

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5831 of 2013

Date of Decision: 24.05.2016

M/s Rangoli Buildtech Private Limited

... Petitioner(s)

Versus

Kishan Lal and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Chetan Mittal, Senior Advocate
with Mr. Varun Issar, Advocate
for the petitioner(s).

Ms. Sonia Madan, Advocate
for Mr. R.S.Madan, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 20.3.2013, passed by learned Additional Civil Judge (Senior Division), Sonapat, whereby application, filed by the petitioner/plaintiff for directing the respondents to execute the sale deed, was dismissed.

Relevant facts of the case that the civil suit was pending and fixed for 3.8.2007 for filing of written statement before the Court below. The

parties entered into written compromise dated 3.8.2007 and made their statement before the Court and undertook to get the sale deed executed in favour of the applicant/plaintiff and the matter was adjourned to 18.8.2007 for decision in the Lok Adalat as the applicant/plaintiff was entitled to get the refund of court fee. The civil suit was decided by the Lok Adalat on the basis of compromise on 18.8.2007. Plaintiff requested the defendants to get the sale deed executed and for that purpose, he had got prepared a demand draft of ₹ 3,32,81,800/- in favour of the defendants but they had not come forward and the defendants disobeyed the order of the Court dated 18.8.2007. So, prayer was made that defendants be directed to come forward and get the sale deed executed in favour of the plaintiff.

Respondents contested the application, *inter alia* taking the plea that present suit was withdrawn in Lok Adalat on 18.8.2007 and thereafter an application, filed by the plaintiff for restoration, is misconceived. As per law, restoration can be effected only if the suit has been dismissed for non-prosecution. More so, petitioner has already taken the refund of court fee amounting to ₹ 5,93,570/-. The payment of demand draft was never made to the respondents. Otherwise also, the application was hopelessly time barred and the order was passed by the Court on 18.8.2007 in presence of both the counsel and the application in question was moved on 1.4.2009 i.e. after delay of 1½ years. The Court below dismissed the application filed by the petitioner and as such present petition before this Court.

Learned counsel for the petitioner submitted that admittedly, as per compromise entered into between the parties in the Lok Adalat, sale deed was to be executed but the respondents had not come forward to get it

executed, though the petitioner was having balance sale consideration by way of demand draft of ₹ 3,32,81,800/- in favour of the respondents and that was the complete misuse of the process of the Court. Such a matter is certainly required to be dealt with by the Court while exercising inherent powers under Section 151 CPC and application is maintainable. On this point, reliance was placed upon the judgment of the Hon'ble Apex Court in ***Jet Ply Wood (P) Ltd. And Another v. Madhukar Nowlakha and Others (2006)3 Supreme Court Cases 699.***

Learned counsel for the petitioner also submitted that any order passed by Lok Adalt, on the basis of compromise, comes within the definition of decree under Section 2 CPC and as such the decree becomes executable and the same is required to be executed by the Court. More so, if the Court has dismissed the suit on the basis of compromise without the same having been implemented, such a suit must be restored and the Court should rectify its order. On this point, reliance was placed upon the judgment rendered by the Kerala High Court in ***C. Varghese Mathal v. Varghese C. Philippukutty 2013(6) RCR (Civil) 368.***

Learned counsel for the respondents submitted that facts of the present case are entirely distinguishable because in this case, petitioner had withdrawn the suit and the Lok Adalat had passed the order. Thereafter, no application was filed for seeking assistance of the Court in any manner for a period of over 1½ years. Had it been a case of non-compliance of court order on the part of the respondents, petitioner should have approached the Court below immediately or at least within a period of 30 days but that has not been done and there is no ground for issuance of any direction to the

respondents to get the sale deed executed.

Having considered the submissions made by learned counsel for the parties and gone through the judgments rendered by the Hon'ble Supreme Court in ***Jet Ply Wood (P) Ltd.'s case*** (*supra*) and Kerala High Court in ***C. Varghese Mathal's case*** (*supra*), this Court is of the considered view that facts of the instant case are certainly distinguishable because in the case in hand, petitioner himself had withdrawn the suit and the said order was never set aside by any Court. If at all, order passed by the Court, on the basis of compromise having been entered into between the parties, was actually not implemented because of lapse on the part of respondents, petitioner should have approached the Court below immediately without wasting any time or at least not to wait for a period of 1½ years. Such a delay in approaching the Court itself shows that the real fault was actually not on the part of respondents but on the part of petitioner. Undisputedly, the balance payment of sale consideration or demand draft was never handed over to the defendants nor any legal notice was issued to get the sale deed executed as per order passed by the Court below. Rather the application for issuance of directions to the respondents was filed after 1½ years and that delay cannot be considered to be a good ground for passing such an order.

As per view taken by Hon'ble the Supreme Court in ***Jet Ply Wood (P) Ltd.'s case*** (*supra*), undisputedly, inherent powers are to be exercised by the Court wherever it is case of injustice. But in the case in hand, petitioner has not been able to make out a case where inherent powers should have been exercised by the Court because petitioner himself had not taken any action on his part at relevant time. He has already sought refund of

the court fee, meaning thereby he had accepted the compromise in its entirety.

Similar matter was before the Co-ordinate Bench of this Court in *Sube Singh and Others v. Pushpa Rani and Another 2013(7) RCR (Civil) 1061*, wherein view was taken that if suit was dismissed as withdrawn, pursuant to compromise between the parties and withdrawal of suit not being conditional in any way, there was no reason for the petitioner to wait for a period of two years to file the restoration application. Quite identical are the facts of the case in hand.

The Court below has rightly taken the view, thereby dismissing the application as suit was withdrawn unconditionally in lieu of compromise between the parties to the suit. There is no infirmity much less perversity, irregularity, illegality or jurisdictional error in the impugned order by the trial Court so as to warrant interference of this Court by way of present petition and the same is hereby dismissed.

(Shekher Dhawan)
Judge

May 24, 2016
“DK”