

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.2051 of 2010 (O&M)

Date of Decision.29.02.2016

Hardeep Singh

.....Petitioner

Vs.

Santa Singh and others

.....Respondents

Present: Mr. Karan Choudhary, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

C.M. No.4593-CII of 2016

For the reasons stated in the application, delay of 11 days in filing the application restoration application is condoned.

Application is allowed.

C.M. No.4594-CII of 2016

For the reasons stated in the application, order passed by this Court on 28.08.2015 is recalled and the revision petition is restored to its original number.

Application is allowed.

C.R. No.2051 of 2010

1. The petitioner is the judgment debtor. He is aggrieved against the order of the Executing Court in allowing for execution of the sale deed pursuant to decree for specific performance that was passed on 20.04.1998. In the light of the decree, the sale deed was required to

be executed within a period of three months on payment of balance of consideration of ₹1 lac. The plaintiff did not prefer any appeal but the defendant preferred the appeal. The Appellate Court modified the decree and the modification was to the benefit of the decree holder who would not have preferred the appeal. In that The Appellate Court found that the direction given by the trial Court for deposit of ₹1 lac was erroneous and even that amount need not be paid. The appeal had been disposed of on 19.04.2004. The defendant judgment debtor preferred a second appeal before this Court in RSA No.2129 of 2004 and it is reported to be still pending. This Court has framed substantial questions of law as arising for consideration but at the same time declined to stay and allowed for the execution of the sale deed in terms of the decree granted already. That order was passed by the Appellate Court on 29.05.2004.

2. The decree holder has filed the application only on 06.08.2007 for deposit of ₹1 lac and for execution of the sale in terms of the decree already obtained. This was objected to by the judgment debtor on plea that the original time of three months granted by the trial Court had not been extended in any way and the application which was filed nearly 8 years after passing the decree and three years after the order passed by the High Court cannot be condoned and the decree was required to be rescinded.

3. The Executing Court found that it was the decree allowing for execution of the sale deed on payment of ₹1 lac and the Court will have discretion to allow for such extension to be given in an order under Section 28. It, therefore, allowed for the time to be extended and

directed the deposit to be made.

4. Learned counsel appearing on behalf of the petitioner would contend that the decree holder is himself in possession of the property and that is being taken advantage of by him not to deposit the money in the manner directed by the Court. In this case, the plaintiff had not even preferred the appeal against the original decree that allowed for three months time for depositing ₹1 lac and if the High Court was passing an interim order to have the execution of the decree in terms of the direction given by the trial Court, that direction ought to be taken as available only for a period of three months which the trial Court itself originally provided for. There is no further discretion available for the Court to allow for extension. The counsel also refers me to decisions of this Court and the Supreme Court on this subject.

5. Most significantly, the appeal against the decree for specific performance still awaits a final consideration before this Court. If this Court was ordering a further execution process to continue, it must be taken that the execution is purely provisional and will be taken as subject to final adjudication made by this Court. Even execution of the sale deed in the manner in which it is now directed by the High Court and which has been permitted by the Executing Court will be taken as purely conditional on the final outcome of the decision in the second appeal. In such an eventuality, if the Court was allowing for exercise of discretion to make the deposit of ₹1 lac, I will not take it to be any illegal exercise of jurisdiction for intervention in the civil revision. I do not feel self constrained to refer to several case laws which the counsel relies on, for, none of the cases really arises in a situation where the

appeal is still pending before the High Court and the decree for specific performance is still open for consideration on its merits before this Court in second appeal. If the amount of ₹1 lac was not deposited within a period of three months, I would understand the issue as arising on account of lack of clarity even in the order passed by this Court when it was merely allowing execution to continue and was not setting any time limit before when the amount was to be paid. It was not as if the defendant was being willing to comply with the terms of the decree. On the other hand, he was aggrieved by the direction given by the Appellate Court and by the decree of specific performance granted even by the trial court. At no point of time has the defendant expressed himself as willing party to execute the sale deed and if there was a delay in deposit of the amount, I will not find it to be such as it would cause any serious hardship. The merits of the contentions of what the petitioner is entitled to canvass at the second appeal will itself protect the petitioner's right and make the sale deed to be conditional on outcome of such decision.

6. I make no interference with the order passed and dismiss the revision petition.

(K. KANNAN)
JUDGE

February 29, 2016
Pankaj*