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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-22-2015

Date of Decision : February 24th, 2016

Tejinder Singh

.... Petitioner

Versus

Harvinder Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? **Yes**

Present Mr. Ashok Singla, Advocate,
for the petitioner.

Mr. G.S.Bhatti, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 7.10.2014 [Annexure P/4] whereby application under Section 28 of the Specific Relief Act, 1963 [for short, "**the Act**"] for rescission of agreement dated 10.03.2005 was accepted and agreement stood rescinded.

2. Relevant facts of the case; that an agreement of sale of suit land dated 10.03.2005 was executed and Civil Suit No. 139 dated 25.5.2006 for specific performance of agreement of sale was filed and the same was decided on 28.02.2013. At the time of passing of judgment and decree, the Court of first instance directed the defendants to get the sale deed

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executed. The relevant part of the decree [Annexure P/2] is extracted below :-

“... is decreed with costs and the defendants are directed to get the sale deed executed and registered of the suit land after getting the same free from all encumbrances and after receiving the balance sale consideration amount in favour of the plaintiff within a period of two months from the date of passing of the said judgment failing which the plaintiff would be entitled to get the sale deed executed through the Court. Decree sheet be prepared and file be consigned to the record room.”

3. Thereafter, first appeal was filed on 4.4.2013 and the same was pending at the time of filing of present petition, though the same is now reported to have been dismissed being infructuous after passing of the impugned order.

4. Petitioner has challenged the order dated 7.10.2014 on the ground that as per the above order, payment was to be made by the plaintiff within two months and that order was subject to the condition that the suit land was to be made free from all encumbrances and till then, there was no direction. More so, the appeal was filed by the defendants in April, 2013 and the same was pending. The petitioner got issued a legal notice on 25.3.2013 [Ex. R/2] that the property be made free from all encumbrances and the said notice was sent through registered post and the postal receipts are Ex. R3 and R/4 on the file. However, the respondents became over-clever and dishonest and on 4.5.2013, they filed an application under Section 28 of the Act for rescission of the contract dated 10.3.2005 because of alleged failure of the present

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petitioner to comply with the direction of deposit of balance sale consideration within the period stipulated in the judgment and decree [Annexure P/1 and P/2], but that stage had not come.

5. Learned counsel for the petitioner submitted that even after receipt of notice, the present petitioner as a matter of caution, moved an application on 24.5.2013 [Annexure P/5] before the Court below seeking permission to deposit the sale consideration of Rs.13.00 lakhs as per decree dated 28.2.2013 [Annexure P/2] before Additional Civil Judge [Senior Division], Rupnagar and the Court below directed the Decree Holder to deposit the said amount in Government Treasury by issuing a challan form dated 24.05.2013 under her signatures on the basis of which the Decree Holder deposited the balance consideration of Rs.13,00,000/- in Government treasury. Still the Court below accepted the application under Section 28 of the Act which is liable to be set-aside on the grounds that firstly, because the compliance was yet to be made by the respondents; secondly, the Civil Appeal was pending and thirdly, the amount was deposited by the petitioner after seeking permission from the Court. However, the Court below completely ignored these facts while passing the order and as such, the impugned order, dated 7.10.2014 [Annexure P/4] be set-aside.

6. While arguing this point, learned counsel for the respondents submitted that as per the judgment and decree [Annexures P/1 and P/2], there was clear cut directions to deposit the amount within a period of two months of passing the said judgment and decree, but the said amount was not deposited till 27.4.2013. The present petitioner deposited the amount only after receipt of the notice. As regards to the plea taken by the

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petitioner that the property was not free from all encumbrances, the said property was already free from all encumbrances on 13.4.2006 and there is no illegality in the order under challenge. In support of his arguments, learned counsel for the respondents placed reliance upon judgments of Hon`ble Supreme Court in **Chanda [dead] through LRs Vs. Rattni & Anr. 2007 (2) R.C.R. [Civil] 534** and **Bhupinder Kumar Vs. Angrej Singh, 2009 (4) R.C.R. [Civil] 248**. He has also relied upon judgments of Coordinate Benches of this Court in **Chanda Vs. Rattni, 1999 (4) R.C.R. [Civil] 621**; **Bhupinder Kumar Vs. Angrej Singh, 2007 (3) R.C.R. [Civil] 198** and **Onkar Nath and another Vs. Basheer and others, 1985 (2) PLR 432**. He also placed reliance on the judgment of Hon`ble Madras High Court in **N.V.S.M Anandvale Vs. K.T. Santhanakrishnan, 2010 AIR [Madras] 204**.

7. Learned counsel for the respondents also submitted that the present petition is not maintainable before this Court, rather, the same be ordered to be presented before the lower Appellate Court to treat the same as appeal.

8. Having considered the submissions made by learned counsel for the parties and having gone through the judgments cited by learned counsel for the respondents, this Court is of the considered view that most of the facts are not disputed that the judgment and decree, Annexures P/1 and P/2 were passed by the Court of first instance and order was passed directing the defendants to get the sale deed executed and registered after getting the suit property free from all encumbrances and after receiving the balance sale consideration. That way, the decree was having two conditions, i.e., **firstly, the suit land was to be made free from**

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encumbrances and secondly, the payment was to be made thereafter.

In pursuance of that, the petitioner had got issued a notice dated 25.3.2013 [Ex.R2] that the property be made free from all encumbrances. Other undisputed fact is that the defendants had filed appeal against the said judgment and decree on 4.4.2013. As regards to the plea taken by learned counsel for the respondents that the property was already free from all encumbrances, the respondents had two options, either to move an application before the Court of first instance to modify the decree that the property was already free from encumbrances OR in the alternative to issue notice to the present petitioner stating that the property is free from encumbrances and let the sale deed be executed. But nothing of this sort was done by the present respondents, except filing appeal before the Court of first Appeal. It was the petitioner, who had issued notice on 25.3.2013 and thereafter, the defendants had filed the appeal. At any rate, the directions given by the Court below for deposit of the amount were not clear and if the directions regarding deposit was not clear, there was no question of acceptance of application as per the provisions of Section 28 of the Act. Such a view was taken by this court in **Smt. Sarupi and others Vs. Har Gian and others, 1975 AIR [Punjab] 231; Balkar Singh and others Vs. Manmohan Singh and others, 1995 PLJ 560 and Gurdit Singh Vs. Jagjit Singh, 1987(1) PLR 129.**

9. The present petitioner has already deposited an amount of Rs. 13.00 lakhs in the Government treasury as per orders dated 24.5.2013 and on the basis of challan-cum-receipt [Annexure P/6]. That means, implied permission was given by the court for extension of time. Such a matter was before Hon`ble Supreme Court in **Sardar Mohar Singh through Power of**

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Attorney Holder, Manjit Singh Vs. Mangilal @ Mangtya, 1997(2) R.C.R.

[Civil] 296 and it was held that the Court has the power to enlarge time in favour of a party. Such a view was also taken by this Court in **Amar Nath Jain Vs. Ram Parkash Dhir,** 1987(1) PLR 490; **Karnail Singh and another Vs. Harinderpal Singh Kohsa and others** 2005(1) R.C.R. **[Civil] 78** and **Mohmad Yassin and another Vs. Faiz Mohd.** 2006(3) RCR **[Civil] 613**. In the case in hand, as Court below had enlarged the time by allowing the present petitioner to deposit Rs.13.00 lakhs.

10. As per view taken by Hon`ble Supreme Court in **Smt. Chand Rani [dead] by LRs. Vs. Kamal Rani [dead] by LRs** 1992 (3) SCR 798 and **Kumar Dhirendra Mullick Vs. Tivoli Park Apartments (P) Ltd.** 2004(4) RCR **[Civil] 763**, if time is not regarded as essence of the contract and if the parties have such an intention, they must make their intention clear that time was essence of the contract and that must be expressed in unequivocal language, but that has not been done in this case.

11. In view of the above, present petition is allowed and the order dated 7.10.2014 [Annexure P/4] passed by Additional Civil Judge [Senior Division], Rupnagar is set-aside. However, as first appeal is reported to have been withdrawn having become infructuous after passing of the impugned order dated 7.10.2014, defendants shall be at liberty to move an application for restoration and decision of first appeal by first appellate Court as per law.

(SHEKHER DHAWAN)
JUDGE

February 24th, 2016
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