

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

CR No.4764 of 2015 (O&M)

Date of decision: 29.01.2016

Ajaib Singh

... Petitioner

versus

Bhupal Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Amit Gupta, Advocate for the petitioner.
Mr. B.S. Rana, Senior Advocate with
Mr. Rajinder Paul, Advocate for the respondent.

K.Kannan, J. (ORAL)

The revision petition is against the order of the Court below allowing an application filed by the judgment debtor for the rescission of the decree for specific performance under Section 28 of the Specific Relief Act.

The suit for specific performance was decreed on 13.09.2010 recording the fact of receipt of an advance of Rs. 2,00,000/- and further payment made towards the sale consideration of Rs. 1,00,000/- aggregating in all the amount of Rs. 3,00,000/- and requiring the balance of Rs. 60,000/- to be paid to the vendor. The decree directions were that the plaintiff, on payment of balance of sale consideration, would be entitled for possession and that the defendant is directed to execute and register a sale deed in respect of the suit land within a period of two months from the date of the judgment.

Admittedly, the defendant/judgment debtor did not execute the sale deed within two months and the plaintiff did not pay the balance of sale consideration and secure possession after taking the sale deed in the manner made possible under the decree.

The defendant, after completion of two months, issued a notice on 06.01.2011 purporting to rescind the contract and filed an application on 07.01.2011 under Section 28 for rescission of the decree. In the notice given by the defendant, he stated that he requested the plaintiff to make the payment of balance of sale consideration several times but he kept on putting off the matter and allowed the time for execution of registration to expire on 10.11.2010. The defendant would, therefore, state in the notice that the plaintiff had lost the right to claim the relief on the basis of agreement and founded a justification for his own petition under Section 28. The plaintiff gave a reply to the notice on 10.01.2011 denying the averment that he was putting off the payment but that the plaintiff visited the defendant several times to get the sale deed registered by offering the payment of balance sale consideration but the defendant did pay heed to the just request of the plaintiff. He reiterated that he was always ready and willing and he is still ready and willing to do the same. The reply notice also demanded of the defendant to indicate the time for execution and registration of the sale deed after taking the balance of consideration, failing which he would approach the Court for suitable direction. The plaintiff himself moved an application on 21.1.2011 for execution of the sale deed and

with the permission of the Court deposit the money on the same day. The application for rescission of the decree was taken up subsequently and allowed. It is against this order that the revision has been filed.

It must be remembered at all times that Section 28 of the Specific Relief Act is built on an essential principle that readiness and willingness shall at all times be the hallmark of driving the vendee's entitlement to secure the sale deed. The requirement of pleadings under Section 16 (c) is that the plaintiff shall prove the readiness and willingness for performance of the contract which conduct must be at the time specified in the agreement, during the entire course of trial and after the decree till the conclusion of the sale deed. The provision in the statute providing for rescission of the decree in the very same suit is available only for suit for specific performance under Section 28 and it is unique in that sense.

By allowing for such an exceptional situation, the Courts are not left without discretion to examine if there are any particular circumstances that should prevail to order one way or the other. The fundamental precept shall however be that the decree obtained on contest shall not be easily interfered with, unless the Court records the finding that the readiness and willingness was lacking. Such a finding cannot be easily interfered by the only fact that the amount was not deposited in Court.

Several circumstances might exist as to why the payment of balance consideration is not made. The decree itself shall be so certain

in its expression that it ought to allow for no ambiguity in the mind of either of the parties. It is most desirable at all times that a decree gives appropriate directions for fulfilment of obligations under the decree. There have been serious lapses noticed in several cases where the Courts themselves contribute unwittingly to some ambiguities that make possible for suitors to plead for explanations why a particular act was not done. In every suit for specific performance, it is most desirable that the Court states what the respective parties have to do. The plaintiff who obtain a decree for specific performance shall be at all times directed to pay the amount of what is due and payable as the balance of consideration within a stipulated time in the decree and there shall also be a direction against the defendant vendor to execute a sale deed on receipt of consideration. In this case, the Court has directed the defendant to execute the sale deed and the decree only provides for the entitlement for payment of consideration. This Court has only noticed that the frequent references to applications under Section 28 are perforce effected on account of want of proper expressions in the decree and has given directions in the judgment in Tara Singh (since deceased) through LRs Vs. Sandeep Kumar and others in CR No. 8288 of 2015 decided on 07.12.2015, about the nature of decree that shall be passed to prevent the recurrent of lapses on the part of Courts in drawing up the decree in an unambiguous manner.

In this case, the Court could not have simply rescinded the decree and allowed for the rescission without minding the fact of

whether it had provided the decree appropriately and whether there was any contumacious conduct exhibited by the plaintiff to make an inference that the plaintiff had acted with such careless abandon that it was possible to adjudge that he was waiving his right or he was guilty of serious laches. If the defendant was issuing a notice after the period of two months, on 06.01.2011 it must be noticed that the plaintiff did not keep silent on receipt of notice but he has his own version to give that he had approached the defendant several times to receive the balance consideration but the defendant was not willing to execute the sale deed. The defendant did not so much wait for even response for the notice issued on 06.01.2011 to move an application for rescission next day itself. It is another way of saying that the defendant decided the case for himself even before waiting for a reply. The plaintiff did not after all allow the grass to grow under his feet. He deposited the money along with his application filed on 21.01.2011. This in my view, would show that the plaintiff had acted with sufficient alacrity and in a situation of assertions one against the other that the other party was not willing to perform the part of the contract, I will not take the view that will nullify the decree itself. The judgment cited by the learned senior counsel for the respondent in **Ajaib Singh Vs. Bhupal Singh in 2009 8 SCC 576** to support the proposition of inaction on the part of the plaintiff to perform his part of the contract after the decree would result in rescission is also the authority for another important exception of what I have delineated about. In the same judgment the Supreme Court

has explained that in an application under 28 itself, the Court has a power to extend the time. The Court in the application filed by the defendant for rescission must have noticed the exchange of notices and the contents therein. When the plaintiff was stating that he had approached the defendant on several occasions and it was only the defendant who did not execute the sale deed, the Court ought to have allowed the extension and allowed the discretion to be exercised in favour of the decree holder to support a decree instead of finding an excuse for rescinding its own decree. I have already pointed out that the decree was not properly drafted and it ought to have been taken as a reason for condoning the delay.

The order passed is erroneous and it is set aside. The civil revision petition is allowed with costs of Rs. 3,500 against the respondent. The Court will set the date for the time before when the defendant can present himself and admit execution and if he does not do so, the Court itself will execute the sale or secure stamp papers produced by the decree holder and direct registration in accordance with law.

29.01.2016

kv

(K.KANNAN)

JUDGE