

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

Civil Revision No.4817 of 2015
Date of Decision: February 24, 2016

Jagmal Singh

...Petitioner

Versus

Jai Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Jitender S. Chahal, Advocate,
for the petitioner.

None for the respondent.

AMIT RAWAL, J. (Oral)

The petitioner-decree holder is aggrieved of the dismissal of the application seeking extension of time in depositing the balance sale consideration in respect of ex-parte judgment and decree dated 6.10.2012, whereby he was directed to deposit the remaining sale consideration.

Mr.Jitender S. Chahal, learned counsel appearing on behalf of the petitioner-decree holder submits that the application, aforementioned, for extension of time was moved on 30.5.2013. As per the decree, he had to deposit the balance sale consideration within one month. In case the defendant fails to execute and register the sale deed, the plaintiff could have moved an application within another one month for execution of the sale deed through the process of the court. The counsel did not inform about the judgment and decree. Moreover, the petitioner was suffering from skin

disease. Once the petitioner was having sufficient amount in his account, the Court ought not to have declined the application for extension of time. In support of his contentions, he has relied upon the following judgments:-

- “1. **Bhim Singh Versus Smt.Mamo**, 2002(1) R.C.R. (Civil) 178;
2. **Mohinder Singh Versus Satpal Singh**, 2010 (4) CivCC 547;
3. **Kehar Singh Versus Ashok Kumar**, 2008(3) R.C.R. (Civil) 428;
4. **Mohmad Yassin and another Versus Faiz Mohd.**, 2006 (3) R.C.R. (Civil) 613;
5. **Karamjit Singh Versus Tarsempal and others**, Vol. CLXXII-(2013-4) PLR 13;
6. **Civil Revision No.1362 of 2015 (Gurbax Singh Versus Sukhjinder Kaur)**, decided on 25.2.2015;
7. **Civil Revision No.2920 of 2015 (Sucha Singh Versus Nand Lal)**, decided on 30.4.2015; and
8. **Civil Revision No.4505 of 2013 (Ashok Kumar Versus Satnam Singh and another**, decided on 16.9.2014.

I have heard the learned counsel for the petitioner and appraised the paper book.

In all the aforementioned judgments, the Court had exercised the discretion while taking into consideration the provisions of Section 148 of the Civil Procedure Code, whereas on the contrary Section 28 of the Specific Relief Act, 1963 puts a fetter on the decree holder in seeking the execution of the decree for specific performance in case of default of

balance amount of consideration within the time prescribed in the decree, in essence the decree was conditional, whereas Section 148, *ibid*, deals with the procedural lapses. There is a stark difference between the statutory provisions and the procedural provisions. It would be apt to reproduce Section 28 of 1963 Act and Section 148 of CPC:-

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on

application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor; (b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.

“Section 148 CPC

Enlargement of time.-Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period [not exceeding thirty days in total], even though the period originally fixed or granted may have expired.”

I cannot remain oblivious of the fact that the agreement to sell contained a specific clause with regard to the execution and registration of the sale deed, in essence, the time was the essence of the contract, therefore, the ratio decidendi culled out in **Karamjit Singh's case (supra)** would not apply.

Against the total sale consideration of ₹4,00,000/-, only a sum of ₹50,000/- had been paid and the balance sale consideration was ₹3,50,000/-. No explanation has come forth in not moving the application for a period of 6½ months and the medical certificate is of the month of May, 2013.

In **Sucha Singh's case (supra)**, the decree of specific performance was assailed upto the Hon'ble Supreme Court and there was an interim stay. On vacation of the interim stay, the decree holder moved an

application seeking permission to deposit the balance sale consideration. The Court noticed the fact and did not accept the contention of the judgment debtor. The facts noticed above are totally different to the one sought to be relied upon in the present case. The other judgments are pertaining to extension of time by exercising the powers under Section 148 CPC. The ratio decidendi culled out in the aforementioned judgments does not apply.

Keeping in view the aforementioned facts and circumstances, I am in complete agreement with the findings rendered by the trial Court in declining the application. No ground is made out to interfere in the impugned order. The same cannot be said to have been passed without jurisdiction.

The revision petition is accordingly dismissed.

February 24 , 2016
ramesh

(AMIT RAWAL)
JUDGE