

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

**CR No. 2971 of 2013 (O&M)
Date of decision: 19.11.2015**

Shashi Kapur

... Petitioner

versus

Om Parkash

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sudhir Paruthi, Advocate for the petitioner.

Mr. Ravinder Kumar, Advocate for

Mr. Manu K. Bhandari, Advocate for the respondent.

K.Kannan, J.

The suit which was decreed on 01.11.2004 for specific performance that required still a balance of Rs. 49,000/- to be made within one month was not complied with by the decree-holder. The decree-holder himself appears to have died on 05.04.2005 without complying with the terms of the decree. The son claimed to be the LR moved an execution of the decree in the year 2009 and it was contested by the judgment debtor when the decree was bound to be rescinded and cannot be executed since the plaintiff had not complied with the terms of the decree and there was no justification for the enormous delay. The LR was seeking to contend that he did not know about the decree obtained by the father and as soon as he came to know about it he filed the execution petition and for permission to deposit the money. This plea was rejected and the defeated legal representative-decree holder is the revision petitioner before this Court.

Learned counsel would argue that non-fulfilment of the condition does not operate to extinguish the decree automatically on failure to pay the balance of consideration. It only provides under

Section 28, the right to a vendor to apply to the Court for rescission of contract. The counsel would refer me to the decision of this Court in Gurbachan Singh Vs. Bachan Singh and others, 1977 (2) RCR (Civil) 130 to such a proposition. It was a case where the decree had been passed on 03.12.1970 when the decree holder was directed to deposit Rs. 1,00,000/- before 07.01.1971. The decree holder submitted an application on 09.03.1971 and sought for extension of time. The Court considered whether the delay of two months would constitute an automatic rescission of the decree. The Court held, it did not.

There is hardly a comparison that we could make to this judgment to the fact obtaining in this case. It was a case where the decree holder himself had not complied with the terms of the decree during his lifetime when he lived beyond the period without the compliance of the decree. The legal representative had also let a period of 4 years to go by a naive plea that he did not know that father obtained a decree. The rescission of decree as contemplated under Section 28 recognizes a salutary principle that runs throughout the legislation that it is a discretionary relief and that even the decree would not be passed merely because it is lawful to do so. The stipulation of time under the decree is a legal requirement which Section 16(c) of the Specific Relief Act spells out. The readiness and willingness that is statutorily mandated must exist throughout, namely from the time stipulated for performance in the agreement; to the trial and at the passing of the decree and after the decree, before the time when the court directs the performance. The right to apply for rescission after a decree is passed could be initiated either by means of application by the judgment debtor-vendor or it could be pursued by means of objection when the decree-holder seek for extension of time. The application of the vendor contemplated under Section 28 does not bargain for the status of the vendor as either an applicant moving the Court on his own but would include even the status of the vendor

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who objects to the time to be granted and pleadings for rescission of the decree by way of written objection. If the objection had been given by the vendor pointing out to the delay of more than 4 years and the Court had considered the same and rejected the plea, I will find nothing erroneous for the modification in revision.

The impugned order is sustained and the revision petition is dismissed.

(K.KANNAN)
JUDGE

19.11.2015
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