

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

CR No.4716 of 2016(O&M)

Date of decision:15.11.2016

Narinder Pal Singh

....Petitioner

VERSUS

Swaran Kaur

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. D.S. Gandhi, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 31.03.2016 (Annexure P-1) whereby application of the petitioner for extension of time to deposit the balance sale consideration has been dismissed.

The petitioner filed a suit for specific performance of agreement to sell dated 04.08.1997 in December, 1998 that culminated in the ex parte judgment and decree dated 23.09.2004 whereby the petitioner was directed to deposit balance sale consideration and complete all other requisite formalities for registration of the sale deed within a period of two months from the date of receipt of certified copy of the judgment. The petitioner failed to comply with the direction of the Court in regard to deposit of balance sale consideration within the stipulated period. Later, an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (in short 'CPC') was filed by the defendant/JD for setting aside the ex parte judgment and decree but in those proceedings, there was no stay of operation of the ex parte judgment and decree dated 23.09.2004. The

proceedings for setting aside the ex parte judgment and decree culminated in order dated 29.11.2011 (Annexure P-3) and the application filed by the respondent/JD was dismissed. Even thereafter, the petitioner did not deposit the balance sale consideration. He filed an application for execution of the decree on 04.01.2013 that came to be dismissed by the executing Court on 08.09.2014. Despite the petitioners having approached the Court for execution of the decree, he neither deposited the amount nor filed an application seeking extension of time. The present execution petition was filed in November 2014.

Keeping in view conduct of the petitioner with regard to his failure to deposit balance sale consideration without any tangible and satisfactory explanation, the Court below has rightly relied upon judgment of Hon'ble the Supreme Court **V.S. Palanichamy Chettiar Firm vs. C. Alagapan, 1999(1) CCC 712**, wherein it was held that merely because a suit is filed within the prescribed period of limitation does not absolve the vendor plaintiff from showing as to whether he was ready and willing to perform his part of agreement and if there was non-performance on account of any obstacle put up by the vendor or otherwise. Provisions to grant performance of an agreement are quite stringent. Equitable considerations come into play. The Court has to see all the attendant circumstances including if the vendee has conducted himself in a reasonable manner under the contract of sale. The Court below has observed that it is not the case of the decree holder that on account of any fault attributable to the vendor/JD, amount could not be deposited. That being the position, if now time is granted that would be going beyond the period of limitation prescribed for filing of suit for specific performance of the agreement.

Counsel for the petitioner has not disputed factual findings recorded by the executing Court. He is not in a position to justify failure of the petitioner to deposit balance sale consideration for more than 10 years. However, it has been submitted that the decree holder does not own any other property and in case he is not permitted to deposit balance sale consideration and seek execution of the decree, it would entail serious consequence.

No such plea appears to have been raised before the Court below. Even otherwise, Section 28 of the Specific Relief Act, 1963 provides remedy both for the decree holder and the JD. Relief of specific performance is based upon discretion and equity. As per settled law, he who seeks equity must do equity. The petitioner got a decree without contest as JD was ex parte before the trial Court. He contested the proceedings for setting aside ex parte judgment and decree. Indisputably, he failed to comply with the terms and conditions of decree with impunity for more than 10 years. He filed the execution in the year 2013 but still did not file an application for deposit or extension of time. The conduct of the decree holder speaks volumes about his non-willingness to pay balance sale consideration, therefore, he has disentitled himself to indulgence of this Court on equitable considerations. That being so, order passed by the Court below cannot be faulted with.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*.

NOVEMBER 15, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :
Whether reportable :

yes/no
yes/no