

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

CR No. 1536 of 2016 (O&M)

Date of decision: 28.04.2016

Partap Singh

... Petitioner

versus

Devi Ram

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Tanmoy Gupta, Advocate for the petitioner.

K.Kannan, J. (ORAL)

The revision petition is against the order declining to extend the time granted under the decree for depositing the balance of sale consideration for securing the sale deed. In the suit for specific performance the Trial Court granted the decree on 27.08.2015 providing for two months' time to the defendant to receive the balance of sale consideration and execute the sale deed. When the defendant did not do so, the plaintiff was granted further period of 30 days failing which the decree directed that the suit will stand dismissed and the earnest amount will be forfeited.

As per the terms of the decree, the outer limit for depositing the money and securing the sale deed was 27.11.2015. However, the plaintiff claimed that he had not been informed about the decree and as soon as he came to know about it he had filed an application seeking for extension of time under Section 148 CPC. The respondent was served but remained ex-parte but the Court all the same dismissed the application. The order is erroneous and the Court has failed to exercise the discretion vested in it. Even if there was an application filed for

rescission of a contract under Section 28, the Court has power to extend the time. This is a decree drafted in an unusual fashion containing a provision for dismissal of the suit if the amount is not deposited. If the plaintiff has given an explanation for his non-compliance and the respondent had not even joined issue by entering appearance and contesting the application, the Court must have exercised the discretion and allowed the deposit to be made.

Since the petitioner has delayed the balance of amount to be paid beyond the period of 3 months, I direct the plaintiff to pay the balance of amount of what was due under the decree to be deposited, if not already done, with interest @ 12% from the date of the original decree till the date of deposit. The deposit, if not fully done already shall be done with interest as directed within two weeks from the date of the receipt of the copy of the order. If the plaintiff makes the deposit, the court shall proceed further for giving the effect to the decree by execution of the sale deed in accordance with law.

The impugned order is set aside and the revision petition is allowed to the above extent.

(K.KANNAN)
JUDGE

28.04.2016

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