

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No.6530 of 2014  
Decided on:-06.05.2015.

Harjinder Singh

.....Petitioner.

Versus

Joginder Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Present:- Mr. Ashok Singla, Advocate,  
for the petitioner.

**Dr. Bharat Bhushan Parsoon, J (Oral)**

This revision petition is directed against order dated 18.07.2014 (Annexure-P4) vide which application dated 14.08.2010 (Annexure-P2) of the JD in the Court below (petitioner herein) for rescission of the contract was dismissed and the JD was called upon to execute the sale deed after deposit of the balance sale consideration.

2. Vide decree dated 09.11.2006 of the Civil Court, suit for specific performance of the respondent-decree holders was partly decreed. Appeal against the said decree was dismissed by the First Appellate Court. Total sale consideration was Rs.1,95,000/-, out of which Rs.50,000/- had already been paid whereas balance sale consideration was to be paid. Possession of 12 bighas 10 biswas of land in litigation was to be delivered to the decree holders.

3. As per the JD, petitioner herein, when the JD had come forward

to execute the sale deed of 12 bighas 10 biswas of land, the decree holder had allegedly not come forward to pay the balance sale consideration. The JD had thus sought for rescission of the contract under Section 28 of the Specific Relief Act, 1963. On the other hand, the decree holder had set up a claim that no date for payment of balance sale consideration had been fixed though he was always ready to pay the same, and in fact had even paid the same.

4. It is important to notice that JD No.1 in the meanwhile had sold the land measuring 18 bighas 15 biswas out of the total land to one Surjit s/o Kartar Singh vide sale deed dated 16.04.1998. Both of them, thus were made the defendants. On conclusion of the proceedings, both the defendants were directed to execute the sale deed in favour of the plaintiffs-decree holders regarding the land measuring 12 bighas 10 biswas out of the total land measuring 31 bighas 7 biswas.

5. During the course of hearing provided to the counsel for the petitioner-JD, it has transpired that the only ground taken in the application by the petitioner-JD for rescission of the contract is that only on payment of the balance sale consideration of 10 bighas 12 biswas of land, the sale deed was to be executed by the JD and the said payment was not forthcoming. Plea of the respondent-decree holder however is that since no time was fixed for payment of the balance amount, the same was not paid immediately.

6. The lower Court has rightly observed that in absence of any stipulation of time, non-deposit of balance sale consideration immediately, *ipso-facto* is not a ground of rescission of the contract. Sequently, the decree holders were given one week time on 18.07.2014 to deposit the balance sale consideration whereupon the JD No.1 was to execute the sale deed. Argument of the counsel for the petitioner-JD is that extension of time could not have been granted to the decree holder for deposit of the balance sale

consideration.

7. Support has been sought from ***Rajinder Kumar Versus Shri Kuldeep Singh and others 2014(2) CTC 93 (SC)***, urging that vendor is entitled to compensation for accretion in value of property and purchaser is entitled to claim compensation for deterioration. In this authority decree had not been executed even for more than 19 years due to laches and lapses on part of the parties. Support has further been sought from ***Satya Jain (D) Thr. Lrs. and others Versus Anis Ahmed Rushdie (D) Thr. Lrs. and other, 2013 AIR 434 (SC)***. Even in this case, 40 years had passed by but the decree had not been executed, of course for no fault of the vendee. There was escalation of price of land in the interregnum. Support from ***Nirmala Anand Versus Advent Corporation (P) Ltd., and another, 2003(2) R.C.R. (Civil)*** has also been sought, urging that though discretion lies with the Court to grant or not to grant time, it was not a fit case to grant extension of time. In this authority it was a matter of balancing the equities and one of the consideration kept in mind was as to who was the defaulting party. It was also held further that ordinarily the plaintiff is not to be denied the relief of specific performance. Citing ***Bhupinder Kumar Versus Angrej Singh, 2009(4) R.C.R. (Civil) 248 (SC)***, it is claimed that when vendee had not been paid the balance amount, a court under Section 28 of the Specific Relief Act, 1963 has power to extend time for payment. Discussing pros and cons as also attending circumstances, the lower Court had accepted the request of the JD for rescinding the contract. In this cited authority, the time had been stipulated and without making compliance with the same, the deposit was made after the stipulated time. In ***Parvesh Kumar Gulati Versus Darshan Singh Gulati, 1998(1) R.C.R. (Civil) 119 (Delhi HC)***, cited by the counsel for the petitioner, since the deposit had not been made within the stipulated time, the Tribunal had held that the victim was not entitled to execute the decree because of his own act and conduct. Support has also been sought from ***Bhupinder Kumar***

***Versus Angrej Singh, 2007(3) R.C.R. (Civil) 198 (P&H).***

8. The blame game accusing the vendee-DH is not permissible because no time to the knowledge of the petitioner-JD had been fixed by the Courts below for deposit of the balance sale consideration. Before the application for rescission of the contract filed by the JD could be decided, the balance sale consideration had already been paid calling upon the JD to execute sale deed. In these circumstance, the impugned order does not suffer from any factual legal error.

9. Even otherwise, there is no delay on the part of the decree holder. Application of a JD for rescission of the contract in all cases and in all circumstances is not to be granted as a matter of routine. There is no fault of the decree holder in making compliance with the decree. When no time had been fixed for deposit of the balance sale consideration by either of the courts below, no rescission can be attributed to the DH.

10. Before parting with this order, it may be mentioned that during the course of arguments it has been noticed that consequent upon vacation of the stay (vide order of 15.01.2015) which had been continuing in favour of the petitioner-JD, the decree has already been satisfied and was withdrawn as such thereafter.

11. This revision petition having no merit, is dismissed.

**(Dr. Bharat Bhushan Parsoon)**  
**Judge**

**May 6, 2015**  
prince rana