

Civil Revision No. 6252 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 6252 of 2016

Date of Decision: 22.9.2016

Surjeet Singh

---Petitioner

versus

Indraj since deceased through his Lrs.

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. P.K.Ganga, Advocate
for the petitioner**

Rekha Mittal, J.

The present petition lays challenge to order dated 6.8.2016 (Annexure P-9) passed by the Additional Civil Judge (Senior Division), Sirsa whereby application for execution moved by the petitioner has been dismissed and the cross objections were disposed of.

A brief backdrop of this case is that Surjeet Singh petitioner filed a suit for possession by way of specific performance of agreement to sell dated 14.12.2001 purported to be executed by Indraj since deceased in respect of land measuring 16 kanals 14 marlas for a sale consideration of

Rs. 83,500/- at the rate of Rs. 40,000/- per acre. The suit was decreed by the trial court vide judgment and decree dated 22.4.2008 passed by the Additional Civil Judge (Senior Division), Sirsa. The judgment and decree passed by the trial court became subject matter of appeal that came to be decided by the Additional District Judge, Sirsa and the operative part of the judgment, reads as follows:-

“The present transaction between late Shri Indraj and respondent-plaintiff seems to be a transaction of loan and in the present case also, as per aforesaid Law laid down by the Hon'ble Supreme Court, the respondent-plaintiff is held entitled for the refund of Rs. 50,000/- along with interest @ 9% per annum from the date of agreement to sell i.e. w.e.f. 14.12.2001 alongwith the costs of the suit. Accordingly, a decree for recovery of money amounting to Rs. 50,000/- alongwith interest @ 9% per annum from the date of alleged agreement to sell i.e. w.e.f. 14.12.2001 along with the costs of the suit is passed in favour of the respondent-plaintiff Surjeet Singh and against the appellants-defendants. The aforesaid amount

of Rs. 50,000/- shall be paid by the appellants-defendants to the respondent-plaintiff along with interest at the rate of 9% per annum from the date of execution of the alleged agreement to sell i.e. 14.12.2001, within a period of two months from today. In default, the impugned judgment and decree dated 22.4.2008 passed by learned lower court shall be operative. Hence, the present appeal is accepted to this extent with no order as to costs and the findings of the learned Trial Court are modified to the aforesaid extent. Decree sheet be prepared accordingly and after due compliance, file be consigned to the record-room.”

Respondent/judgment-debtor (now represented by his LRs.) filed an application on 17.2.2012 (not placed on record) for depositing an amount of Rs. 95,200/- (Rs. 50,000/- as principle and the remaining as interest) but the appellate court in place of permitting the judgment-debtor to deposit the amount issued a notice to the decree holder and eventually the application was decided on 23.2.2012 (Annexure P4). In pursuance thereof, the judgment-debtor deposited the amount on 23.2.2012 itself.

Counsel for the petitioner would contend that as the trial court passed order dated 23.2.2012 permitting the respondent/judgment-debtor to deposit the amount at his own responsibility as well as subject to decision of Hon'ble the High Court, the petitioner under a bona fide impression withdrew Regular Second Appeal No. 906 of 2012 preferred against the judgment and decree passed by the Court of Appeal. It is further submitted that order dated 26.9.2012 passed in the aforesaid Regular Second Appeal also makes a specific reference to order dated 23.2.2012 passed by the Executing Court. It is argued with vehemence that in case the impugned order is allowed to sustain, it would cause a serious prejudice to right of the petitioner who had been successful before the trial court in getting a decree of specific performance and later withdrew his appeal under a bona fide mistaken impression.

Another submission made by counsel is that as the judgment-debtor was required to pay the amount, in terms of the judgment and decree passed by the first appellate court, within a period of two months with effect from 17.12.2011, the application filed by the judgment-debtor for deposit on 17.2.2012 was otherwise beyond the period of two months, therefore, liable to be dismissed. In support of his contention, he has relied

upon judgment of Hon'ble the Supreme Court of India ***P.R.Yelumalai vs. N.M. Ravi 2015(2) R.C.R.(Civil) 585.***

I have heard counsel for the petitioner, perused the paper book particularly the order impugned.

Indisputably, the legal representatives of deceased Indraj, who were arrayed as such in the suit were permitted to pay the amount of Rs. 50,000/- alongwith interest within a period of two months by the Court of Appeal. As per plea of the petitioner, the judgment-debtor filed an application on 17.2.2012 seeking permission for deposit of the amount. The Court in place of permitting the applicant(s) to deposit the amount issued a notice to the petitioner/decreed-holder and eventually permitted the judgment-debtor to deposit the amount of Rs. 95,200/- on 23.2.2012. An action of the Court giving notice to the petitioner/decreed-holder instead of permitting the applicant to make deposit on 17.02.2012 can neither enure to benefit of the petitioner nor can put the respondent to disadvantage for no fault attributable to him.

So far as the plea of the petitioner that he withdrew RSA No. 906 of 2012 under some bona fide mistaken impression, the same is not sufficient to find any fault in the impugned order. The petitioner may take recourse to appropriate proceedings, in accordance with law, for expressing

grievance against order dated 26.9.2012 passed in RSA No. 906 of 2012.

This brings the Court to the plea that application was filed by the respondent beyond a period of two months. Firstly, the said application has not been placed on record. This apart, no such issue was raised before the Court below that the respondent is not entitled to deposit the amount as he has filed the application beyond stipulated period. The said issue being a disputed question of fact was required to be raised before the trial court for adjudication. Under these circumstances, the petitioner cannot derive any advantage to his contention from what has been held in ***P.R.Yelumalai's case (supra)***.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

22.9.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No