IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6456 of 2016
Date of Decision- 27.09.2016

Smt. Raj Dulari and others ... Petitioners

Versus

Ram Sarup and another ... Respondents

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

Present: Mr. Kanwardeep Singh, Advocate for the petitioners.

***

RAJ MOHAN SINGH, J.

[1]. Petitioners have filed this revision petition against the order dated 16.08.2016 passed by Civil Judge (Senior Division), Karnal whereby application filed by the petitioner under Section 28 of Specific Relief Act for rescission of agreement, judgment and decree dated 11.02.2012 on account of non-payment of sale consideration within prescribed period was dismissed.

[2]. Suit of the plaintiff was decreed vide judgment and decree dated 11.02.2012 on deposit and receipt of balance sale consideration within two months from passing of the judgment and decree holder was required to deposit the balance sale consideration for getting the sale deed executed and registered.

[3]. Petitioners alleged that the decree holder did not comply with the requirement and by not depositing the balance sale consideration had violated the mandatory direction, therefore, the decree has to be nullified. Decree holder moved an application for

depositing the balance sale consideration only on 20.07.2013 after a period of about 17 months and the balance sale consideration was deposited only on 01.10.2013. The agreement to sell was executed on 08.12.2006. Judgment and decree came to be passed by trial Court on 11.02.2012.

[4]. Judgment debtors filed an appeal before the lower Appellate Court which was dismissed in default and the application for restoration of the same was filed.

[5]. Evidently, there was no default clause in the operative part of the decree. A due notice of draft sale deed was issued to the judgment debtors under Order 21 Rule 34 CPC. Judgments debtors appeared in the Court on 31.05.2014 and execution petition was adjourned for filing objections on the draft sale deed for 06.09.2014. On 06.09.2014, judgment debtors did not file objections and the execution petition was adjourned for 18.10.2014, 20.10.2014 and for 02.01.2015. On 02.01.2015, judgment debtors filed the present application for rescission of agreement and consequent decree without filing any objection to the draft sale deed. Court had already passed an order directing the decree holder to deposit remaining balance sale consideration vide order dated 28.09.2013. In compliance thereof, decree holder had already deposited the remaining amount of sale consideration.

[6]. Perusal of decree dated 11.02.2012 revealed that the suit of the plaintiff was decreed and defendants were directed to execute

and register the sale deed in favour of decree holder as per agreement to sell dated 08.12.2006 in respect of suit land within two months from passing of the judgment and decree on receipt of balance sale consideration, failing which the decree holder was given an opportunity to get the sale deed executed through the process of law. It was nowhere mentioned that in the event of non-deposit of balance sale consideration within prescribed period, the suit shall be deemed to be dismissed. Since there was no rider in the judgment and decree, therefore, in the absence of any default clause, no curtailment of right of the plaintiff as suggested by the defendants can be ordered.

[7]. In ***Tara Singh (since deceased) through his LRs Vs. Sandeep Kumar and others, 2016(1) PLR 408,*** it was held 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 has discretion to extend the time as well. A decree lawfully passed should not be allowed to be nullified very easily.

[8]. In ***Manoj Vs. Umesh and others, 2015(3) RCR (Civil) 1008***, it was held 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.

[9]. In ordinary circumstances, Court cannot 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 already directed in the decree that payment of balance sale consideration is to be made by certain date and on failure, suit will be dismissed. The power exercisable under Section 28 of Specific Relief Act is discretionary.

[10]. In ***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."

[11]. In view of law laid down in ***Amar Nath Jain Vs. Ram Parkash Dhir, 1987(1) PLR 490***, the time can be extended even in the absence of any application filed by the decree holder. 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. The discretionary power of the Court can be exercised for granting such permission to deposit the balance sale consideration. The Court has power to fix and extend the time for deposit of sale consideration. In the absence of condition stipulated in the decree, the consequences of non-deposit of such

amount would be of no consequence as the Court passing the decree in its discretion has power to extend the time as well.

[12]. The time has already been extended. Pursuant to such extension, the amount had already been deposited. I see no legal impediment in allowing the decree holder to have the fruits of the decree. There is no illegality or error of jurisdiction in the impugned order dated 16.08.2016 passed by Civil Judge (Senior Division), Karnal. Resultantly, this revision petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

27.09.2016
Prince

Whether reasoned/speaking Yes/No

Whether reportable Yes/No