

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-5821-2012

Date of decision: 07.04.2015

Subhash Chand

..... Petitioner

Versus

Om Parkash (deceased) through LRs 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. Ashok Verma, Advocate for the petitioner.

Mr. Ajay Jain, Advocate for respondent No. 1.

R.P. NAGRATH, J.

A suit for possession by way of specific performance of agreement to sell dated 22.09.1999 was filed by the petitioner by impleading respondent No. 2-Anandpal, the co-vendee as proforma party. The agreement to sell was executed by defendant/respondent No. 1-Om Parkash (deceased) agreeing to sell 6 kanals 6 marlas of the land being 1/30th share out of total land measuring 188 kanals 9 marlas of the land. The total amount of sale consideration was ₹ 1,45,000/- out of which ₹ 60,000/- was paid on 22.09.1999 and another amount of ₹ 50,000/- on 30.04.2000 when the period of execution of sale deed was extended up to 15.05.2000. Therefore, respondent No. 1-judgment debtor (JD) had

received an amount of ₹ 1,10,000/- in all out of ₹ 1,45,000/-. The execution of agreement to sell was admitted but the only issue framed in the case was whether the petitioner and proforma respondent No. 2 were ready and willing to perform their part of contract. In the instant petition, the petitioner/decreed-holder (DH) has invoked revisional jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 05.05.2012 (Annexure P-5) whereby prayer of the petitioner made in his application dated 12.09.2011 (Annexure P-4) for extension of time for depositing the balance amount of ₹ 35,000/- was declined.

2. The facts relevant for disposal of instant petition are that the suit for specific performance of agreement to sell was instituted on 15.06.2000 and decree in favour of petitioner and the proforma respondent No. 2 was passed on 09.06.2008 i.e. after about 8 years of the institution. Appeal against the judgment of trial Court was instituted on 30.07.2008 which was dismissed on 30.08.2010. The judgments of trial Court and Appellate Court are Annexures P-1 and P-3, respectively. The decree passed by the trial Court was to the effect that defendant-respondent No. 1 was directed to execute the sale deed and deliver the possession within a period of two months from the date of decision failing which the decree-holder could seek assistance of the Court. It was further held that in case, defendant-respondent No. 1 failed to execute the sale deed, the decree-holder shall deposit the balance sale consideration within a period of two months after expiry of period granted to the defendant to execute the sale deed. In a nutshell, the total time granted to

execute the sale deed was four months from the date of judgment and decree of the trial Court i.e. 09.06.2008. It is borne out from the impugned order dated 05.05.2012 (Annexure P-5) that the execution petition was filed before the Executing Court on 20.01.2011 i.e. after about five months of the passing of judgment by the Appellate Court. The application for extension of time for depositing the balance sale consideration of ₹ 35,000/- is dated 12.09.2011 (Annexure P-4).

3. Learned lower Court dismissed the prayer for extension of time on the ground that the execution was filed after expiry of four months of passing of the judgment in appeal, therefore, no permission for extension of time can be granted. It was observed that the petitioner-DH having failed to comply with the terms of judgment and decree dated 09.06.2008, dismissed the execution petition.

4. I have heard learned counsel for the petitioner, learned counsel for respondent No. 1 and have gone through the entire paper-book quite carefully and find that the learned lower Court has failed to properly exercise its discretion which has resulted in failure of justice and the impugned order deserves to be quashed.

5. For disposal of the prayer for extension of time, the Courts are required to deeply consider the facts and circumstances of each case and find out if it is a fit case for extension of time. In case, the trial Court is going to strictly abide by the time granted in the decree, the very purpose of enacting Section 148 of the Code of Civil Procedure (CPC) which granted discretion to the Court to extend the time where certain time bound compliance has to be made. Similarly, the provisions of

Section 28 of the Specific Relief Act (for short 'the Act') are also applicable. The learned trial Court has not adverted to the aforesaid situation and the facts of instant case in the right perspective.

6. It may be seen that it took about 8 years in disposal of suit by the learned trial Court for determining the question whether respondent No. 1-JD was justified in his plea that the petitioner-DH and proforma respondent No. 2 were not ready and willing to perform their part of contract. A perusal of the judgment dated 09.06.2008 (Annexure P-1) would show the attempt of respondent No. 1-JD that he was present in the office of Sub Registrar, Bawal but the proposed vendees did not come. The other important aspect that the substantial amount of sale consideration had already been paid to the judgment-debtor. That amount was ₹ 1,10,000/- out of the total sale consideration of ₹ 1,45,000/-.

7. The petitioner categorically alleged that he moved an application for extension of time as advised by his counsel but was not told to deposit the amount. The precise contention of the petitioner in the grounds of revision is that counsel for the petitioner did not render the advise that amount was to be deposited before the trial Court in terms of the decree despite the fact that appeal was pending against the judgment and decree of the trial Court and operation of the same had not been stayed by the Appellate Court. The petitioner's counsel was also under the impression that once the appeal was filed, finality of the trial Court's judgment had come to an end and the same would merge with the Appellate Court judgment and the Appellate Court would grant further time for making deposit of the balance sale consideration but this was not

done by the Appellate Court. That is why the execution was filed after the decision of appeal and also application for extension of time was moved on 12.09.2011.

8. It is pertinent to mention that respondent No. 1-JD had not even raised any plea under Section 28 of the Act for rescission of contract nor any such ground of non-deposit of balance amount was taken before the learned Appellate Court when the appeal filed by respondent No. 1-JD was decided by the Appellate Court on 30.08.2010.

9. The Hon'ble Supreme Court in **K. Kalpana Saraswathi Vs. P.S.S. Somasundaram Chettiar, 1980 (2) SCR 293**, held that on an oral prayer made by the counsel for the plaintiff for permission to deposit the entire amount as directed by the trial court, the Court directed the appellant to deposit the amount within six months from that date together with interest and other conditions mentioned therein. An application for extension of time for payment of balance consideration may be filed even in the court of first instance or in the appellate court in the same suit as the decree of the trial court stands merged with that of the Appellate Court, which decree is under execution. It was further held that the procedure is the handmaid for justice and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve substantial justice. Therefore technicalities would not stand in the way to subserve substantive justice. Hon'ble Supreme Court observed that take a case where the decree is transferred for execution to a transferee executing court, then certainly the transferee court is not the original court and execution court is not the "same court" within the meaning of Section 28

of the Act. But when an application has been made in the court in which the original suit was filed and the execution is being proceeded with, then certainly an application under Section 28 is maintainable in the same court.

10. In **Yeshodha Vs. K. Nagarajan, 1997 (1) RCR (Civil) 583**, it was contended before Hon'ble Supreme Court, that after expiry of time prescribed by the Court, the petitioner has a right to seek rescission of contract for non-compliance. It was further contended that the Court, therefore, has no power to enlarge the time. Hon'ble Supreme Court found no force in the aforesaid contention. It was held that Section 148 CPC gives power to the court to enlarge the time for complying with the orders of the Court from time to time.

11. On the other hand, learned counsel for respondent No. 1 relied upon **Resham Singh and others Vs. Manmohan Singh Kent and others, AIR 1985 Punjab and Haryana 193** but that judgment would not be of much help to respondent No. 1 because of the nature of decree passed in the said case. That was a conditional decree holding that a sum of ₹ 50,500/- was to be paid within one month failing which the plaintiffs' suit was to stand dismissed. Even in **Smt. Parmeshri Vs. Naurata, AIR 1984 Punjab and Haryana 342**, this court held that in cases of the conditional decrees the Courts cannot extend the time though in other cases it can do so.

12. In the present case, however, as already observed that substantial amount having already been paid, there was no scope of contending that there was intentional, deliberate or contumacious delay

on the part of petitioner for not depositing the amount on time and the ground that his counsel was under a wrong impression that the amount could be deposited after the decision of appeal cannot be brushed aside straight-away. It may further be seen that suit of the petitioner-DH was decreed with costs by the learned trial Court and the costs of plaintiff was assessed at ₹ 10,307/- which could ultimately be adjusted out of the total balance amount of ₹ 35,000/-. So in this view, there was a nominal balance amount and the petitioner made an effort for seeking extension of time for depositing the same should have been allowed in the facts and circumstances.

13. In view of the aforesaid discussion, the instant revision is allowed and the impugned order dated 05.05.2012 (Annexure P-5) is set aside. The petitioner is granted time deposit the amount in the trial Court as mentioned in the judgment of trial Court within 10 days of the receipt of certified copy of this order and on doing so, the trial Court would appoint a Local Commissioner to execute the sale deed, but the disbursement of amount deposited shall be made on determination of the same by the trial Court i.e. the refund of the amount of costs of suit as per decree and rest of the amount to be disbursed to the judgment-debtors. In case, the petitioner fails to deposit the amount within the time as aforesaid, the instant revision would stand dismissed.

April 07, 2015
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(R.P. NAGRATH)
JUDGE