

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 5997 of 2014

Date of Decision: July 30, 2015

Narinder Singh and others

.....Petitioners

Vs.

Bhalinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.M.L.Sarin, Sr. Advocate with
Mr. Vijay Sharma, Advocate
for the petitioners.

Mr. Navjot Singh, Advocate
for respondent No.1.

Mr. A.P. Kaushal, Advocate
for respondents No.2 and 3.

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M.M.S. BEDI, J.

The petitioners before this Court are defendants in a suit for possession by way of specific performance filed by plaintiff- respondents No.1 to 3 on the basis of an agreement of sale dated March 1, 2006 regarding 78 bighas of land mentioned in the heading of the plaint.

Claim of plaintiff- respondents is the suit is that a sum of Rs.1.71 crores has been paid as earnest money to the defendant- petitioners and that balance Rs.6.09 crores were payable at the time of execution of the sale deed. Sale deed executed by defendant- petitioner No.2 on August 28, 2008 in favour of defendant No.5 Baljit Singh is also challenged in the suit. The defendant- petitioners filed written statement on March 6, 2009 and stated in para 5 of the written statement that all the defendants were ready and willing to execute the sale deed in case the entire sale consideration was paid by March 10, 2009 alongwith cost of litigation of Rs.1 lac with interest on balance calculated w.e.f. June 5, 2006. The trial Court directed the defendant- petitioners to execute the sale deed on April 30, 2009 vide order dated April 15, 2009 and adjourned the case for June 1, 2009 for report. The plaintiff- respondents No.1 to 3 appear to have not appeared before the Sub Registrar on April 30, 2009. The plaintiff- respondents No.1 to 3 sought extension of six months to execute the sale deed by filing CR No. 2340 of 2009 challenging the order dated April 15, 2009. The defendant- petitioners filed an application annexure P-4 dated June 1, 2009 before the trial Court for dismissal of the suit as the plaintiff- respondents No.1 to 3 had not complied with the order dated April 15, 2009 by executing the registered sale deed on April 30, 2009. It is pertinent to mention that Civil Revision filed against the order dated April 15, 2009 was dismissed on November 16, 2009 by Surya Kant, J. on the ground that the plaintiff- respondents No.1 to 3 had themselves failed to arrange sufficient funds and due to their failure to

pay the balance sale consideration, the sale could not be executed or registered on April 30, 2009. The request for extension of six months to arrange funds was thus declined.

The application filed by defendant- petitioners for dismissal of the suit before the trial Court on the ground that the plaintiff- respondents had not complied with the order dated April 15, 2009, was pending for consideration. Meanwhile, the plaintiff-respondents No.1 to 3 got the suit dismissed in default under Order 9 Rule 8 CPC on June 1, 2009 but the suit was restored on December 10, 2011. The application dated June 1, 2009 was again taken up and the plaintiff- respondents filed reply on January 5, 2012. After the suit was restored, the application was taken up for consideration. Instead of dismissing the suit of plaintiff- respondents for non-compliance of order dated April 15, 2009, the trial Court granted time to the plaintiff- respondents till July 24, 2014 for executing the sale deed vide impugned order dated July 15, 2014. The operative part of the impugned order reads as follows:-

“I have heard the Id. Counsel for both the sides and have also gone through the case file properly. Defendants through the present application alleged that the suit of the plaintiff is liable to be dismissed as they have not complied with the order dated 15.4.2009 passed by the Court. Id. Counsel for the defendants argued that vide order dated 15.4.2009, the defendants were directed to

get the sale deed executed and registered on 30.4.2009 on receiving the balance sale consideration in terms of agreement dated 1.3.2006 and in compliance with the said order they remained present before the office of Sub Registrar, Rajpura on 30.4.2009 but plaintiffs did not come present to comply with the said order and he relied upon affidavit duly attested regarding presence before Sub Registrar, Rajpura on 30.4.2009. But on the other hand the plaintiffs denied the presence of the defendants and alleged that they are ready to get the sale deed executed and registered from the defendants in their favour on payment of balance sale consideration. Perusal of the file shows that defendant No.2 and Sh. R.K. Joshi. Advocate counsel for the defendants have suffered statement on 19.3.2009 to the effect that they are ready to get the sale deed executed and registered in favour of plaintiffs in terms of agreement to sell dated 1.3.2006. When both the parties are ready and willing to perform their part of the contract, then why the sale deed is not being executed and registered as per terms and conditions of agreement to sell dated 1.3.2006. This case falls under the category of Samadhan Cases and this Court is of the considered opinion that in the interest of justice, both the

parties should have given one more opportunity to perform their part of the contract as per agreement to sell dated 1.3.2006. As such, in the interest of justice, both the parties are directed to appear before the office of Sub Registrar, Rajpura for performing their part of the contract on 24.7.2014. Defendants are directed to get the sale deed executed and registered in favour of the plaintiffs on payment of balance sale consideration in terms of agreement to sell dated 1.3.2006. It is further ordered that non compliance of this order shall be viewed seriously. Report be awaited till 24.7.2014. With these observation, the present application is disposed of.”

The legality and propriety of the above order dated July 15, 2014 has been questioned by filing the present petition under Article 227 of the Constitution of India.

A perusal of the direction issued by the trial Court reflects that vide impugned order the trial Court has passed an order which has got following consequences:-

- i) The application filed by the defendant- petitioners for dismissal of the suit for non-compliance of order dated April 15, 2009 has been dismissed;
- ii) The defendant- respondents have been granted extension for implementation of the agreed order

dated April 15, 2009 after about 5 years presuming that both the parties are still ready to perform their part of the contract in terms of the agreement of sale dated March 1, 2006;

- iii) The case being old falling under the category of 'samadhan cases' could be decided by giving one more opportunity to the plaintiff- respondents to perform their part of the agreement of sale dated March 1, 2006;
- iv) A specific direction has been given to the defendant- petitioners and the plaintiff- respondents to appear before the Sub Registrar on July 24, 2014 directing the defendants to get the sale deed executed and registered in favour of plaintiff- respondents on receipt of balance of sale consideration and that the non-compliance of the order would be taken adversely and seriously against the defendant- petitioners;

Mr. M.L. Sarin, Sr. Advocate appearing on behalf of the defendant- petitioners has vehemently contended that the plaintiff- respondents No.1 to 3 had no doubt entered into an agreement of sale with the defendant- petitioners on March 1, 2006 but they had never been ready and willing to perform their part of the contract by paying the balance sale

consideration as they never had funds whereas the defendant- petitioners had always been ready and willing to perform their part of the contract by execution of the sale deed on receipt of balance sale consideration. In order to show the intentions of the defendant-petitioners, it has been submitted that the plaintiff- respondents No.1 to 3 had filed a suit for permanent injunction on July 20, 2006 alleging that the defendant- petitioners are inclined to sell the property to third party and interfere in their possession. The defendant-petitioners pleaded that they are always ready and willing to execute the sale deed and that the plaintiffs are not ready to execute the sale deed. It is further contended that counsel for the defendants got recorded a statement before the trial Court on December 18, 2006 that the plaintiffs have failed to get the sale deed executed and registered in their favour by the date i.e. September 10, 2006 fixed as per the agreement. The suit of the plaintiff-respondents No.1 to 3 was got disposed of as infructuous and was withdrawn by the plaintiff- respondents No.1 to 3 on December 18, 2006. The plaintiffs again filed an application for restoration of that suit but the application for restoration was got dismissed for non-prosecution vide order dated April 5, 2008. The defendant- petitioners thereafter vide sale deed dated August 27, 2008 sold 8 bighas of land out of the 78 bighas of land in favour of defendant No.5.

The plaintiff- respondents then filed a suit for specific performance on August 8, 2008 for possession on the basis of agreement of sale dated March 1, 2006. The defendants filed written statement on March

6, 2009 and pleaded that plaintiff- respondents had failed to pay the amount of Rs.4,59,00,000/- on June 5, 2006 to the defendant as per the terms of agreement of sale and reiterated their statement made in suit for permanent injunction and again got a statement recorded that they are ready to execute the sale deed in favour of plaintiffs uptill March 10, 2009 in case the plaintiffs are ready to pay the balance sale consideration alongwith interest and cost of litigation. As mentioned hereinabove, the plaintiff- respondents did not come forward either for execution of the sale deed or for payment of balance of sale consideration as a result of which the defendant- petitioners were compelled to file an application annexure P-4 for dismissal of the suit on June 1, 2009. A reply was filed to the said application taking up a false plea that they were ready and willing to pay balance of the sale consideration as per agreement dated March 1, 2006.

Learned counsel for the defendant- petitioners submit that the defendant- petitioners had no doubt made a statement that they were ready to execute the sale deed in favour of the plaintiff- respondents No.1 to 3 in the year 2009 when suit for injunction was filed by the plaintiff- respondents No.1 to 3 and thereafter a suit for specific performance was filed. As the plaintiff- respondents No.1 to 3 did not appear before the Sub Registrar on April 30, 2009 and the plaintiff- respondents No.1 to 3 failed to seek extension for another six months to execute the sale deed with dismissal of CR No. 2340 of 2009, decided on April 24, 2009, the defendant- petitioners had impliedly withdrawn the offer for executing the sale deed. The mere

filing of the application by the defendant- petitioners annexure P-4 on June 1, 2009 is indicative of the fact that the offer for execution of the sale deed on receipt of balance of sale consideration ceased to exist after the plaintiff- respondents failed to perform their part of the contract by executing the sale deed by paying the balance sale consideration.

Mr. Sarin has argued that vide impugned order dated July 15, 2014 the trial Court, after the expiry of five years has extended the time to execute the sale deed which was agreed to by the defendant- petitioners by filing written statement in 2009. He claimed that while deciding application dated June 1, 2009, annexure P-4, it was not proper for the trial Court to extend the time for execution of the sale deed.

On the other hand learned counsel for the plaintiff- respondents No.1 to 3 Mr. Navjot Singh and Mr. A.P. Kaushal , respectively have vehemently argued that it is within the discretion of the trial Court to extend time for any purpose of such a discretion vested in the Civil Court, cannot be interfered with in the exercise of powers under Article 227 of the Constitution of India.

I have heard learned counsel for the petitioners as well as counsel for respondents No.1 to 3 and carefully gone through the facts and circumstances of the case and I am of the opinion that the trial Court has ignored the fact that in case of specific performance, the readiness and willingness of a person to perform the essential terms of the agreement of the contract which are to be performed by him, is one of the most material

factor for decreeing the suit at the final stage. It is settled principle of law that continuous readiness and willingness on the part of the plaintiffs is a condition precedent to grant the relief of specific performance and this circumstance is material and relevant and is required to be considered by the Court while granting or refusing grant of relief. The conduct of the plaintiffs prior and subsequent to the filing of the suit alongwith other attending circumstances is material; and a Court is required to find out whether the amount of consideration which the plaintiff is to pay to the defendants, must be proved to be available right from the date of execution of the sale deed fixed till the date of decree. Even at the time of deciding the case at final stage, the Court is required to adjudge the readiness and willingness of the plaintiffs to perform their part of the contract in reference to the conduct of the party and attending circumstances. In this context, reference can be made to law laid down in **N.P. Thirugnanam (D) by LRs Vs. Dr. R. Jagan Mohan Rao**, AIR 1996 SC 116, **M/s J.P. Builders and another Vs. A. Ramadas Rao and another**, (2011) 1 SCC 429 and **Man Kaur (D) by LRs Vs. Hartar Singh Sangha**, 2010 (4) CCC 792.

The short question which is required to be determined in this case is whether the trial Court had not exercised its jurisdiction to decree the suit of the plaintiff- respondents No.1 to 3 on the basis of admission of the defendant- petitioners in the exercise of powers under Order 12 Rule 6 CPC when the defendant- petitioners had admitted the claim of the plaintiff- respondents subject to their paying balance sale consideration and offering

themselves for execution of the sale deed. The conditional admission of the defendant- petitioners will not remain alive for all times to come, as has been presumed by the trial Court in the present case. Had the trial Court passed a decree on the basis of the consent of the defendant- petitioners under Order 12 Rule 6 CPC and passed a decree in consonance with the provisions of Order 20 Rule 12 A CPC specifying the period within which the plaintiff- respondents would make the payment of sale consideration, the plaintiff- respondents could have achieved a legal right to enforce the decree for possession and specific performance by executing the same but having kept the offer in abeyance for 5 years, it was not appropriate for the trial Court to extend the period for five years to pay the balance sale consideration. Seeing the controversy from legal angle, an order passed on the basis of admission could have also been executed by the plaintiff- respondents as Section 36 of the CPC makes the provisions of CPC relating to the execution of decrees applicable to the execution of orders. Neither the plaintiffs sought the execution of the order dated April 15, 2009 nor did the plaintiffs take any step for execution of the consent order. Once the defendant- petitioners filed application annexure P-4 dated June 1, 2009 for dismissal of the suit for non-compliance of the order dated April 15, 2009, it tantamounts to the withdrawal of the consent in the written statement on account of conduct of the plaintiff- respondents No.1 to 3.

So far as the power of the Court to extend the period for payment of sale consideration and execution of the sale deed is concerned,

Section 148 CPC allows a Court to use discretion to enlarge any period granted by Court for doing any act for a period of 30 days in total, even though the period originally fixed or granted may have expired. Legally the power under Section 148 CPC could have been used for a period of 30 days after April 15, 2009. The plaintiff- respondents had challenged the order dated April 15, 2009 in the High Court by filing a revision petition which was decided on April 24, 2009 but the High Court had also refused to extend the period. The impugned order passed by the trial Court extending the period is absolutely without jurisdiction and in contravention to the basic principles of law enshrined in Section 148 CPC and Section 28 of the Specific Relief Act. The trial Court seems to have exceeded its jurisdiction by extending time to execute the sale deed vide order dated April 15, 2009 after a period of five years. Even if there had been a decree passed in favour of the plaintiff- respondents No.1 to 3 on the basis of consent of the defendant- petitioners as per Order 20 Rule 12 A CPC, the defendant- petitioners were authorized to file an application under Section 28 of the Specific Relief Act before the same Court for an order to rescind the contract for plaintiff- respondents No.1 to 3 having not paid the purchase money and other sum ordered by the Court. A statutory right vests in a judgment debtor to have the contract rescinded in case of non-compliance of the terms of the decree passed under Order 20 Rule 12 A CPC to extend the time. A power which could not be exercised after the passing of the decree cannot be allowed to be exercised by the trial Court to cause prejudice to the

defendant- petitioners. As the plaintiff- respondents No.1 to 3 have failed to perform their part of the contract as per the contents of the application annexure P-4 dated June 1, 2009, the only jurisdiction vested with the trial Court was to decide the application dated June 1, 2009 by either acceding to the request or by rejecting the request for dismissal of the suit. It was open to the Court to leave the parties to lead evidence to determine the rights of the plaintiff- respondents No.1 to 3 taking into consideration their readiness and willingness at the time of decision in the suit or till the final decision of the case. Granting time to the plaintiff- respondents No.1 to 3 to pay the balance sale consideration and issuing directions to the parties to execute the sale deed, is an order passed by the trial Court without jurisdiction in contravention to the basic principles of law governing the suits for specific performance, extension of time and execution of decrees/ orders. The impugned order is thus patently an order without jurisdiction. It is hereby set aside. The revision petition is allowed without prejudice to the rights of the plaintiff- respondents No.1 to 3 to be determined at the time of final adjudication of the suit and without prejudice to the rights of the defendant- petitioners to pursue the application dated June 1, 2009 in accordance with law. Since the litigation between the parties is pending since the year 2006, a direction is issued to the trial Court to decide the case within a period of six months by giving fair opportunity to both the parties i.e. plaintiffs and the defendants to produce their evidence to substantiate their case subject to

the decision of the application dated June 1, 2009, annexure P-4 which will
be decided in accordance with law.

July 30, 2015
sanjay

(M.M.S.BEDI)
JUDGE