

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

**CR No.5591 of 2016(O&M)  
Date of Decision-19.09.2016**

Parkash Kaur and others ... Petitioners  
Versus  
Jagtar Singh ... Respondent

**CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. J.S. Brar, Advocate for the petitioners.

Mr. Kanwaljit Singh, Sr. Advocate with  
Mr. M.S. Sidhu, Advocate for the respondent.

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**RAJ MOHAN SINGH, J.**

**CM No.17212-CII of 2016**

Prayer in this application is for impleading legal representatives of deceased appellant who died on 28.06.2012, leaving behind the legal representatives as shown in para No.2 of the application.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions. Legal representatives of deceased Parkash Kaur are ordered to be brought on record.

Amended memo of parties is taken on record.

**CR No.5591 of 2016**

[1]. Petitioners have assailed order dated 27.07.2016 passed by Additional Civil Judge (Senior Division), Malout whereby application under Order 28 of Specific Relief Act (for short 'the Act') filed by the petitioners was dismissed.

[2]. Plaintiff-respondent filed a suit for possession by way of specific performance of agreement dated 28.06.2002 in respect of suit land. Agreement to sell was executed on 28.06.2002 in respect of 72 kanals of land on payment of Rs.11,36,500/- out of which RS.1,01,000/- was allegedly paid as earnest amount.

[3]. Suit was partly decreed vide judgment and decree dated 05.02.2009 and defendants No.1 to 3 were directed to execute and register the sale deed in favour of plaintiff qua their respective shares to the exclusion of defendant No.4 after adjustment of earnest money and on reducing the amount to the extent of share of defendant No.4 from the sale consideration within a period of three months, failing which plaintiff was given liberty to get the sale deed executed and registered through process of the Court. Cost of the suit was assessed to be Rs.14,485.25/-.

[4]. Judgment debtors filed appeal against judgment and decree dated 05.02.2009 passed by the trial Court. Initially operation of the judgment and decree of the trial Court was stayed on 05.03.2009. Ultimately, vide judgment and decree dated 16.10.2012, the appeal was dismissed by the lower Appellate Court.

[5]. Decree holder filed an application for execution of judgment and decree dated 05.02.2009 along with an application for allowing the decree holder to deposit an amount of

Rs.8,89,000/- as remaining sale consideration and for appointment of Local Commissioner for execution and registration of sale deed.

[6]. RSA No.72 of 2013 titled as Binder and another Vs. Jagtar Singh and another was also filed in which, this Court passed an order dated 01.05.2013 directing the executing Court to adjourn the proceedings beyond the date fixed by this Court. Vide order dated 14.09.2015, the interim stay granted by this Court was vacated. The executing Court allowed the application for deposit of the amount vide order dated 08.01.2016 and directed the decree holder to deposit the remaining sale consideration of Rs.8,89,000/- on 11.01.2016.

[7]. Decree holder moved another application for permission to deposit the remaining sale consideration of Rs.8,47,020/-. The Court passed an order on 11.01.2016 that the amount of Rs.8,47,020/- be deposited at own responsibility.

[8]. Similarly on 12.01.2016, the decree holder moved another application for permission to deposit the remaining sale consideration of Rs.47,500/-. The Court vide order dated 12.01.2016 directed that Rs.47,500/- be deposited at own responsibility.

[9]. The judgment debtor/petitioner filed an application under Section 28 of the Act to rescind the contract dated 28.06.2002 and for disposal of the execution on the ground that

the balance sale consideration was not deposited in time, nor application for extension of time was moved.

[10]. Decree holder contested the application. Executing Court vide order dated 27.07.2016 dismissed the application under Section 28 of the Act and fixed the execution for filing draft sale deed.

[11]. I have heard learned counsel for the parties.

[12]. Judgment and decree was passed by the trial Court on 05.02.2009 whereby direction was given to the decree holder to pay the balance sale consideration within three months. Before the expiry of three months, judgment debtor preferred an appeal before lower Appellate Court and obtained stay order dated 05.03.2009. The appeal was dismissed by the lower Appellate Court on 16.10.2012. Judgment debtor preferred Regular Second Appeal in this Court in which stay was granted on 01.05.2013. The stay granted by this Court was vacated only on 04.09.2015. Judgment debtor had already filed execution of the judgment and decree on 15.02.2013. After vacation of stay order by this Court, the objections moved by judgment debtor were dismissed on 21.11.2015 and thereafter, decree holder deposited the balance sale consideration on 11.01.2016 within three months from the date of dismissal of objections on 21.11.2015.

[13]. Learned counsel for the petitioners vehemently contended that the judgment and decree was passed by the lower

Appellate Court on 16.10.2012 and stay was granted by this Court only on 01.05.2013. There was inordinate and unexplained delay of about more than 6 months in depositing the balance sale consideration. Secondly, the amount was deposited on 11.01.2016 and 12.01.2016 that too under own responsibility. Thirdly, the decree holder himself assessed the balance sale consideration as Rs.8,89,000/- as per application moved by him before the executing Court. Still an amount of Rs.8,47,020/- was ordered to be deposited at own responsibility on 11.01.2016 and additional amount of Rs.27,500/- was ordered to be deposited at own responsibility on 12.01.2016. Still an amount of Rs.14,480/- was short and the amount towards costs could not have been deducted by the decree holder in the manner as done by the decree holder.

[14]. Learned counsel for the petitioners relied upon **Laila Kassim Vs. V.K. Kunjumol, 2016(2) CCC 241, Kerala** to contend that the adjustment of the costs awarded in payment of balance sale consideration cannot be set off or adjusted in the payment of sale consideration. The remedy was available for releasing the costs under Order 21 Rule 32 CPC only.

[15]. Learned counsel further relied upon **Bhupinder Kumar Vs. Angrej Singh, 2009(4) RCR (Civil) 248** on the ground that if vendee did not pay the balance sale consideration within stipulated period, the Court has power to extend the time for

payment and if the vendee does not deposit the amount within stipulated period, the Court has jurisdiction to refuse to extend the time if the vendee fails to place on record material to show his inability to tender the decretal amount. The Court is always within its jurisdiction to refuse such extension of time for depositing the balance sale consideration.

[16]. According to learned counsel for the petitioners, there were no adverse reasons for not depositing the balance sale consideration by the decree holder in time, nor any application for extension of time was moved. Learned counsel for the petitioners referred to **Chanda Vs. Rattni, 1999(4) RCR (Civil) 621** to contend that judgment debtor was justified in seeking rescinding of agreement to sell on account of default committed by the decree holder in not depositing the balance sale consideration in time.

[17]. Learned counsel also emphasized that if no application for extension of time was moved, the judgment debtor became entitled to get the contract rescinded. In support of his contention, he relied upon **Onkar Nath and another Vs. Basheer and others, 1985(2) PLR 432** and **Smt. Krishna Vs. Naresh Kumar and others, 2015(2) PLJ 585.**

[18]. As against this, learned counsel for the respondent submitted that there was no default clause in the decree passed by the trial Court. While decreeing the suit, there was no rider

placed in terms of default of the decree holder. The suit was partly decreed in respect of shares of defendants No.1 to 3 to the exclusion of share of defendant No.4 on payment of remaining sale consideration. Defendants No.1 to 3 were directed to execute and register the sale deed qua their respective shares to the exclusion of share of defendant No.4 after adjustment of the earnest money and on reducing the amount to the extent of share of defendant No.4 within a period of three months, failing which the liberty was given to the decree holder to get the sale deed executed and registered by process of Court. There was no default clause mentioned in the decree that in the event of non-deposit of the amount within prescribed time the decree was having effect of rescinding at the instance of the judgment debtor.

[19]. Even otherwise, against the judgment and decree dated 05.02.2009, an appeal was filed by the judgment debtor before the lower Appellate Court. The operation of impugned judgment and decree passed by the trial Court was stayed by lower Appellate Court on 05.03.2009. The said interim order subsisted during pendency of first appeal and which was dismissed only on 16.10.2012 and thereafter, Regular Second Appeal was filed in this Court in which interim order was granted on 01.05.2013. The said stay order was vacated only on 04.09.2015. Thereafter, the objections filed by the judgment debtor were dismissed by the executing Court only on 21.11.2015.

Thereafter, the judgment debtor filed an application for depositing

the amount of balance sale consideration. The application was allowed and decree holder was directed to deposit the remaining sale consideration vide order dated 08.01.2016. In further clarification, orders dated 11.01.2016 and 12.01.2016 came to be passed by the executing Court.

[20]. Learned counsel for the respondent emphasized upon **Tara Singh (since deceased) through his LRs Vs. Sandeep Kumar and others, 2016(1) PLR 408** to highlight that the Court that passes the decree for specific performance shall incorporate necessary direction to the decree holder for depositing the amount and shall not make it a matter of mere inference. Normally, the directions are given to the defendant-judgment debtor only, but in case of decree for specific performance like a decree for redemption of mortgage and pre-emption, a specific and positive direction needs to be given to the plaintiff-decree holder. In the absence of such a direction, the Court passed the decree as discretion to extend the time. A decree lawfully passed should not be allowed to be nullified very easily. Learned counsel also referred to **Manoj VS. Umesh and others, 2015(3) RCR (Civil) 1008** to contend that the Court can extend the time after decree if decree was passed by the Court containing a stipulation as to time which it provided for.

[21]. In **Chanda Vs. Rattni's case (supra)**, the Hon'ble Apex Court has decided that a decree for specific performance



has been described as a preliminary decree. The power under Section 24 of the Act is discretionary and the Court cannot ordinarily annul the decree once passed by it. The Court does not cease to have power to extend the time even though the trial Court had earlier directed in the decree that payment of balance sale consideration to be made by certain date and on failure, suit will be dismissed. The power exercisable under Section 28 of the Act is discretionary.

[22]. In case **Bharat Heavy Electricals Ltd. Vs. R.S. Avtar Singh and Co., 2013(1) RCR (Civil) 252**, the Hon'ble Apex Court laid down following principles as to the decretal amount and costs:-

*“a) The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and cost and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.*

*b) the legislative intent in enacting sub-rules 4 and 5 is clear to the pointer that interest should cease to run on the deposit made by the judgment debtor and notice given or on the amount being tendered outside the Court in the manner provided in Order 21 Rule 1 sub-clause (b)*

*c) If the payment made by the judgment debtor falls short of the decreed amount, the decree holder will be*

*entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards cost and finally towards the principal amount due under the decree.*

*d) Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit interest on that part of the principal sum will cease to run thereafter.*

*e) In cases where there is a shortfall in deposit of the principal amount, the decree holder would be entitled to adjust interest and cost first and the balance towards the principal and beyond that the decree holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for re-appropriation.”*

[23]. In view of aforesaid, the contention as raised by the learned counsel for the petitioner with regard to separate assessment of costs which in turn was claimed to be executable under Order 21 Rule 32 CPC has to be turned down. Learned counsel for the respondent further relied upon **V. Kala Bharathi and others Vs. The Oriental Insurance Co. Ltd., Chittor, 2014(2) RCR (Civil) 573**, wherein the principles and guidelines enunciated in **Bharat Heavy Electricals Ltd's case (supra)** were followed.

[24]. Having considered the submissions made by both sides, I am of the view that no indulgence can be granted to the

petitioners in nullifying the decree passed by the trial Court. In the absence of any application for extension of time, the discretion should not be exercised in favour of defaulting party after the expiry of such a period. I find from the ratio of **Amar Nath Jain Vs. Ram Parkash Dhir, 1987 (1) PLR 490** that the time can be extended even in the absence of any application. The Court can use its discretion for extending the time for depositing the amount, even if no specific order for extension of time was passed, nor such an application was moved. Even on facts, the present case based upon the bona fide of the decree holder inasmuch as that after passing of the decree on 05.02.2009, the First Appellate Court stayed the operation of the decree and the appeal was dismissed only on 16.10.2012. Thereafter, this Court in Regular Second Appeal passed the interim order on 01.05.2013 and the same was vacated on 04.09.2015. Thereafter, the objections were filed by the judgment debtor before executing Court which were dismissed only on 21.11.2015 and thereafter, the amount was ordered to be deposited.

[25] In view of ratio laid down in **Gurdit Singh Vs. Jagjit Singh, 1987(1) PLR 129, Smt. Sarupi and others Vs. Har Gian and others, AIR 1975 Punjab and Haryana 231, Kedar Nath Dhingra and another Vs. Kanwal Bhatia, AIR 1998 Punjab and Haryana 86, Chintambaran Vs. Viswambaran, 2001 AIR (Kerala) 205, Sham Kaur Vs. Malagar Singh and another, 2004(1) PLR 814, Mohinder Singh Gurdial Singh, 1997(1) PLR**

**73, Nanha Vs. Risala and another, 2007(5) RCR (Civil) 655**

and **Sucha Singh Vs Nand Lal, (2015-3) PLR 272**, the

discretionary power of the Court can be exercised to grant such permission to deposit the amount. The Court has power to fix and extend the time for deposit of purchase money. The effect of the decree is to be seen, if there is condition stipulated in the decree incorporating consequences of non-deposit of balance sale consideration, then power of the Court to extend the time for payment of balance sale consideration is to be perceived in discretionary ambit of the Court and such discretion has to be exercised in view of the facts and circumstances of the case. If the decree does not show any contingency for on happening of an event or default in terms of decree, the suit stands dismissed automatically, then the power of the Court to enlarge the time would be in consonance with the provisions of the Civil Procedure Code and Specific Relief Act.

[26]. It is a settled principle of law that the Court in its discretion, if stipulates the time for balance sale consideration without imposing any pre-emptory condition in the event of default, then the Court would have the power to extend the period under Section 148 of the CPC. The exercise of such discretion to extend time to comply with the decree would be in consonance with the provisions of the Civil Procedure Code and Specific Relief Act. The powers of the Court are not merely declaratory or

regulatory, but are substantive powers and can be invoked to impart complete justice between the parties.

[27]. In nutshell, if there was no default clause stipulated in the decree for payment of balance sale consideration, then the Court has a right to extend the time, even if the balance sale consideration was not deposited within stipulated period. Such extension of time can be ordered without application. Mere failure on the part of the decree holder to deposit the amount does not render the decree ineffective or release the judgment debtor from his liability to satisfy the decree. It is only a willful default that makes the Court to refuse extension in depositing the balance sale consideration.

[28]. Even otherwise, Section 28 of the Act is based on the principle that readiness and willingness of the party shall be at all times. Plaintiff has to prove the readiness and willingness for performance of agreement during entire course of trial and after the decree till the execution of the sale deed. Section 28 of the Act has applicability only in cases of established and intentional default on the part of the decree holder. The decree obtained after full contest should not be allowed to interfere with normal contingencies unless and until, the Court is satisfied that readiness and willingness on the part of decree holder is lacking.

[29]. In view of aforesaid, I do not find any illegality or infirmity in the impugned order dated 27.07.2016 passed by

Additional Civil Judge (Senior Division), Malout. Resultantly, this revision petition is dismissed.

**(RAJ MOHAN SINGH)  
JUDGE**

19.09.2016

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Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No