

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

**CR No.686 of 2015
Date of decision : 15.10.2015**

Surinder Nath & ors.

.... Petitioners

Versus

Surinder Kumar & anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present: Ms. J.S.Munder, Advocate for
Mr. R.K.Kapila, Advocate
for the petitioners.

Mr. Sudeep Mahajan, Advocate
for respondent No.1.

K.Kannan, J. (Oral)

The revision is at the instance of judgment debtor who is aggrieved that the Court had allowed for balance of sale consideration to be paid and the sale deed to be executed without minding the fact that the decree-holder did not comply with the terms of decree as regards stipulation for securing the sale deed through Court when the judgment debtor failed to execute the sale deed within a period of two months. The suit was decreed on 07.02.2001 and it would appear that the correctness of the judgment was put to test in two tiers of appellate forum and the decision of the trial court stood confirmed by the decision of this Court on 25.01.2012. The decree-holder filed an application for execution and sought for deposit of the balance of sale consideration on 15.05.2012. The judgment-debtor moved an application during the pendency of the execution petition on 02.12.2014 for rescission of contract on the ground that the terms of the decree has not been complied with.

Decree-holder's contention was that the decree did not stipulate the deposit of the amount within two months but on the other hand directed the defendant to execute the sale deed within two months and if he failed to do so, the decree-holder will be entitled to secure the sale through Court.

As a general guideline, the Court that deals with suit for specific performance, it is most appropriate for the Court to stipulate the time not merely obligating the defendant to execute the sale deed within a particular period but it must address a corresponding duty on the plaintiff to pay the balance of sale consideration within the same period stipulated. For example, the stipulation shall be to stipulate duties of parties specifically. "The plaintiff shall pay the balance consideration to the vendor(s)/defendant(s) on or before – and the vendor(s)/defendant(s) shall execute the sale deed within the period stipulated. In default, either party may be at liberty to secure the execution decree or apply for rescission of the decree, as the case may be through Court." Such a direction would obviate any vagueness in the decree and give a definite guidance to the party to do what the decree mandates. In the manner in which the decree has been framed, it surely admitted of an ambiguity. The plaintiff has waited for two months after the appellate court disposed of the case and finding that the defendant had not offer to register the sale , the decree-holder moved an application for execution and deposited the money as well. I will take that there is no disobedience of decree of specific performance to allow for rescission of a contract. A decree which is passed after stout contest in all judicial forums cannot be allowed to be scuttled lightly, unless the conduct of the decree-holder was so

seriously at fault that the Court shall exercise its discretion to even condone the delay, if there was a delay by few months. In this case, the execution petition and the deposit of amount was made within a period of four months from the date when the Appellate Court disposed of the case and the judgment had become final between the parties.

Learned counsel for the petitioner gives reference to a judgment of Hon'ble Supreme Court titled as ***Bhupinder Kumar vs. Angrej Singh, 2009(4) Civil Court Cases 195 (S.C.)*** to state that the decision would squarely apply to make possible the rescission of the decree.

I have examined the facts involved and the proposition that Court was laying down. That was a case where an agreement of the year 1991 came to be adjudicated upon when a decree was passed on 13.10.1998 providing for three months time for completion of the same. The decree holder did not do anything till when the judgment debtor filed final application for rescission of the contract on 28.05.2001. After a rescission application had been filed, the decree-holder moved an application for extension of time on 13.08.2001. The Court of first instance dismissed the application for extension of time and this order was confirmed by the District Court and further affirmed in the High Court.

The decree-holder had evidently allowed grass to grow under his feet, as it were, and waited till the judgment debtor moved an application to apply for rescission of contract. In this case, there is no such contumacious conduct that would make possible inference of abandonment and unwillingness or unworthy conduct for a decree-

holder to suffer the consequences of rescission of contract.

The amount of Rs.1 lac that was directed to be deposited in expression of bona fide by the judgment debtor at the time of issuance of notice is directed to be refunded to the judgment debtor. There is no error in the order passed by the Courts below. The revision petition stands dismissed.

15.10.2015
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(K.KANNAN)
JUDGE