

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

**CR No.300 of 2015  
Date of decision: 30.8.2016**

Ashwani Kumar and others

**... Petitioners**

**Versus**

Jagdish Mittal

**... Respondent**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

**Present:** Mr.APS Sandhu, Advocate,  
for the petitioner.

Ms.Jasneet, Advocate,  
for the respondent.

**AMIT RAWAL, J. (Oral)**

The petitioner-defendant is aggrieved of the impugned order whereby the application of the respondent-plaintiff for deposit of the balance sale consideration has been allowed.

Mr.Sandhu learned counsel appearing on behalf of the petitioner submits that the suit for specific performance of the agreement to sell was decreed vide judgment and decree dated 6.5.2009 whereby the plaintiffs were called upon to pay the balance sale consideration within a period of two months from the date of passing of the decree. The amount was not deposited, but the attempt was made after a lapse of 3 years after the passing of the judgment and decree. In support of his contention, he

**P.R.Yelumalai v. N.M.Ravi;** 2015 (2) RCR (Civil) 585 to submit that as per the provisions of Section 28 of the Specific Relief Act, the period cannot be extended and urges thus court to set aside the impugned order.

Ms.Jasneet learned counsel appearing on behalf of the respondent submits that there is no illegality and perversity in the order under challenge as the petitioners have no right to challenge the same and they were proceeded against ex parte. The discretion exercised by the executing court is perfectly legal and justified as it was between the plaintiff and the court. Time can always be extended by invoking the provisions of Section 148 of the Code of Civil Procedure.

I have heard the learned counsel for the parties and appraised the paper-book and of the view that the provisions of Section 148 of CPC cannot be pressed into service in view of the statutory bar in 1963 Act i.e. the provisions of Section 28. I am agreement with Mr.Sandhu much less ratio decidendi culled out in the P.R.Yelumalai's case (supra) which envisages that in case there is no compliance of the judgment and decree except when there had been compelling circumstance, for depositing the amount, time cannot be extended. In my view, the decree had become unexecutable, thus the courts below have committed an illegality and perversity for granting time to the plaintiff to deposit the amount.

For the reasons aforementioned, the impugned order is set aside. The revision petition stands allowed.

**(AMIT RAWAL)**  
**JUDGE**

**August 30, 2016**

Paritosh Kumar

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether reportable        | : | Yes/No |