IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.1452 of 2014 (O&M)
Date of decision: 20.04.2015

Kuldeep Kaur widow of Satpal Singh, resident of House No.413, Sector 37-A, Chandigarh.

... Petitioner

versus

Manohar Singh Gulati son of Shri Mohan Singh, resident of House No.122, Sector 20-A, Chandigarh, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

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

Mr. Vinay Bhandari, Advocate, for respondent No.1

Mr. S.S. Toor, Advocate, for respondent No.2.

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1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. *(Oral)*

1. The judgment debtor is the revision petitioner before this court. A suit for specific performance of an agreement to sell of a property in Chandigarh was for a consideration of ₹34 lakhs, out of which, 5 lakhs has been paid as advance and the balance was to be paid before 31.07.1995. According to the plaintiff, the vendor was

not prepared to execute the sale and, therefore, a suit for specific performance has been filed. After a long pendency of a suit, the parties had compromised the matter on 07.08.2004 that contained several clauses. A decree was passed in terms of the compromise.

2. The compromise terms spelt out mutual obligation of parties, namely, on the part of the purchaser to pay ₹29 lakhs and on the part of the vendor to deliver possession of the property and to secure conversion from leasehold to freehold or NOC from the Chandigarh Administration. The compromise also spelt out an outer time limit of 4 months for completion of sale deed or latest by 05.12.2004.

3. Subsequent to the compromise decree, the defendant received ₹9 lakhs towards portion of sale consideration and had also delivered possession of the property which was in the hands of the tenant-Surjit Singh. Various amounts had been paid totalling ₹21,69,440/- and leaving still a balance of ₹12,30,560/-. The subsequent payments had been done on various dates beyond the date fixed under the compromise and the last of such payments had been made on 14.05.2005.

4. The execution petition was filed on 03.10.2005 setting out the payments made and demanding the execution of the sale deed. The judgment debtor's contention by way of objection under Section 28 of the Specific Relief Act was that the conversion had

been obtained and NOC was also obtained but the decree holder did not make the amounts ready as per the compromise and there cannot be an extension of period at the will of the decree holder. The court below allowed for the balance of money to be deposited and the decree holder is reported to have deposited the balance amount on 14.08.2014, that is, nearly a decade after the stipulated date and the court dismissed the objection taken.

5. One thing becomes clear that there had been a breach both by the decree holder and the defendant with reference to the obligations which they had to perform respectively under the compromise. There is nothing on record to show that the plaintiff-decree holder made the balance of sale consideration ready before 05.12.2004. There had been also nothing on record to show that the defendant had made the conversion or obtained NOC before 05.12.2004. On the other hand, the document filed would show that NOC was obtained on 08.08.2005 and the conversion to freehold was obtained on 13.06.2005. It is not very clear whether the conversion and the NOC through documents obtained from Chandigarh Administration were informed to the plaintiff but I would take that it is the plaintiff who must be interested in securing the purchase and must have apprised himself of the defendant's activities or at least, ought to have elicited from the defendant of the state of preparedness to sell the property by making available the

necessary documents from the Chandigarh Administration. If the document had been made ready at the latest by 08.08.2005, there ought to have been the tender of the balance by that date by the plaintiff and secure the sale. Instead the decree holder has filed execution petition for sale of the property. I will find the conduct of the plaintiff to be not in conformity with the compromise terms.

6. The learned counsel appearing on behalf of the decree holder responded that the deposit could have been made only if the court had directed and since the court had not directed the deposit, he could not make the deposit. This argument is fallacious. The direction for deposit could be issued by the court if only the court was adjudicating on the rights of parties on a full-fledged contest and there was a requirement to stipulate a period before when the amount was to be deposited. In this case, the adjudication was not on merits but was brought on a compromise. The compromise terms included the duty to pay the balance of consideration for securing the sale deed before a stipulated date which the parties had themselves decided. I would understand this to require the one who was ready to call upon the other to undertake the obligation and conclude it. It could have happened at the instance of either the decree holder or the judgment debtor before the stipulated date for the execution of the sale deed. If the property itself could not have been sold without NOC or conversion, they were surely available on

31.05.2005 and 08.08.2005 respectively. That should have been immediately the day when the sale could have been concluded. The plaintiff was bound to tender and take a sale not later than the respective dates and called upon the defendant to execute the sale deed and if it was still not done, there was a scope for approaching the court through the execution petition. The decree holder did not do so.

7. Indeed, the court had no power to extend the period, for, such extension is possible only if the court itself was setting out a period for deposit. If the payment was under a compromise, the court had no power to extend the period. This is so by virtue of Order 20 Rules 11 (1) and (2) CPC where a decree provides for payment of money in full or by installments, the power to postpone the payment obtained only on the consent of the decree holder where the liability is for payment by a judgment debtor. If the liability were to be taken as on the part of the decree holder to make the payment, the converse must apply, for, that extension cannot be without the concurrence of the judgment debtor. The power to extend which may arise and which court may exercise even while considering the case under Section 28 of the Specific Relief Act could only be instances where the time is fixed by the court. There was no power for a court to extend it unless the parties themselves were prepared to extend such a period in relation to a compromise

decree. The court became *functus officio* to even consider a request for deposit of money if the matter had been compromised between parties and a date had been fixed for performance of their obligations.

8. In ***Deepa Bhargava and another Versus Mahesh Bhargava and others-2009(1) SCC 505***, the Supreme Court held, while considering the powers of a court to extend time set and interest payable in a compromise decree, that executing court had no power to modify decree even if it was penal in nature. In ***Hukumchand Versus Bansilal and others-AIR 1968 (SC) 86***, the Supreme Court ruled that time given for depositing payment by consent terms cannot be extended by court, in a case dealing with setting aside a court auction sale. In ***Kuppurajammal Versus Meenakshi Ammal and others-AIR 1984 Mad 257***, the Madras High Court held that the court's power to extend time for payment stipulated under compromise terms did not exist in law, since the court would become *functus officio*, while examining Order 20 Rule 11(2) CPC read with Section 148 CPC. The Delhi High Court dealt with a typical situation, such as we confront in this case, in ***Ram Gopal and others Versus Ram Charan Aggarwal-2012(131) DRJ 512***, when the court said that the court executing the decree which was rendered on a compromise cannot modify or amend the decree except with the consent of parties.

9. In this case the court had no power to allow for a deposit to be made literally after a decade, viz., on 14.08.2014. It will be wrong to contend that the decree holder could not deposit since the court had not directed him to do so. The court had no duty to inform the plaintiff of what he was bound to do by a compromise term. The power exercised by the court did not reside in it and it was an illegal exercise of judicial power and, therefore, the order passed would require to be set aside.

10. Section 28(4) states that no separate suit in respect of any relief which may be claimed under the section would lie at the instance of a vendor, purchaser, lessor or lessee. If the purchaser has taken possession of the property pursuant to the document, then Section 28(2) directs that a court shall direct the purchaser to restore possession of the vendor or lessor and may also direct payment to the vendors of all the rents and profits which may have accrued in respect of the property. Section 33 of the Specific Relief Act states that the court has a power to require benefit to be restored or compensation to be made when the instrument is cancelled. Since in this case I cancel the decree as unenforceable on the failure of the vendor to pay the balance of sale consideration as per the compromise term, or at the latest by 08.08.2005 when NOC was obtained, I direct the following to be done:-

(i) the decree holder shall deliver back possession of the property which he has taken from the defendant within 4 weeks from today;

(ii) at or before the said date, the defendant shall refund ₹21,69,440/- to the plaintiff;

(iii) since the defendant had the benefit of a large portion of sale consideration, it will compensate the benefit obtained by the plaintiff in securing possession and there shall be no obligation for the defendant to pay interest for the amount received and there shall be no obligation for the plaintiff to pay compensation or rent for the property which he took possession under the terms of the contract;

(iv) For any delay in delivery of property by the plaintiff or refund of the amount by defendant, interest on the total consideration of ₹34 lakhs at 9% per annum shall constitute the mesne profits payable by the plaintiff to the defendant; interest at 9% per annum on ₹21,69,440/- shall constitute the damages by the defendant to the plaintiff, effective from 4 weeks from today.

11. The parties shall be entitled to enforce the final terms of this order before the Executing Court if either one of the parties is in

breach of directions. The order passed already is set aside and the civil revision is allowed. There shall be no order as to costs.

(K.KANNAN)
JUDGE

20.04.2015
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