

CR-5930-2015

1

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

CR-5930-2015

Date of decision: 10.9.2015

Ram Kishan and another

...Petitioners

Versus

Bijender Mann @ Vijender Mann and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Bhag Singh, Advocate for the petitioners

SNEH PRASHAR, J.

The instant civil revision has been filed assailing the order dated 29.8.2015 passed by learned Civil Judge (Sr. Divn.), Panipat vide which, the objection-petition filed by petitioner No.2 in an execution No.80/8 of 2013 was dismissed.

In precise, the facts are that respondents No.1 to 3 -plaintiffs filed a suit for possession by way of specific performance of agreement to sell dated 10.11.2004 and also for declaration that the sale deed dated 7.4.2005 executed by respondents No. 4 and 5 in favour of the petitioners is null and void. The suit was decreed in favour of the plaintiffs-respondents No. 1 to 3 vide judgment and decree dated 12.5.2010, against which, the petitioners preferred an appeal but that too was dismissed by learned Additional District Judge, Panipat on 19.10.2011. The petitioners approached this Court

by filing RSA and after dismissal of the same, they filed SLP but that too was dismissed.

The respondents No.1 to 3 -decree holders filed an execution for executing the judgment and decree dated 12.5.2010. Respondents No. 4 and 5 -judgment debtors filed an objection-petition alleging that the decretal amount was not deposited by the decree holders within stipulated period of two months from the date of passing the decree by the trial Court, which was dismissed vide order dated 22.9.2014. The said order was challenged before this Court by filing CR-7028-2014, which was also dismissed vide order dated 28.10.2014. Thereafter, petitioner No.1- JD filed a separate objection-petition on 17.7.2015, which was dismissed by the Executing Court vide the impugned order dated 29.8.2015. Feeling aggrieved, the instant revision petition has been filed.

The submissions made by learned counsel for the petitioners have been heard.

Learned counsel for the petitioners submits that the learned Executing Court committed grave error by dismissing the objection- petition filed by the petitioner No.1 simply on the ground that the objection petition of other judgment debtors had already been dismissed. He referred to Section 28 of the Specific Relief Act and submitted that the respondents No.1 to 3-DHs did not deposit

the decretal amount within stipulated period of two months from the date of passing the decree by the trial Court, therefore, as he violated the specific orders passed by learned trial Court, the suit automatically stands dismissed. To support, he lied upon **Onkar Nath and another vs. Basheer and others 1985(2) PLR 432 (P&H)**.

Earlier respondents No.4 and 5 filed an objection petition to the execution of the judgment and decree dated 12.5.2010 on exactly identical ground that the decree-holders did not deposit the balance sale consideration within the stipulated period of sixty days, which has resulted into recession of the contract in view of Section 28 of the Specific Relief Act, 1963. The learned trial Court vide a detailed order dated 22.9.2014 dismissed the same. Respondents No.4 and 5 assailed the said order vide CR No. 7028 of 2014 but same was dismissed by this Court on 28.10.2014. The findings of this Court were as under:-

“There is no dispute on facts inasmuch as the decree dated 12.05.2010 clearly provides that the suit shall be deemed to be dismissed if the plaintiffs failed to make the payment of the balance sale consideration, after adjusting the amount of earnest money and costs of the suit, within the period of aforesaid two months from the date of the decree. The period of two months

had expired on 12.07.2010, whereas the application for permission for depositing the sale consideration was filed on 09.11.2011 on which order was passed on the same day, granting permission to deposit the balance sale consideration at their own responsibility.

However, the fact remains that the decree dated 12.05.2010 was carried in appeal and the Appellate Court, vide its order dated 09.06.2010, stayed operation of that judgment and decree. Ultimately, the appeal was dismissed by the Appellate Court on 09.10.2011 and the application was filed by respondents no.1 to 3-decree holders on 09.11.2011, within the period of two months, as prescribed in the decree. The trial Court has relied upon a decision of the Kerala High Court in the case of **Kumaresan vs. M.P.Seshadri**, AIR 2002 Kerala 198 in which it has been held that if the Appellate Court confirms, varies or reverses the decree, the parties are entitled to time for deposit of balance sale price from the date of decree passed by the Appellate Court.

Distinguishing the facts in hand to the facts of judgment passed in **Onkar Nath's case (supra)** this Court held as under:-

“Insofar as the judgment of this Court **Onkar Nath's case (supra)** is concerned, the application was filed under Section 28 of the Act on the ground that the balance sale consideration has not

been paid within the stipulated time but the said application was contested by the decree-holders on the ground that they were ready and willing to deposit/ pay the balance sale consideration and furnish the draft agreement but the petitioners were not ready to comply with the decree and they refused to execute the sale deed. It was on the facts of the case that the Court had held that if the buyer fails to pay the balance sale consideration within the prescribed time and does apply for extension of time, the seller would be entitled to get the contract rescinded.

This judgment is not applicable to the facts and circumstances of the present case because in the present case, the operation of the impugned judgment and decree was stayed by the Appellate Court, may be on the appeal filed by respondents no.4 and 5, therefore, respondents no.1 to 3 -decree holders were unable to abide by the decree for the purpose of making the payment to the petitioners as the said decree could not have been executed.”

Indeed, the facts in hand do not invoke the provision of Section 28 of the Specific Relief Act as the operation of the impugned judgment and decree dated 12.5.2010 was stayed by the Appellate Court the decree and the decree holders were unable to abide by the decree. After the dismissal of the appeal, the decree-holders respondents No.1 to 3 filed an application for depositing the

balance sale consideration, which was allowed by the Executing Court on 9.11.2011.

In the above premises, this Court finds no illegality or perversity warranting intervention in the impugned order passed by learned trial Court and as such, the present revision petition being devoid of any merit is dismissed.

10.9.2015
gsv

(SNEH PRASHAR)
JUDGE