

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.5235 of 2016

Date of Decision.14.09.2016

Pawan Kumar

.....Petitioner

Vs.

Rana Partap Singh

.....Respondent

Present: Mr. Abhinav Sood, Advocate for
Mr. Rajbir Singh, Advocate
for the petitioner.

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AMIT RAWAL J. (ORAL)

The petitioner/judgment debtor/defendant is aggrieved of the impugned order whereby the application filed under Section 28 of the Specific Relief Act for rescission of agreement to sell dated 26.09.2007 owing to the non-compliance of the direction contained in the judgment and decree dated 18.04.2012, has been dismissed.

Mr. Abhinav Sood, Advocate for Mr. Rajbir Singh, learned counsel appearing for the petitioner submits that in suit for specific performance of the agreement to sell whereby the suit property agreed to be sold for total sale consideration of ₹5,50,000/-, which was decreed on 18.04.2012, the respondent-decree holder was required to deposit the balance sale consideration of ₹50,000/- within two months. Having failed to do so within the stipulated time period of two months, depositing of alleged amount on 04.09.2014 by taking the benefit of Section 148 CPC is neither here nor there as it is statutorily barred as per the provisions of Section 28 of the Specific Relief Act. Even in the appeal preferred by the petitioner, there was no stay of the judgment and decree except for alienation. All these aspects have escaped the notice of the Court, thus,

urges this Court for setting aside the of the impugned order.

I have heard learned counsel for the petitioner and appraised the paper book. The admitted fact on record is that against the judgment and decree dated 18.04.2012, the petitioner-defendant had filed an appeal before the expiry of two months on 22.05.2012. The same was dismissed on 06.08.2014 and balance amount has been deposited on 04.09.2014. It is, in my view, within the time frame as per the judgment and decree as noticed above. The petitioner cannot have the benefit of provisions of Section 28 of the Specific Relief Act as the plaintiff-decree holder has deposited the amount within the stipulated time. In my view, the agreement cannot be said to be inexecutable in view of the attenuating circumstances as noticed above, rightly so, the Court below dismissed the application.

I do not find any illegality and perversity in the order under challenge, much less, the order cannot be said to be passed without jurisdiction. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

September 14, 2016

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No