

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-41-2012

Date of decision: 16.03.2015

Narender Nath Puri

..... Petitioner

Versus

Satish Kumar Kapil and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

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

PRESENT: Mr. CB Goel, Advocate for the petitioner.

Mr. Rajiv Joshi, Advocate for respondent No. 1.

Mr. Ajay Kumar Kansal, Advocate for respondent No. 2.

R.P. NAGRATH, J.

The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 27.4.2011, passed by the Executing Court dismissing the objection petition filed in terms of Section 47 read with Section 151 of the Code of Civil Procedure (CPC) and the order dated 21.11.2011 of the learned Additional District Judge, Gurgaon, dismissing the appeal being not maintainable.

2. Petitioner-defendant No. 1/judgment-debtor (JD) was

allotted plot No. 29, Sector-55, Gurgaon by Haryana Urban Development Authority (for short 'HUDA') vide allotment letter dated 16.11.1992, for a consideration of ₹ 1,31,220/-. The facts of the case as borne out from the judgment of Appellate Court in Civil Appeal No. 45 of 24.7.2003 decided on 30.10.2003 by Sh. R.K. Saini, Additional District Judge, Gurgaon, attached with the record of RSA-326-2004, decided on 25.8.2008 are that the petitioner agreed to sell this plot in favour of respondent No. 1-plaintiff/decree-holder (DH) on 3.5.1994 on payment of ₹ 10,392/- towards premium and ₹ 49,208/- which the petitioner-defendant No. 1 had already deposited with HUDA and the remaining sale consideration was to be deposited by respondent No. 1-DH, in installments with HUDA impleaded as defendant-respondent No. 2. An amount of ₹ 5000/- was paid to the petitioner-JD towards part of the sale consideration and rest of the amount i.e. ₹ 54,600/- was to be paid at the time of transfer of the plot in favour of respondent No. 1-DH by defendant/respondent No. 2-HUDA. Necessary sanction was also granted by respondent No. 2-HUDA permitting transfer of the plot by petitioner-JD in favour of respondent No. 1-DH. Accordingly, respondent No. 1-DH, got prepared a bank draft of ₹ 50,000/- on 29.5.1994 and visited petitioner/defendant No. 1-JD on 1.6.1994 but the petitioner-JD refused and stated to have committed breach of the terms of agreement.

3. The trial Court directed the petitioner-JD to get the sale deed executed and registered on payment of balance sale price of the plot which has already been paid to defendant/respondent No. 2-HUDA within two months from the date of judgment and also to put respondent

No. 1-DH in possession of the plot. Appeal against the judgment of trial Court was dismissed on 30.10.2003 and Regular Second Appeal (RSA) also dismissed on 25.08.2008. This Court further clarified in the judgment dated 25.08.2008 in RSA that if during pendency of the suit the petitioner-JD deposited any amount with HUDA, the same shall also be paid by the plaintiff to the petitioner-defendant No. 1 as per terms and conditions of the agreement.

4. The execution application (Annexure A-3) is dated 16.5.2005 and objections were filed by petitioner-JD on 16.5.2009 i.e. after decision of the RSA. In the execution application respondent No. 1-DH had made a prayer for transfer of the plot in question in the name of decree-holder after deposit of the balance sale price in the Court. The petitioner prayed for dismissal of the execution on the ground *inter alia*:-

- (i) That the balance amount was not deposited within the time directed by trial Court in the judgment and no application for extension of time was filed;
- (ii) that respondent No. 1-DH is also liable to pay an amount of ₹ 50,000/- plus the amount which the petitioner had deposited with HUDA;
- (iii) that due to non-deposit of the amount within the time stipulated the contract gets rescinded in terms of Section 28 of the Specific Relief Act.

In the reply, respondent No. 1-DH stated that he was required to pay only amount of ₹ 54,600/- to the petitioner which the respondent had always

been ready and willing to pay.

5. I have heard learned counsel for the parties and perused the impugned orders passed by both the Courts below as well as the paper-book. I have also gone through the judgment of Appellate Court which is part of record of RSA-326-2004, decided by this Court on 25.8.2008.

6. Learned counsel for the petitioner-JD vehemently contended that the objections filed by petitioner were supposed to have been allowed in terms of Section 28 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act'), especially when there was no application filed by respondent No. 1-DH for seeking extension of time granted by the trial Court directing respondent No. 1-DH to deposit the amount within a period of two months from the date of passing of decree. Learned counsel for the petitioner-JD further submitted that there was no stay of execution of the decree during the pendency of RSA and, therefore, the huge delay in depositing the amount could not have been explained by the decree-holder. It was submitted that respondent No. 1-decree holder moved an application for the first time on 07.07.2011 before the Executing Court with a prayer to deposit a demand draft which would suggest that the decree-holder did not comply with the terms of decree passed by the trial Court.

7. Section 28 of the Act, reads as under:-

“Section 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 the 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 the 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.”

8. Learned petitioner's counsel relied upon among other the case law reported in ***(i) Chanda (dead) through LRs Vs. Rattni and another, 2007 (2) RCR (Civil) 534*** and ***(ii) Bhupinder Kumar Vs.***

Angrej Singh, 2009 (4) Civil Court Cases 195 (S.C.).

9. On the other hand, learned counsel for respondent No. 1-decree holder relied upon (i) Amar Nath Jain Vs. Ram Parkash Dhir, 1987 (1) PLR 490; (ii) Partap Singh Vs. Narpat, 2010 (2) PLR 553 and (iii) Ramakutty Gupta Vs. Avara, 1994 (2) SCC 642.

10. In Chanda (dead) through LRs Vs. Rattni and another, 2007 (2) RCR (Civil) 534, Hon'ble Supreme Court observed that Section 28 of the Act corresponds to Section 35 (c) of the Specific Relief Act, 1877 under which it was open to the vendor or lessor the right to seek rescission; but this Section goes further and gives to the vendor or lessor the right to seek rescission in the same suit, when after the suit for specific performance is decreed the plaintiff fails to pay the purchase money within the period fixed. The Hon'ble Supreme Court further held as under:-

“8.The present section, therefore, seeks to provide complete relief to both the parties in terms of a decree for specific performance in the same suit without requiring one of the parties to initiate separate proceedings. The object is to avoid multiplicity of suits. Likewise under the present provision where the purchaser or lessee has paid the money, he is entitled in the suit for specific performance to the reliefs as indicated in Sub-section (3) like, partition, possession etc. A suit for specific performance does not come to an end on passing of a

decree and the Court which has passed the decree for specific performance retains the control over the decree even after the decree has been passed.

9. *The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the Court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The Court does not cease to have the power to extend the time even though the trial Court had earlier directed in the decree that payment of balance price to be made by certain date and on failure suit to stand dismissed. The power exercisable under this Section is discretionary.”*

11. Therefore, it is within the discretion of the Court where the matter is pending either to grant extension of time for making payment of the balance amount of consideration or for rescission of the contract if such a discretion is not exercised in favour of the petitioner. Therefore, the learned trial Court was quite incorrect in its observation made in the impugned order that it could not go behind the decree and that it has to be executed in accordance with law. The trial Court was also not quite correct in observing that the objections raised by the petitioner-JD have already been decided in civil suit on 19.5.2003. The Appellate Court

simply held that appeal is not maintainable and, therefore, the petitioner has been deprived of the right to make submissions on the question whether the contract is liable to be rescinded for non-deposit of the amount within time or for the decree-holder to claim that the period originally fixed for compliance may be extended under the relevant circumstances over which the learned trial Court/Executing Court has to apply its judicial mind. The sale deed has since been executed in July, 2011 but that was during pendency of the appeal which was held to be not maintainable but there is no specific order by taking all the relevant facts into consideration about the extension of time in depositing the amount. The learned trial Court did not discuss the relevant case law on the subject.

12. In the aforesaid circumstances, the instant petition is allowed and the impugned order is set aside with a direction to the trial Court/Executing Court to decide the matter afresh in accordance with law by looking into the findings in the main judgment granting the decree passed by the trial Court; the observations of the Appellate Court vide which the specific directions were given and also the effect of observations made by this Court in the judgment dated 25.8.2008 passed in RSA-326-2004 whereby it was clarified that if during pendency of suit the petitioner-JD deposited any amount with HUDA, the same shall also be paid by the plaintiff to the petitioner-defendant No. 1 as per terms and conditions of the agreement apart from the other relevant facts and circumstances.

13. The parties are directed to appear before the trial

Court/Executing Court on 07.04.2015. Since the matter is quite old, the trial/Executing Court would dispose of the matter expeditiously and preferably within a period of 6 months from the date of receipt of certified copy of this order.

March 16, 2015
rishu

(R.P. NAGRATH)
JUDGE