

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-7103-2011 (O&M)

Date of decision: 07.04.2015

Yatinder Rana

..... Petitioner

Versus

Harpal Singh and others

..... 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. Kartik Gupta, Advocate for the petitioner.

Mr. Rubi Kumar, Advocate for
Mr. Ashish Gupta, Advocate for respondent No. 1.

None for respondent No. 3.

R.P. NAGRATH, J.

Petitioner is the decree-holder (DH) and has invoked the revisional jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 10.10.2011 (Annexure P-6) passed by the learned Civil Judge (Junior Division), Karnal, in execution petition Annexure P-4 mainly holding that the balance sale price was not deposited within the time and refusing to grant the extension resulting into dismissal of the execution.

2. The petitioner filed a civil suit No. 75 on 14.06.2003 for

possession by way of specific performance of agreement to sell dated 15.05.2001 executed by respondent No. 1-judgment debtor (JD) in respect of land measuring 1 kanal 14 marlas being 1/5th share out of total land measuring 8 kanals 10 marlas. The suit was decreed by the trial Court with costs vide judgment dated 06.01.2007 (Annexure P-1), directing respondent No. 1-JD to execute and register the sale deed in favour of petitioner-DH after receiving the balance sale consideration of ₹ 4,50,000/- from the petitioner as per terms and conditions of the agreement to sell and hand over vacant possession of the property. It was made clear in the decree that if respondent No. 1-JD failed to execute the sale deed in favour of petitioner within three months, the petitioner was entitled to get the sale deed executed through the Court. Respondent No. 1-JD preferred appeal against the judgment and decree of the lower Court bearing Civil Appeal No. 20 of 2007 instituted on 06.02.2007 but the same was dismissed on 27.02.2009 (Annexure P-3). Appeal against the judgment of the lower Court was also dismissed with costs.

3. The petitioner-DH filed an execution petition Annexure P-4 on 13.05.2009 making a prayer for directing respondent No. 1-JD to execute the sale deed. It was stated that the petitioner-DH was prepared to deposit the balance amount to the tune of ₹ 4,50,000/- by deducting the amount of costs awarded by the Courts from the amount of ₹ 4,50,000/- towards the balance sale consideration.

4. During pendency of execution petition, the petitioner-DH moved an application dated 31.07.2010 (Annexure P-5) before the Executing Court seeking permission to deposit the balance sale

consideration after deducting the amount of costs of the suit. It was reiterated in this application that the petitioner was ready to deposit the same in the Government Treasury and two challans duly filled for deposit of the amount were enclosed with the application. The application was declined by the trial/executing Court vide impugned order dated 10.10.2011 (Annexure P-6) by observing as under:-

“8.In this case, civil appeal was filed and the same was dismissed by the Additional District Judge, Karnal on 27.2.2009. The decree holder filed the execution petition on 13.5.2009 and did not make any deposit of the amount of remaining sale consideration. The decree-holder preferred to move an application only on 31.7.2010 for grant of permission to deposit the amount of ₹ 4,09,630/- in Court. It is mentioned that even now the decree holder does not want to deposit the balance amount of ₹ 4,50,000/- in the Court as per terms of the decree under execution. The application of the decree holder is time barred and not in terms of decree dated 6.1.2007 and the same is not maintainable. In view of the discussion above, the execution petition is not maintainable and same is hereby dismissed.”

5. 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 impugned order passed by the

learned lower Court is patently wrong, illegal and perverse as the learned trial Court has failed to properly exercise its discretion vested in it by proper application of principles applicable to such disputes.

6. The main ground that prevailed upon the Executing Court was that though the execution application was filed on 13.05.2009, the petitioner-DH did not deposit the amount but moved an application for the purpose only on 31.07.2010. It was further observed that even now the decree-holder was not prepared to deposit the balance amount of sale consideration of ₹ 4,50,000/- as per the decree.

7. Both these observations are wrong on the face of it and cannot be sustained in the eyes of law. The suit was decreed by the trial Court with costs and, therefore, the decree-holder was entitled to recover the costs from respondent No. 1-JD. The learned trial Court assessed ₹ 40,955/- as costs as per the decree-sheet annexed with judgment of the trial Court Annexure P-1. Even the appeal filed by respondent No. 1-JD was dismissed with costs though the decree-sheet passed by the learned Appellate Court was not attached for having a look at the costs incurred by petitioner-DH in the appeal but the offer made by petitioner-DH to deposit the amount of ₹ 4,09,630/- as balance sale consideration cannot be said to be non-compliance. I am of the view that even if the learned lower Court was of the view that full amount of balance sale consideration was required to be deposited, it should have directed the decree-holder to deposit the aforesaid amount within a specific time instead of straight-away dismissing the application on that ground. If in case, the petitioner-DH would not have deposited that amount in spite of

direction by the Executing Court, the necessary consequences would have followed.

8. There was in fact no such delay on the part of decree-holder/petitioner for refusing him the fruits of lawful decree passed in his favour. The learned Executing Court could not rest its decision merely on the ground that application for seeking permission to deposit the amount was made on 31.07.2010, because in the execution petition itself there was a prayer that the decree-holder was prepared to deposit the amount in terms of decree. The execution petition with the aforesaid prayer was filed well within three months of the decision of Appellate Court. Indisputably, the petitioner-DH could not have possibly deposited the amount in the Government Treasury without a specific order of the Executing Court. I am of the view that as soon as the prayer was made by the petitioner-DH, the Executing Court should have passed an order for depositing the amount in terms of the decree which of course would have been subject to the objections that could be raised by respondent No. 1-JD.

9. It was not a disputed proposition of fact that the Appellate Court while admitting the appeal stayed the operation of judgment and decree of the trial Court. The order of Appellate Court staying the operation of trial Court judgment and decree is dated 23.02.2007 (Annexure P-2). If that be the fact situation, no adverse inference could be raised for not depositing the amount within a period of three months of passing of the judgment by the trial court. With the dismissal of appeal, the judgment of the trial Court would merge into the judgment of

Appellate Court and it could be validly and legally inferred that the period of three months for the deposit of amount of balance sale consideration would have started from the date of judgment of the Appellate Court.

10. It would be pertinent to note that respondent No. 1-JD also preferred Regular Second Appeal (RSA) in this Court which remained pending and was dismissed on 07.07.2011. There was of course no stay order granted during pendency of RSA but it is not the respondent's case that he raised such an issue in the RSA about non-deposit of the amount on time as granted by the trial Court or that any such favourable observations were been made by this Court while dismissing the RSA. The application Annexure P-5 specifically seeking permission to deposit the remaining amount was filed on 31.07.2010 i.e. much before the decision of the RSA.

11. There is a catena of authorities in support of contention raised by the petitioner that Courts should be liberal in granting time to deposit the amount and in the present there is nothing to suggest any deliberate attempt by the decree-holder for not depositing the balance sale consideration on time. In **Mohinder Singh and another Vs. Satpal Singh and others, 2011 (1) LJR 197**, a judgment of this Court the decree for specific performance of agreement to sell was passed on 19.03.2008 directing the decree-holder to deposit the balance sale consideration within one month. An application was filed before the Executing Court for extension of time on 14.06.2008 which was declined by the Executing Court on 22.11.2008. This Court observed that Courts should be liberal

and not rigid in extending the time. The delay on deposit of the balance amount was not so grave that could not be condoned.

12. In **Sardar Mohar Singh through Power of Attorney Holder, Manjit Singh Vs. Mangilal @ Mangtva, (1997) 9 SCC 217**, Hon'ble Supreme Court held as under:-

“From the language of sub-Section (1) of Section 28, it could be seen that the Court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes functus officio. The very fact that Section 28 itself gives power to grant order of rescission of the decree would indicate that till the sale deed is executed in execution of the decree, the trial Court retains its power and jurisdiction to deal with the decree of specific performance. It would also be clear that the Court has power to enlarge the time in favour of the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, in spite of an application for rescission of the decree having been filed by the judgment debtor and rejected. In other words, the Court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance. It is true that the respondent has not given satisfactory explanation of every day's delay, it is not, unlike

Section 5 of the Limitation Act, an application for condonation of delay. It is one for extension of time.

Under these circumstances, the executing Court as well as the High Court had exercised discretion and extended the time to comply with the conditional decree.”

13. The facts of **Sardar Mohar Singh's case (supra)** were that the petitioner contracted to sell his land vide agreement dated 07.07.1977. Respondent, however, failed to perform his part of contract and petitioner filed Civil Suit No. 9A/78. The trial Court granted the decree for specific performance on 18.11.1987, directing the respondent to refund the earnest money within a period of three months and in default to execute the sale deed. The respondent (vendee) filed applications to rescind the decree in execution and sought extension of time for compliance. The Executing Court by order dated 15.03.1996 allowed both the applications of respondent (vendee) and directed him to deposit the amount within three days. The High Court, however, dismissed the revision but directed the respondent (vendee) to deposit a further sum of ₹ 16,000/-. This discretion exercised by the Executing Court as well as the High Court was found to be appropriate.

14. In **Partap Singh Vs. Narpat and others, 2011 (1) LJR 341 (P&H)**, the facts were that after dismissal of the first appeal the decree-holder immediately filed execution petition and also made a prayer to pay the balance amount. This Court observed that without an order of Executing Court, the Treasury or Bank would not have accepted

the balance sale price. The Executing Court passed the order on 20.11.2007 directing the decree-holder to deposit the balance sale consideration within a period of 20 days and accordingly the the decree-holder deposited the same on 23.11.2007. It was found that there was no lapse or default on the part of decree-holder. Even in that case the Appellate Court did not fix any time to deposit the balance sale price. That was a case in which agreement to sell was executed on 09.02.1994 and the suit was decreed on 29.04.2006. The operation of the judgment of trial Court was stayed in the appeal. Even Regular Second Appeal (RSA) preferred in this Court and Special Leave Petition (SLP) filed before the Hon'ble Supreme Court were dismissed in 2007. The execution in that case was filed on 13.10.2006 but in execution petition, a prayer was made to deposit the balance amount. Later on, the subsequent vendee, however, filed the objections which were dismissed on 20.11.2007 and while dismissing the objection petition, twenty days time was granted to the decree-holder to deposit the balance sale consideration.

15. In **Ramankutty Gupta** Vs. **Avara**, AIR 1994 Supreme Court 1699, Hon'ble Supreme Court observed that 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. It was also observed that procedure is the hand-maid for justice and unless the procedure touches upon the jurisdictional issue, it should be moulded to subserve substantial justice and therefore, technicalities would not stand in the way to subserve substantive justice. It was observed that

where the decree is transferred for execution, the transferee Executing Court is not the original Court and it would not be the same Court within the meaning of Section 28 of the Act, but when execution 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 of the Act is maintainable in the same Court. Moreover, even Executing Court can treat the application to be on original side of the trial court, if it happens to be the same Court.

16. From the above discussion, I find that present was a case in which the petitioner-DH was successful in obtaining the decree which was upheld up to this Court and even after a short period of dismissal of first appeal that the execution petition was filed showing the preparedness of the petitioner-DH to deposit the amount. This is a fittest case where discretion to extend the time should have been allowed and refusal to grant the same, the trial Court has failed to exercise its jurisdiction vested in it resulting in miscarriage of justice which must be set at naught. It was not even the case of respondent No. 1-JD that he filed any application before the trial/executing Court for rescission of the contract on the ground of delay in depositing the balance sale consideration. This further fortifies the view that discretion for permission to deposit the amount by extending the time if it was required should have been granted.

17. In view of the above, the instant revision is allowed and the impugned order dated 10.10.2011 (Annexure P-6) is set aside. The petitioner is granted time to deposit the amount 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. However, the disbursement of amount shall be made on determination of the issue by the Executing Court thereafter, keeping in view the amount of costs which the petitioner/decreed-holder would be entitled for the refund. In case, the petitioner fails to deposit the amount within the time as granted vide this order, the instant revision would stand dismissed.

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