

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

CR No. 4266 of 2016(O&M)

Date of decision:12.7.2016

Baldev Krishan

....Petitioner

VERSUS

Rajan Katyal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Gurcharan Dass, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition has been directed against order dated 11.05.2016 passed by the Civil Judge (Junior Division), Ludhiana, dismissing application filed under Section 28 of the Specific Relief Act, 1963 (for brevity 'the Act') for rescission of the agreement to sell dated 15.06.2010.

Rajan Katyal, respondent, filed a suit for possession by way of specific performance of agreement to sell dated 15.06.2010 in regard to house measuring 58 square yards, detailed in head-note of the judgment dated 08.08.2012 (Annexure P-1). The petitioner/defendant was proceeded against ex parte and the suit was decreed vide judgment and decree dated 08.08.2012. The respondent (decree-holder) deposited an amount of Rs.2,48,100/- in the Government Treasury on 12.11.2012 towards balance sale consideration.

The petitioner filed application dated 19.09.2015 under Section 28 of the Act on the plea that there was delay of 34 days in payment of balance sale consideration to the judgment debtor (for brevity 'JD')/applicant despite clear directions of the trial Court. After getting reply of the respondent and having heard counsel for the parties, the application was dismissed by the executing Court vide order impugned in the present petition.

Counsel for the petitioner/JD would contend that as the decree holder/respondent failed to deposit balance sale consideration within a period of two months from the date of decree nor sought any extension of time for making necessary deposit in compliance with the decree passed by the trial Court, the contract for sale is liable to be rescinded and the decree has become unexecutable. In the alternative, it was prayed that petitioner may be given six months to hand over vacant possession of the suit house and in that eventuality he would not press the petition on merits.

Notice of motion was issued and Mr. Saurabh Goel, Advocate, accepted notice on behalf of the respondent.

On instructions from the respondent present in the Court, counsel has apprised the Court that the petitioner has parted with possession of a part of the suit house in favour of a third party who preferred an objection petition before the executing Court but remained unsuccessful. The said party has filed an independent suit for permanent injunction in which an order of stay has been granted by the Court. It is further submitted that as the petitioner, in view of claim made by a third party is not in possession of the entire house, his plea that he would deliver vacant possession of the entire house within a period of 6 months is patently false and has been raised with a mala fide intent to delay

execution of the decree in which sale deed has already been executed in favour of the respondent/decreed holder and police help has been provided for execution of warrants of possession issued by the Court.

In response, after examining certain documents available with counsel for the respondent, counsel for the petitioner has not disputed correctness of the submissions that a part of the suit house is claimed to be in possession of a third party who has filed a suit for permanent injunction against his dispossession through the same counsel who is representing the petitioner before the executing Court.

I have heard counsel for the parties, perused the paper-book more particularly the order impugned.

The suit filed by the respondent for possession by way of specific performance on the basis of agreement to sell dated 15.06.2010 was decreed and operative part of the relief clause, relevant in the present context, reads as follows:-

“9....The plaintiff is entitled to the possession of the suit property measuring 58 Square Yards as detailed in the head note of the plaint from the defendant by way of specific performance of agreement to sell after the defendant clears the loan amount which he had taken from the State Bank of Patiala. The plaintiff will send a legal notice to the defendant within two months from the date of the judgment tendering him the balance amount and asking him to get the NOC from the bank after clearing the due loan amount. If the defendant refuses to accept the balance amount or refuses to clear the loan amount of the Bank and get the sale deed executed and registered after obtaining the NOC then the plaintiff will deposit the balance sale consideration amount in the court and the balance loan amount on the property with the State Bank of Patiala with which the property be lying mortgaged within two months of such refusal by the defendant and thereafter the plaintiff would be entitled to get the sale deed executed and registered through the Court. It is made clear that the amount of loan which is deposited with the Bank by the plaintiff on behalf of the defendant to clear the loan on the suit property would be adjusted out of the final consideration which remains

to be paid by the plaintiff to the defendant. The relief of permanent injunction is also given to the plaintiff and the defendant is restrained from alienating, mortgaging, gifting or otherwise disposing of the suit property except the plaintiff. Decree sheet be prepared accordingly.”

Indisputably, the respondent deposited balance sale consideration on 12.11.2012. He placed on record copy of legal notice dated 12.09.2012 along with postal receipt issued to the JD calling upon him to receive the balance sale consideration. Though, the petitioner has denied receipt of any such notice but it is not plea of the petitioner that the address mentioned on the notice is incomplete much less incorrect. Once the decree holder in compliance with the decree has sent a legal notice to the JD/petitioner within two months from the date of judgment calling upon him to receive balance sale consideration and there was no response to the said notice by the JD/petitioner, there was no alternative with the respondent except to deposit balance sale consideration in the Court after clearing the loan amount qua which the property was mortgaged with State Bank of Patiala. As the respondent/decreed holder issued a legal notice within two months from the date of decree and deposited the balance sale consideration within two months from the date of issuance of notice, the executing Court has rightly refused to accept plea of the petitioner that the respondent/decreed holder has failed to comply with the terms and conditions of the decree passed by the trial Court. This apart, the application for rescission of the agreement was filed by the petitioner in September, 2015 after about 3 years since the respondent deposited the balance sale consideration. Hon’ble the Supreme Court in Chanda (dead) through LRs v. Rattni and another, 2007(2) R.C.R. (Civil) 534, 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.”

When the facts and circumstances of the present case are examined in the light of observations made in Chanda's case (supra), I find myself unable to agree with the submissions made by counsel for the petitioner particularly in the circumstances that claim of the petitioner to deliver possession after six months is mala fide and deceptive.

For the foregoing reasons, finding no merit, the petition is dismissed.

JULY 12, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE