IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1179 of 2014 (O&M)
Date of decision: 20.10.2015

Hardayal Singh and others ... Petitioners

versus

Kiru Ram and another .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sanjiv Gupta, Advocate, for the petitioners.

Mr. Vaneet Soni, Advocate for the respondents.

K.Kannan, J.

The revision is against the order passed by the Executing Court allowing for the amount payable for exercising the right of pre-emption and dismissing the objection taken by the judgment debtor that the decree-holder had not complied with the terms of the decree and hence the right had been lost.

Admittedly, the decree-holder who had obtained a decree for pre-emption had originally deposited the pre-emption money on 07.03.1995, but, when the judgment had been challenged in appeal by the judgment debtor, this Court had granted a stay of dispossession in RSA No. 2456 of 1995. The decree holder withdrew the amount which had been deposited already on 22.05.1996 but the reference to deposit and withdrawal is only for the sake of narration, for, when the High Court was dismissing the appeal filed by the judgment debtor, had provided for a decree in favour of the plaintiff with direction for deposit of Rs. 55, 626.50 less Rs. 9, 800/- as $1/5^{th}$ pre-emption money which had already been deposited by the plaintiff " within one month from the date of the order, failing which the suit of the plaintiff shall stand dismissed". The order further directed that the suit would remain decreed on the same terms and conditions as specified in the relief Clause in the impugned judgment. The appeal has been disposed of on 09.11.2010 and the decree holder had filed an application for deposit of the amount on 15.01.2011. This application, which was taken by the Presiding Officer was kept in the file and report from the office as well as the Treasury had been called for 20.1.2011. The Treasury Officer had given a report that the amount of Rs. 45. 826.50 had been deposited on 07.03.1995 vide receipt No. 702-OCD and same amount was permitted to be withdrawn on 22.05.1996. The Court had passed the order on 23.03.2011 to register the application filed for deposit and served the notice to the judgment debtor. The application was getting adjourned from time to time when the judgment debtor filed an application " for dismissal of suit of the plaintiff and set aside/rescission decree and judgment dated 16.02.1995 for not depositing the pre-emption/purchase money, within stipulated time"(sic). The Court directed the copy of the application to be served and both the applications were coming up from time to time till it was finally disposed of through the impugned order dated 05.02.2014. If the order was passed, the decree holder had tendered the money into the treasury on 12.02.2014.

The judgment debtor is in revision to point out that the deposit had not been made as directed by the Court and hence the decree had become enforceable. The decree holder would join issue on the plea to contend that when the order was passed by the High Court on 09.11.2010, an application for copy was filed on the same day but the certified copy was got ready on 07.01.2011 and delivered on 10.1.2011, 8th and 9th January being holidays, Saturday and Sunday. The decree holder lost no time and filed an application before the Executing Court for deposition 15.1.2011, seeking for permission to deposit the amount. The Court had not passed any order till the impugned order was passed permitting the deposit, and therefore, the decree holder cannot be stated to be in default.

If the argument that the time taken for preparation of the decree could be excluded, it will address one portion of the problem confronting the decree holder for even if such an assumption were to be made, admittedly, the deposit was made only on 12.02.2014 for beyond the period of 30 days even after obtaining certified copy of the decree. The explanation again was that the Court did not allow for such deposit when there was an application moved by the decree holder till the impugned order was passed. The subsidiary question would be, therefore, whether the decree holder was justified in holding his deposit to await the Court orders for such deposit.

On the issue of whether the time taken by the Court for issuing certified copy of the decree would be relevant, it is argued that the period for exclusion of time in legal proceedings contemplated under Section 12 CPC could not be invoked for purpose of execution in terms of Section 12 and particularly with reference to the explanation contained under the said Section. Clauses 1, 2 and 3 contained in Section

12 contemplate exclusion of time for preferring an appeal or revision or review against the judgment or an order passed by the Court of first instance Clause 3 excludes the time requested for obtaining the copy as made for leave to appeal and Clause 4 deals with the provision for excluding the time if an application was filed to set aside an award. Explanation states that in computing under the Section, the time required for obtaining the copy of the decree or an order, any time taken by the Court to prepare the decree or order before an application for a copy thereof is made, shall not be excluded. This is to explain that if there was a delay in filing an application for copy, the time taken for supplying the copy will not be excluded. Such a contingency did not arise for the application was filed on the same day when the order was passed. Section 12 (1 to 4) therefore deal with exclusion of time, for computation of limitation for any suit, appeal or application which application includes, in the context in which it appears, an application to set aside the award. Section 13 deals with exclusion of time in case of leave to sue or an appeal as pauper and Section 14 deals with exclusion of time of proceedings prosecuted *bonafide* in Court without jurisdiction. Section 15 which deals with exclusion of time in certain other cases, when the institution of suit or execution is stayed by injunction or order the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn shall be excluded. The provision relating to exclusion of period in execution petition, therefore, comes only under Section 15 and the basis for such exclusion cannot be seen through Section 12. I have already observed that the reference to

application under Section 12 must be confined only to an application for setting aside award and Section 15 does not contemplate exclusion of time for the purpose of execution petitions other than the period when there was operation of the order of stay or injunction. It is for this reason that Article 136 of Limitation Act provides for 12 years with the date of commencement for computing the period as the date when the decree or order becomes enforceable. It does not use the expression the date of the decree only because, under Section 15 the enforceability obtains when there is no order of stay or injunction. If the High Court decree, therefore, provided for 30 days to deposit the amount from the date of the order, the deposit ought to have been made when the order was passed and the decree holder could not have fettered himself by not making the deposit by waiting for securing the certified copy of the order in the judgment.

This interpretation might seem harsh and might even pose difficulties for persons who may require the order copy to be secured before they could make the deposit before the Court. It is suggested by the learned counsel on behalf of the respondent that Executing Court will not even receive the deposit unless the copies of orders are shown allowing for such deposit and the decree holder could not have deposited the amount from the date of the order on 09.11.2010 i.e. Before 09.12.2010, if he had not had the copy of the order in his hands. In my view, if there was any particular difficulty that the decree holder encountered, it could have been relieved only by the party applying only to the Court that passed the order namely, the High court, pointing out to the specific difficulties encountered and sought an extension before the High Court for deposit from the date when the order copy was received. There was simply no scope for a decree holder to apply before the Court below to seek for any permission for extension or seek for permission to deposit, the course that has been adopted by the decree holder. As far as the Executing Court is concerned if the application for deposit had been made no 15.01.2011, all that the Court could notice was whether such a deposit was sought to be made within the time which the decree provided for. If the date as provided in the High Court decree had expired, the Court by no means could allow for such an exercise by putting the application for adjudication, when it was not even competent to extend the time. The Court of competence could have been only the High Court which had granted the time and for any difficulty experienced by the decree holder for not being able to secure the certified copy within time and had to wait to secure the sure knowledge of what the order contained, the modification could have been possible only before the High Court and not through the permission application before the Executing Court. Unfortunately, the application stood on and the decree holder was goaded to believe that it was sufficient if he deposited the money if the Court passed such a direction. When it did give such a direction through the impugned order, it was surely passing an order by exercise of discretion which did not vest with it. The order passed by the Court allowing for deposit suffers from vice for want of authority of law for extension. It could not have done as a Court inferior to the Court that stipultated the time for deposit.

The manner of how the time stipulated in the pre-emption decree is to be construed has been dealt with by this Court in Dinesh minor son of Rama Nand and another Vs. Lal Singh and others, 2007 (2) RCR (Civil) 864, that held that it was mandatory for a decree holder to deposit pre-emption money within time fixed by the Court in the decree and it cannot be extended under Section 148 of the Civil Procedure Code. I will take this judgment only as a strict consideration of how the Court will exercise its discretion under Section 148 for the pre-emption decree is always regarded as a decree in enforcement of a weak right. In my reckoning, this law could not mean that even the High Court would fetter its own right to extend time for specific difficulties encountered, such as this case has presented, but, the ultimate dispensation could not be different for the delay in making the deposit within the time has been aggravated by the decree holder adopting practice which had no basis in law.

The counsel appearing on behalf of the respondent argues with passion and perhaps justifiably so, that, a decree holder cannot lose its right for technical reasons. According to him no Court will receive the deposit unless accompanied with an application for such deposit. There is no rule of civil procedure that requires any permission to be taken apart from what is contained in the decree. The civil rules of practice also do not provide for such a procedure, for, a deposit in the treasury might require the presentation of challan that would be initialled by the court or its authorised officer before such amount is received by the treasury officer. The respondent was literally inviting a procedure which was not contemplated and has inflicted upon himself a serious harm by delaying his own deposit by nearly 3 to 4 years, waiting the further delay of Court in rendering adjudication to that long period.

The decree holder was probably misled all along that it would be sufficient if he deposited the money when the Court passed the specific orders to that effect. That permission was being sought in a wrong forum and that order that was ultimately passed could not have supported him at all, for, he had already been in breach and it was too late in the day to have that defect corrected.

The decree that was obtained allowing for the deposit and for enforcement of right of pre-emption has stood inescapable of execution by the failure to carry out the essential term of the decree regarding deposit and in my view the order already passed allowing for the deposit to be made by the Court below was erroneous and amounted to exercise of discretion which did not rest with it. The impugned order is set aside and the revision petition is allowed.

Needless to state the respondent is at liberty to apply for return of the amount of what has been deposited in the treasury in purported compliance of the terms of the decree.

(K.KANNAN)
JUDGE

20.10.2015
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