

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

Date of Decision: 04.09.2015

1. Civil Revision No.8295 of 2014 (O&M)

Taptesh Kaur @ Taaptesh KaurPetitioner

Vs

Sushil Kumar and anotherRespondents

2. Civil Revision No.8296 of 2014 (O&M)

Taptesh Kaur @ Taaptesh KaurPetitioner

Vs

Suhsil Kumar and anotherRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikas Behl, Senior Advocate with
Mr. Narinder Kumar Vadehra, Advocate
for the petitioner.

Mr. Kashish Garg, Advocate
for respondent No.1.

- 1. *Whether Reporters of 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?***

RAJ MOHAN SINGH, J.

[1]. By this common order Civil Revision No.8295 of 2014 titled and Civil Revision No.8296 of 2014 both titled Taptesh Kaur @ Taaptesh Kaur v. Sushil Kumar and another are being disposed of.

[2]. For brevity, facts are being culled out from CR No.8295 of 2014. In this revision petition order dated 20.11.2014 (Annexure P-9) and in connected revision petition order of even date (Annexure P-8)

passed by Civil Judge (Jr. Divn.) Bathinda have been assailed. It would be necessary to refer both the orders in the present petition.

[3]. Respondent No.1 filed a suit for specific performance against the petitioner and respondent No.2. The said suit was partly decreed by the Additional Civil Judge (Sr. Divn.) Bathinda by judgment and decree dated 26.08.2011. Two separate appeals were filed. During pendency of appeal, a compromise was effected between the parties on 12.10.2012. According to which it was settled between the parties that respondent No.1 would pay Rs.1 crore to petitioner out of which petitioner has already received earnest money to the tune of Rs.10 lacs from respondent No.1. It was further agreed between the parties that respondent No.1 would pay balance sale consideration on or before 30.11.2012.

[4]. On the basis of said compromise, lower appellate Court modified the judgment and decree dated 26.08.2011 and it was mentioned in the judgment and decree dated 29.10.2012 passed by lower appellate Court that respondent No.1 would pay an amount of Rs.90 lacs to the petitioner on or before 30.11.2012 and thereupon petitioner shall execute the sale deed after receiving the balance sale consideration of Rs.90 lacs.

[5]. Petitioner remained present before the office of Sub-Registrar on 30.11.2012 and was ready and willing to perform her part, but the respondent No.1 did not come present to the office of Sub-Registrar, Bathinda. Petitioner was always ready and willing to honour the compromise. Respondent No.1 never approached her

with balance sale consideration and for execution of sale deed on the date fixed, rather respondent No.1 sent two SMS messages to petitioner on 29.11.2012 i.e. a day prior to the target date for execution of the sale deed. The contents of SMS messages are reproduced hereasunder:-

*"29/Nov/2012 10:08:09 PM Lala Btd
(+919815315630)*

SSA Navtesh Madam kindly does't come Bathinda tomorrow for registry as we have to go to Delhi for operation. We will convey new date and time tomorrow evening. Thanks & Rgds. Sushil Bansal. Mob. No.98153-15630, Dana Mandi, Bathinda.

"29/Nov/2012 10:10:21 PM – 919876333658

SSA Navtesh Madam kindly does't come Bathinda tomorrow for registry as we have to go to Delhi for operation. We will convey new date and time tomorrow evening. Thanks & Rgds. Sushil Bansal. Mob. No.98153-15630, Dana Mandi, Bathinda."

[6]. The factum of aforesaid two SMS messages is an admitted fact. It is necessary to state here that Navtesh is sister of Taptesh Kaur @ Taaptesh Kaur (petitioner) and is also power of attorney.

[7]. The petitioner went to the office of Sub-Registrar on 30.11.2012 for executing the sale deed after receiving the balance sale consideration of Rs.90 lacs from respondent No.1. She remained present in the office of Sub-Registrar from 10.00 a.m. to 5.00 p.m. and also got executed an affidavit before the Executive Magistrate, Bathinda which was duly attested by the Executive Magistrate, Bathinda and also entered in register maintained by the

office of Sub-Registrar at serial number 282 dated 30.11.2012 in token of her readiness and willingness. It is relevant to state that petitioner came to India only for the purposes of executing sale deed from abroad.

[8]. Needful in the context of execution of sale deed was not done on 30.11.2012, thereafter respondent No.1 moved an application for depositing the balance sale consideration of Rs.90 lacs on 11.12.2012. In the said application, respondent No.1 has nowhere pleaded that he appeared before the office Sub-Registrar on 30.11.2012 with remaining amount. Nothing was mentioned whether petitioner was at fault or she has not appeared before the Sub-Registrar on 30.11.2012 or the sale deed has not been executed on account of fault of petitioner. The application is conspicuously silent about the SMS messages sent by respondent No.1. Para 3 of the application is relevant to be quoted herein:-

“That as per the compromise decree dated 27.10.2012 the plaintiff-Applicant was to pay balance amount of Rs.90 lacs to Taptesh Kaur, defendant-respondent No.1 on 30.11.2012 before the Sub-Registrar, Bathinda, who was thereafter to get the sale deed executed and registered in favour of the plaintiff-applicant and also had over the vacant possession of same. It was further ordered that in case defendant-respondent No.1 defaulted in accepting the amount, then the plaintiff-applicant was to deposit the same in the Lower Court by 15.12.2012 and thereafter to get the sale deed executed and registered in terms of Applicant, whereafter he shall apply for execution and registration of the sale deed in terms of appellate

decree. Challan from is enclosed herewith."

[9]. Since the respondent No.1 has failed to fulfill his part of obligation arising out of the judgment and decree of the lower appellate Court based on compromise, therefore, the execution application filed by respondent No.1 should have been dismissed.

[10]. Respondent No.1 filed an application for execution of decree of the trial Court which was amended by the lower appellate Court. Petitioner filed objections in the said execution application. The factum of two SMS messages was duly pleaded. The petitioner has submitted in the objections that respondent No.1 was estopped from executing the decree by his own act and conduct as he did not come to the Court with clean hands. Petitioner also filed an application for rejection of execution on 24.07.2014.

[11]. The Executing Court rejected the objections filed by the petitioner vide order dated 20.11.2014 and also rejected the application for rejection of execution application filed by petitioner vide order of even date. That is how both the orders are being assailed by petitioner in these civil revision petitions.

[12]. Learned Senior counsel for the petitioner(s) has submitted that the impugned orders (Annexures P-8 and P-9) in both the revision petitions are the result of non-application of mind. Respondent No.1 has admitted the factum of SMS messages. Even the recital of SMS messages shows that respondent No.1 will convey new date and time by tomorrow evening. New date and time were never conveyed. Petitioner while not acting on the aforesaid SMS

messages got herself presented before the Sub-Registrar and got herself marked. Therefore, no fault can be attributed to the petitioner by any stretch of imagination. Learned counsel also submitted that after having failed to deposit balance sale consideration of Rs.90 lacs before the Sub-Registrar on 30.11.2012, respondent No.1 moved an application for deposit of the same on 11.12.2012 and unilaterally deposited the same vide challan number 526376 dated 15.12.2012 i.e. the date beyond the date fixed in compromise i.e. 30.11.2012. Respondent No.1 also pleaded that he had also attended the office of Sub-Registrar.

[13]. In the event of dispute regarding affidavit of presence and in order to know which of the party was at fault and who backed out on the date fixed i.e. 30.11.2012, it was obligatory on the part of executing Court to frame issue and decide the controversy of readiness and willingness in the objections filed by the petitioner.

[14]. Respondent No.1 has taken the stand that he attended the office of Sub-Registrar, but ultimately after sending the SMS messages he never informed the petitioner that he would come on the date fixed, nor he informed about his presence in the office of Sub-Registrar. Respondent No.1 stated that the sale deed has already been executed on 16.12.2014 and possession is with him. In view of the situation, he made the statement before the executing Court on 23.12.2014 that the execution is satisfied and he withdrew the execution having become fully satisfied.

[15]. I have considered the rival submissions of both the sides.

[16]. It is noticed that, in the event of denial by respondent No.1 in respect of affidavit of presence of petitioner before the Sub-Registrar, it was obligatory upon the executing Court to decide the controversy after framing proper issue and both the parties should have been afforded reasonable opportunity of hearing and to produce material to show that they were ready and willing to perform their part of obligation on 30.11.2012. Admittedly, the amount was deposited beyond the target date fixed for execution of sale deed. The deposit of amount upto 15.12.2012 was only in the event of failure on the part of petitioner to honour the terms and conditions of the compromise. In view of aforesaid, it was necessary to adjudicate the factum of readiness and willingness of either of the party on 30.11.2012.

[17]. Respondent No.1 proceeded with the execution. At the time of issuance of notice of motion in this case, notice re: stay was also issued, but in the absence of any stay granted by the Court, respondent No.1 kept on pursuing the execution and ultimately made statement regarding withdrawal of the same on the ground that the decree has been fully satisfied with the execution of sale deed dated 16.12.2014 and his possession over the suit land.

[18]. Learned Senior counsel appearing on behalf of petitioner has tried to persuade this Court on the strength of **1990 CivCC 397, Ravinder Kumar v. Jaswant Singh and others, 2006(4) RCR (Civil) Sukhmander Singh v. M/s Ram Krishan Harbans Lal**, that the objections filed by petitioner should have been decided after

framing of issues. Learned counsel has pressed into service of the provision of Section 144 CPC to contend that restitution of possession should be invoked and resorted to in such a situation where respondent No.1 has acquired wrongful gain on the basis of his own wrong.

[19]. I have considered the arguments of learned Senior counsel for the petitioner who has also placed reliance upon **1962 AIR (Raj.) 57 (Full Bench) Haridas and another v. Banshidhar and another.**

According to this Court the first obligation before the executing Court was to arrive at just conclusion of the case based on lawful consideration of objections. The executing Court has virtually proceeded with the case on the assumption that even if there was a target date for execution of sale deed, the amount could have been deposited upto 15.12.2012 and the deposit of such amount on 15.12.2012 was considered to be valid deposit and thereafter proceeded to execute the sale deed on the next day. The executing Court should have followed minimum requirement of law in deciding the objections lawfully after giving opportunity of hearing to both sides to substantiate their claims vis-a-vis their readiness and willingness to perform their part of obligation on 30.11.2012.

[20]. Since the aforesaid exercise has not been done by the executing Court, therefore, the impugned orders (Annexures P-8 and P-9) in both the revision petitions are liable to be set aside. The case is remanded back to the executing Court for decision of objections/applications on merits by way of framing proper issues

and to decide the same after giving lawful opportunities to both the parties to prove their case.

[21]. The plea of restitution of possession of the petitioner in terms of Section 144 CPC cannot be entertained at this stage, and is subject to ultimate decision of the executing Court, in the manner aforesaid.

September 04, 2015

Atik

(RAJ MOHAN SINGH)
JUDGE