific performance of the agreement, though the provision may not be strictly applicable. It was observed that it is nevertheless an important circumstance to be considered by the court. Accordingly, the appeals were dismissed.

18. In the instant case, an application was filed by the decree-holder for payment of money under the decree and the reason ascribed in the application for tendering the amount of Rs.10,000/- was stated to be the pendency of the first appeal in the High Court. It is pertinent to mention

here that in the order dated 06.02.1980, this Court in the first appeal, modified the stay order granted on 11.09.1979 and directed payment of Rs.4000/- per annum in the execution court, which amount could be withdrawn by the respondent (plaintiff) on furnishing adequate security to the execution court. It is not the case of the petitioner that the judgment decree-holder had not deposited the amount of Rs.4000/- per annum.

19. The judgment in the case of **P. Shyamala** (supra) is based on its own fact and is not applicable in the case of the petitioner.

20. Accordingly, no interference is called for in this petition. It is, therefore, **dismissed**.

Order Date :- 7.12.2023

A Gautam/SK

(Jayant Banerji, J)