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

Civil Revision No. 834 of 2015 (O&M)

Date of decision : 20.3.2015

Rakesh Chander Goel and others .. Petitioners

versus

Atul Kumar .. Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Narinder Kumar Vadehra, Advocate, for the petitioners.

Mr. Vikrampreet Aora, Advocate, for the respondent.

Rajesh Bindal, J.

1. The order dated 30.1.2015, whereby the objections filed by the petitioners/judgment-debtors have been dismissed, has been impugned in the present petition.

2. The facts as are evident from the record are that the petitioners entered into an agreement to sell on 19.2.2009 for sale of property named as Hotel Park Avenue with the respondent/plaintiff for a total sale consideration of ₹ 1,40,00,000/-. Earnest money of ₹ 20,00,000/- was paid. The last date for execution of sale-deed was fixed as 25.6.2009. The respondent filed a suit for possession by way of specific performance of agreement to sell on 18.7.2009 on the plea that the vendors failed to get the sale-deed registered. During the pendency of the suit, the petitioners/ defendants conceded the claim of the respondent/plaintiff and on the basis thereof decree was passed on 23.7.2010. The vendee still aggrieved filed appeal. During the pendency of the appeal, counsel for the vendee made a statement that the vendee will pay the balance sale consideration along with interest @ 12% per annum from 25.6.2009 till actual payment, for getting the sale-deed executed in his favour in terms of the decree passed by the trial Court on 'as is where is basis'. The payment shall be made within two

months, otherwise the suit shall be deemed to have been dismissed. The appeal stood disposed of on 24.9.2014 in terms of the settlement between the parties. The respondent/plaintiff filed execution to get the sale-deed registered. The sale consideration mentioned in the draft sale-deed was ₹ 1,40,00,000/- to which the petitioners filed objections claiming that the sale-deed should be got registered by mentioning the total sale consideration being received by them as per the settlement and not what was mentioned in the initial agreement to sell. The objections having been dismissed by the learned Court below, the order has been impugned in the present petition.

3. Learned counsel for the petitioners submitted that no doubt the agreement to sell was executed for sale of the property for a total sale consideration of ₹ 1,40,00,000/- and decree was passed by the learned trial court in terms thereof where the petitioners conceded the claim of the respondent/plaintiff. However, still dissatisfied, the vendee filed the appeal where the matter was settled. The respondent/plaintiff got his statement recorded that he will pay the balance sale consideration along with interest @ 12% per annum with effect from 25.6.2009 till actual payment for getting the sale deed executed in his favour in terms of the decree passed by the trial court on 'as is where is basis'. The total amount being paid by the respondent/ plaintiff for getting the sale deed registered becomes the sale consideration for which the property is being transferred to the vendee and that amount is required to be mentioned in the sale-deed. It is the total amount being received by the petitioners-vendors for sale of the property which becomes the sale consideration but with a view to save the stamp duty, the respondent is mentioning only ₹ 1,40,00,000/- in the draft sale-deed.

4. Learned counsel for the petitioners further submitted that the sale-deed is sought to be got registered by the respondent/plaintiff even at a price less than the rates fixed by the Collector, which is not permissible in view of the judgment of Hon'ble the Supreme Court in *State of Haryana and others vs Manoj Kumar* 2010 (4) SCC 350. It was further submitted that even in the execution application filed by the respondent, he had mentioned that balance sale consideration payable was ₹ 1,98,00,000/- and not ₹ 1,20,00,000/- i.e. including the interest.

5. It was argued by learned counsel for the petitioners that in view of the statement made by the respondent/plaintiff before the learned Lower Appellate Court in terms of which the appeal was disposed of, the property was to be transferred on 'as is where is basis'. This fact has not been mentioned in the sale-deed as the property in dispute is a hotel and non-mentioning thereof may create dispute at a later stage. It was further submitted that in terms of Section 24 of the Stamp Act, interest if any paid at the time of execution of the sale-deed has to be treated as part of the sale consideration.

6. On the other hand, learned counsel for the respondent/plaintiff submitted that once the agreement to sell was executed for a total sale consideration of ₹ 1,40,00,000/-, the sale-deed is to be executed for that amount. The additional amount payable is merely interest and not as part of the sale consideration. Hence, the same is not required to be mentioned in the sale-deed. In case the sale-deed depicted value less than fixed in the area by the Collector, it can be impounded under Section 47A of the Stamp Act. The petitioners cannot be permitted to raise the grievance for the same. As far as mentioning of words, 'as is where is basis' in the sale-deed are concerned, learned counsel for the respondent submitted that he does not have any objection to the same. With reference to the contention raised by learned counsel for the petitioners regarding Section 24 of the Stamp Act, learned counsel for the respondent submitted that the same has application only in case the property being sold was under mortgage and not otherwise.

7. Heard learned counsel for the parties and perused the paper book.

8. The undisputed facts on record are that the petitioners entered into an agreement to sell on 19.2.2009 for sale of property known as Hotel Park Avenue with the respondent-plaintiff for a total sale consideration of ₹ 1,40,00,000/-. Earnest money of ₹ 20,00,000/- was paid. The sale-deed was to be executed on or before 25.6.2009. Though nothing hinges on the fact that which party sought to back out from the agreement to sell, however, the fact remains that a civil suit was filed for possession by way of specific performance of agreement to sell by the respondent-plaintiff on 18.7.2009. During the pendency thereof, the claim of the respondent-plaintiff was

accepted by the petitioners-vendors, hence, the same was decreed on 23.7.2010. Relevant part of the decree is extracted below:-

> "It is ordered that the suit of the plaintiff stands decreed for possession by way of specific performance of the agreement in question as prayed for by the plaintiff as per the head note of the plaint. The defendants are directed to execute the sale deed in favour of the plaintiff within 2 (two) months from the date of decision on receiving the balance sale consideration. The defendants are further directed to execute the sale deed of Hotel namely Park Avenue as prayed for as per the agreement relied upon by the plaintiff dated 19.2.2009 and the defendants are directed to hand over the original sale deed of the property and also hand over the site plan of the suit property, failing which the plaintiff can get the sale deed executed through the process of law. The parties are left to bear their own costs."

9. In terms of the aforesaid decree, the respondent-plaintiff was to get the sale-deed registered within a period of two months. But still he was aggrieved and preferred appeal against the judgment and decree of the trial court on 6.11.2012. It was sought to be argued by learned counsel for the petitioners that the object was merely to gain time, as the respondent was not ready with the balance sale consideration. Be that as it may, nothing hinges on that as well as the respondent-plaintiff made a statement before the learned Lower Appellate Court that he is ready and willing to pay the balance sale consideration along with interest @ 12% per annum from 25.6.2009 till actual payment for getting the sale deed executed in his favour in terms of the decree passed by the trial court on 'as is where is basis' within a period of two months. The statement of counsel for the respondent/plaintiff is extracted below:-

> "Stated that the Appellant is willing to pay the balance sale consideration along with interest @ 12% p.a. w.e.f. 25.6.2009 till actual payment for getting the sale deed executed in his favour in terms of the decree passed by the trial court on as is where is basis. He

> undertake to make the payments within two months from today, failing which the suit shall be deemed to have been dismissed, the appeal may be decided accordingly."

10. On the same day, petitioner Rakesh Goyal made a statement before the learned Lower Appellate Court agreeing in terms of the statement made by counsel for the vendee and prayed for the decision of the appeal in terms thereof. The statement of petitioner- Rakesh Goel is extracted below:-

> "I have heard the statement of Counsel for the Appellant. I agree to the statement made by the counsel for the Appellant. The appeal may be decided accordingly."

11. It was on the basis of the aforesaid settlement between the parties that the learned Lower Appellate Court decided the appeal on 24.9.2014. The petitioners got a legal notice dated 16.11.2014 issued to the respondent-vendee that they are ready and willing to get the sale-deed executed in terms of the compromise arrived at before the learned Lower Appellate Court. Instead of doing that, the respondent-plaintiff filed execution on 27.11.2014 especially mentioning that the balance sale consideration including interest would be ₹ 1,98,00,000/-. This would make total sale consideration as ₹ 2,18,00,000/- including ₹ 20,00,000/- paid as the earnest money. In the draft sale-deed annexed with the execution application, total sale consideration was mentioned as ₹ 1,40,00,000/-. Even the words, 'as is where is basis' were not mentioned in the sale deed with reference to the property being sold. To this, the petitioners filed objections that once the total amount being received for sale of the property in terms of the settlement arrived at between the parties was ₹ 2,18,00,000/-, the same deserves to be mentioned in the sale-deed and not what was originally agreed. The objections were dismissed.

12. I find merit in the contention raised by learned counsel for the petitioners to the extent that in the sale-deed being registered in terms of the settlement arrived at between the parties before the learned Lower Appellate Court, total amount being paid including interest is required to be mentioned as the sale consideration and not what was originally agreed to.

The agreement to sell is dated 19.2.2009, in terms of which total sale consideration was ₹ 1,40,00,000/-. The sale-deed was to be executed on or before 25.6.2009. Even the suit filed by respondent-plaintiff for possession by way of specific performance of agreement to sell was decreed directing execution of sale-deed in terms of the agreement to sell dated 19.2.2009 on payment of balance sale consideration. It was the vendee, who felt aggrieved and filed appeal against the same, which resulted in delay in execution of sale deed and payment of balance sale consideration to the petitioners. He himself agreed before the learned Lower Appellate Court that now he will pay the balance sale consideration along with interest @ 12% per annum with effect from 25.6.2009 till actual payment. That was the date upto which he was to get the sale deed registered on payment of balance sale consideration. He had undertaken to pay interest for the intervening period which shall form part of the sale consideration as it was not a loan transaction, as such in which principal or interest amount could be dealt with separately. The entire amount being received by the vendors-petitioners was on account of sale of the property and correspondingly being paid by the respondent on that account. Nomenclature will not make any difference. Substance has to be seen. The total amount being paid by the vendee to the vendors including the interest is required to be mentioned as sale consideration in the sale-deed so that the vendors could also account for the same accordingly.

13. Even in terms of illustrations given in Section 24 of the Stamp Act where a mortgaged property is sold, the total sale consideration is the amount of sale consideration agreed between the mortgagor-vendor and the vendee plus mortgage money and the interest if any due on that.

14. As far as the claim of the petitioners regarding mentioning of words, 'as is where is basis' is concerned, learned counsel for the respondent fairly conceded that the same will be incorporated in the sale-deed, hence, while accepting the statement, no direction is required to be given for the same.

15. In view of my aforesaid discussions, the impugned order passed by the learned Court below is set aside. The sale-deed shall now be got registered by mentioning the total sale consideration of ₹ 2,18,00,000/-

being paid by the vendee to the vendors and by adding the words, 'as is where is basis', as undertaken by learned counsel for the respondent.

16. The Revision Petition stands disposed of accordingly.

20.3.2015 (Rajesh Bindal)
vs Judge

(Refer to Reporter)