

119.

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

**Civil Revision No.8288 of 2015 (O&M)**

Date of decision: 07.12.2015

Tara Singh (since deceased) through his LRs ... Petitioners

versus

Sandeep Kumar and others .... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr.Vikas Kumar, Advocate,  
for the petitioners.

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1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

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**K.Kannan, J.** (*Oral*)

1. The revision is at the instance of the judgment debtor to the dismissal of the application for rescission of a decree filed under Section 28 of the Specific Relief Act. The facts that gave rise to the application are as under.

2. A suit for specific performance was decreed on 20.09.2012 by the appellate court when the trial court had granted only the relief of refund of advance paid. The appellate court had directed the defendant to get the sale executed in favour of the plaintiff after receiving the balance of sale price within 2 months

from the date of the decree. Admittedly, the sale deed was not executed in the manner directed but the defendant had preferred an appeal against the judgment to the appellate court on 28.09.2012. During the pendency of appeal, the plaintiff had moved an application for execution of sale deed on 18.03.2013 and also moved an application for deposit of the balance of sale consideration. The court allowed for deposit to be made on 19.03.2013 at his own risk and responsibility. The appeal by the defendant was disposed of by the High Court on 10.02.2014. It was after the disposal of the appeal that the Executing Court took up the execution petition which was pending for consideration. The judgment debtor contended through his application that his own deposit had not been made within a period of 2 months from 28.09.2012, that is, before 28.11.2012 and the deposit made on 19.03.2013 was such as to exhibit a conduct that he had been unwilling to perform his part of the contract and, consequently, the decree must be rescinded. This application was rejected by the court below and hence, the revision.

3. The counsel would state that a direction for sale deed within 2 months after the receipt of consideration contemplated an implied direction for deposit within 2 months in the manner interpreted by the Supreme Court in **Chanda (dead) through L.Rs. Versus Rattni and another-AIR 2007 Supreme Court 1514** and the reasoning of the court below that there was no direction by the

appellate court for deposit within 2 months was erroneous. The counsel would argue that when he preferred the regular second appeal, he had not obtained any order of stay and consequently, the mere institution of the appeal could not be taken to operate as stay in the manner contemplated under Order 41 Rule 5 CPC. The power of the court to entertain an application filed by the defendant for rescission of a decree was competent in the light of law laid down by this court in **Chanda Versus Rattni -1993-3 PLR 135** that was later confirmed by the Supreme Court in **AIR 2007 Supreme Court 1514** with the interpretation referred to above.

4. The legal positions advanced are well taken but we must observe that in spite of a decree that is passed by a court, it does not lose the discretion to extend time or consider a plea for rescission of a decree to allow it or not in the light and circumstances of the case. Even if there was no specific direction for deposit of money within 2 months and there was only direction for execution of a sale deed, the fact that the defendant was not prepared to execute the sale deed was clearly manifest in his conduct in preferring a second appeal against the judgment of the appellate court. The defendant cannot surely have an argument when he preferred the appeal to High Court, he was interested in executing the sale deed. It will be complete travesty of truth and illogical, if the appellant were to contend that he was preferring an appeal without minding the plaintiff to

execute the decree. On the other hand, the very fact that the appeal was filed was another means of showing that a direction for execution of sale deed as contained in the appellate court judgment was put to challenge and hence, he was not willing to execute the sale deed.

5. It was not as if that the decree holder had simply allowed for time to go by without any act on his part. If he was moving an application for execution and was also tendering the amount within a reasonable time of 5 months that included 2 months in between, the court was justified in examining the conduct of the parties in the application filed for rescission of decree and consider whether the decree must be declared as rescinded or the decree should be allowed to be executed even when there was no application. If the decree holder had not paid the balance within 2 months but filed it on the 5<sup>th</sup> month when there was an appeal filed by the defendant to this court, the court was justified in extending the discretion to allow for the execution process to continue and to decline the plea for rescission. A decree lawfully obtained shall not be allowed to be stifled very easily. There have been several pronouncements that underscore the sanctity of a decree and it ought not to be allowed to be rendered nugatory. In **Abdul Shaker Sahib Versus Abdul Rahiman Sahib and another-AIR 1923 Madras 284**, it has been held, “it would seem absurd to hold that the mere fact that a date of

completion is fixed in the original decree puts an end to the action and that the control of the original court expires on the expiration of that date and thus substitute in effect for all the known remedies stated above the simple expedient of treating the action and the decree as dead for all purposes and leaving the vendor in undisturbed possession of property which is not his. ....". In **Sardar Mohar Singh Versus Mangilal-1997 (9) SCC 217**, the Supreme Court has held, while detailing the discretionary powers of the court, that, ".....that the Court does not lose its jurisdiction after the grant of the decree for specific performance nor does it become *functus officio*. Therefore, the Court has the power to enlarge the time of the judgment debtor to pay the amount or to perform the conditions in the decree for specific performance, despite the application for rescission of the agreement/decreed." In **P.R. Yelumalai Versus N.M. Ravi-2015(9) SCC 52**, it has been held that, "Court has the discretion to extend the time upon an application made by the party required to act within a stipulated time period. Extension of time can be granted even after the expiry of the period originally fixed."

6. In **Chanda** (supra), it has been held by the Supreme Court that the power under Section 28 of the Act is discretionary and the Court cannot ordinarily annul the decree once passed by it. The power exercisable under this Section is discretionary. In **Sneh Lata Verma Versus Baldev Raj Monga-1998(3) RCR (Civil) 187**

(P&H), it has been held that field of specific performance is governed by equity and discretion of the court. Court has the jurisdiction to impose conditions to derive balance between the parties and it will be just and proper to impose such conditions to apply the concept of automatic forfeiture of right of decree holder in a case of default. The Court has also the power and discretion to extend time for fulfillment of such condition if it is satisfied that the decree holder is not taking undue benefit by delaying the performance due on his part. It has been further held that if the Court is satisfied of the just and reasonable cause, it can extend the time for deposit of balance consideration amount and to balance the equity between the parties, it may direct the decree holder to pay interest on the balance amount for the period of default.

7. As a measure of general practice for the sake of clarity, the court that passes decree for specific performance shall incorporate appropriate directions to the plaintiff/decreed holder for deposit and shall not make it a matter of mere inference. Unlike every other suit, where normally the directions are to the defendant/judgment debtor, a decree for specific performance, like a decree for redemption of mortgage or pre-emption, requires positive direction to the plaintiff. The model direction in the decree shall be: “The plaintiff is directed to pay the balance of sale consideration within a period of \_\_\_\_\_ months and call upon the

defendant/judgment debtor to execute the sale deed. On failure or unwillingness of the judgment debtor, the decree holder shall make the deposit in court and resort to execution process.” In this case, the deposit has already been made. There is enough justification for not making the deposit within 2 months. As a matter of prudent practice, every application for deposit beyond the period stipulated in the decree shall be put on notice to the judgment debtor, after receiving the deposit and subject the deposit to the outcome of consideration after eliciting objections from the judgment debtor.

8. The impugned order dismissing the application for rescission of the decree is maintained and the revision petition is dismissed.

**(K.KANNAN)**  
**JUDGE**

07.12.2015  
sanjeev