

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

CR No.1623 of 2016(O&M)

Date of decision:2.3.2016

Makhtool Singh

....Petitioner

VERSUS

Mehar Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sharad Mehra, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

The present petition has been directed against the order dated 09.10.2015 (Annexure P-1) passed by the Civil Judge (Junior Division), Amritsar, dismissing the objection petition filed by the petitioner-judgment debtor (in short 'JD').

Counsel for the petitioner contends that respondents No.1 to 3 filed a suit for possession by way of specific performance of a contract of sale dated 02.09.1985, decreed by the trial Court on 21.05.1994 subject to the condition that the decree-holders/plaintiffs would deposit the remaining sale price of Rs.24,000/- in the Court within one month from that day, failing which the suit shall be deemed to have been dismissed with costs. It is further submitted that the appeals preferred by the petitioner against the judgment and decree passed by the trial Court did not find favour with the first Appellate Court as well as this Court.

In the Regular Second Appeal No.2216 of 1995 titled as Makhtool Singh v. Mehar Singh and others, filed before this Court, the respondents filed an application to withdraw the amount deposited by them and undertook to re-deposit the same within 30 days, subject to outcome of the appeal and the application was allowed vide order dated 09.09.1996 (Annexure P-3). The Regular Second Appeal (in short 'RSA') was dismissed by this Court on 11.12.2008 but the respondents failed to deposit balance sale price within a period of 30 days from the date of dismissal of RSA. After about two years, an application dated 25.09.2010 (Annexure P-4) was filed seeking permission to deposit balance sale consideration and was allowed by the Additional Civil Judge (Senior Division), Amritsar, without notice to the petitioner much less adverting to the issue of extension of time. The ex parte proceedings initiated against the petitioner were later set aside. It is urged that as the respondents/decreed-holders failed to deposit balance sale consideration within a period of 30 days from the date of decision of the RSA, the agreement stands rescinded, therefore, the Executing Court has committed a gross error rather illegality in dismissing the objections preferred by the petitioner. In support of his contentions, counsel has relied upon judgments of Hon'ble the Supreme Court P.R. Yelumalai v. N.M. Ravi, 2015(2) R.C.R. (Civil) 585 and Chanda (dead) Through LRs v. Rattni and another, 2007(2) R.C.R. (Civil) 534.

I have heard counsel for the petitioner and perused the records.

The Court below has noticed that the contesting respondents/decreed-holders deposited the balance sale consideration in compliance with the judgment and decree passed by the trial Court. Counsel for the petitioner is not in a position to contest the aforesaid factual finding. It is an admitted position that the respondents were allowed to withdraw the amount in RSA No.2216 of 1995. At the time of disposal of the RSA, there was no direction by the Court as to what would be the consequence of failure of the respondents to re-deposit the amount within 30 days from the date of dismissal of RSA.

The respondents filed an application dated 25.09.2010 (Annexure P-4) for revival of execution proceedings and permission to deposit the balance sale consideration that came to be allowed by the Court vide order dated 25.11.2010. The petitioner never challenged the order passed by the executing Court, permitting the decree-holders to deposit the balance sale consideration beyond 30 days from the date of decision of RSA.

As per the settled position in law, an erroneous or illegal order passed by a Court in exercise of jurisdiction vested in it would hold good for all intents and purposes till it is set aside in an appropriate proceedings. That being so, plea of the petitioner in regard to rescission of the contract at a time subsequent to deposit of balance sale consideration is misconceived and merits rejection.

Another important aspect of the matter that invites consideration is that in the objection petition, the petitioner did not raise a plea that the decree holders failed to deposit balance sale consideration

within 30 days from the date of disposal of RSA. On the contrary, it is averred that the decree holders did not deposit the balance sale consideration within time fixed by the trial Court. A relevant extract from sub para (ii) of para 2 of the objection petition, reads thus:-

“(ii) That on 21.5.1994 while passing the decree, the Sub-Judge Ist Class passed an order while decreeing the suit that the decree holder has to deposit the remaining sale price with in the period of one month from the date of passing the decree. The decree holder did not deposit the amount with in the stipulated period. It has been specifically provided that the suit stands dismissed in case of non deposit of balance sale price. Even the court of Sh. M.S. Chawla, Additional District Judge, Amritsar dismissed the appeal and upheld the judgment of the Id. lower court on 3.5.1995. The decree holder did not even deposit the amount.”

As such, the petitioner otherwise cannot press into service a plea that was not a part of objection petition, namely failure of the decree holders to deposit the amount within 30 days from the date of dismissal of RSA.

Hon’ble the Supreme Court in Chanda’s case (supra), in para 9, has held, reads thus:-

“9. The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the Court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The Court does not cease to have the power to extend the time even though the trial Court had earlier directed in the decree that payment of balance price to be made by certain date and on failure suit to stand dismissed. The power exercisable under this Section is discretionary.”

In the case at hand, the respondents/decreed-holders initiated the litigation in the year 1988 that culminated in the judgment and decree passed by the trial Court in May, 1994. The appeal preferred by the JD was dismissed by the first Appellate Court some time in the year 1995-96. The petitioner preferred RSA in the year 1996 which came to be dismissed in December, 2008. After a protracted legal battle for more than two decades, the respondents came out successful to execute specific performance of the contract of sale dated 02.09.1985. They made the deposit of balance consideration in compliance with pre-emptory order passed by the trial Court though withdrew the amount after permission granted by the Court in pending RSA and re-deposited the same on the basis of an application for extension of time and permission to deposit was allowed by the executing Court. In the given facts and circumstances, the judicial discretion exercised by the Executing Court negating plea of the petitioner qua rescission of the contract by invoking provisions of Section 28 of the Specific Relief Act, 1963, cannot be faulted with.

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed in limine.

MARCH 2, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE