

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.1621 of 2013 (O&M)

Date of decision: 03.07.2015

Kulbir Singh and others

... Petitioners

versus

Ishwinder Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Aseem Kalia, Advocate,
for Mr. Premjit Kalia, Advocate,
for the petitioners.

Mr. Ashok Kumar Arora, Advocate,
for the respondent.

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 revision is against the order dismissing a petition filed by the judgment debtor under Section 28 of the Specific Relief Act for rescission of the decree. The decree was passed for specific performance on 25.08.2007 in favour of the plaintiff directing, inter alia, the decree holder to deposit the balance of sale consideration within 2 months from the date of the decree. Admittedly, there had been no compliance of such a direction.

2. The decree holder appears to have filed an application seeking for extension for deposit on 07.10.2009 and in the application, the court had ordered notice to the judgment debtor. The judgment debtor contested the request and contended that the request of the decree holder was barred by limitation. The court subsequently passed an order on 19.11.2011 taking notice of the application for depositing the sale consideration filed on 07.10.2009 and had observed that the court had already permitted the decree holder to deposit the sale consideration on 14.10.2009. He had also observed that there was no further adjudication necessary since the court of Shri Deepak Kumar Choudhary was the court that passed the decree and application had already been disposed of. It was subsequent to this order on 19.11.2011 that the judgment debtor appears to have filed a petition under Section 28 for rescission of the decree. The application to rescind the decree had been dismissed citing his own earlier order of 19.11.2011 and finding that the amount had been deposited as per orders of court and, therefore, the decree could not be rescinded.

3. To a contention raised by the petitioners, the counsel appearing on behalf of the respondent would agree that the court was in error in stating that the time for deposit had already been extended by an order of court. There was no other order prior to 19.11.2011 permitting such deposit through an express order on the

objection taken by the judgment debtor that the application for deposit was barred by limitation. The counsel for the respondent, however, points out that this order dated 19.11.2011 was not challenged by the judgment debtor and he had moved an application under Section 28 only a year later. The judgment debtor had, therefore, not come to the court with clean hands.

4. I find the entire approach adopted by the court below which is sought to be supported by the counsel for the respondent to be inverting a logic of what ought to be applied only to the decree holder. Section 20 of the Specific Relief Act enacts an important rule that the suit for specific performance resides within the realm of equitable jurisdiction and a decree will not be passed merely because it is lawful to do so. The court that passes a decree exercises its discretion to grant the relief and ought to find that the plaintiff who has come to court with clean hands. It is the conduct of the plaintiff that shall be put to test at all times and it is irrelevant to know whether the defendant had been recalcitrant or not. Section 16(c) of the Specific Relief Act also gives a clue to the whole scheme of the Act, whether or not, there is a defence. The plaintiff shall declare that he is ready and willing to perform his part of the contract. Judicial pronouncements have been that the readiness must subsist right through from the time when stipulation for payment is made in the agreement till the time when the sale deed is executed pursuant

to the decree. The readiness must obtain even subsequent to the decree and should persist till a sale deed is executed. It is, therefore, quite inconsequential that the judgment debtor did not file an application under Section 28. Section 28 is again peculiar only to suit for specific performance, for, there exists no other enactment that allows for rescission of a decree before the very same court through a statutory provision other than the provision under the Specific Relief Act. It is only to bring the focus to the court that there is an additional obligation for a decree holder in a specific relief suit to show that he has acquitted himself in full and has done no act which will dis-entitle him to the discretionary relief which he has already obtained.

5. The above discourse which I have indulged is only to dispel an argument made by the respondent that the judgment debtor had not been fair and he had not come to court with clean hands, the quality that must behove of the decree holder than what should describe a judgment debtor's conduct.

6. The impugned order ought to go on a fundamental premise on what is admitted before me that the court had assumed on 19.11.2011 that the court had already granted the decree holder the permission to deposit the balance of sale consideration on the petition filed by him on 07.10.2009. If the decree holder has actually deposited the amount, that the deposit must be taken to be

merely voluntary and he cannot advance his own cause without securing a specific order from the court on the objection taken by the judgment debtor. The impugned order is set aside and I direct the court below to pass an order on the objection seeking for extension of time after hearing the judgment debtor and all the subsequent acts done, such as, execution of sale deed or any further process in execution must be put back to the situation where the proceedings stood on the date of application on 07.10.2009. The effect of the execution of the sale deed or deposit will finally abide by the decision that the court will take, uninfluenced by the act done by the court executing the sale deed or permitting the decree holder to deposit the same.

7. The revision petition is allowed and the matter is remitted to the court below for consideration in the light of the directions given above.

(K.KANNAN)
JUDGE

03.07.2015
sanjeev