IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.6645 of 2016
Date of Decision: 19.10.2016

Varinder Garg

......Petitioner

Vs

Balbir Singh

.....Respondent

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

Present: Ms. Pallavi Singh, Advocate
for the petitioner.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 08.08.2016 (Annexure P-1) passed by the Civil Judge (Sr. Divn.), SBS Nagar whereby objection filed by the petitioner in execution petition was dismissed.

[2]. Plaintiff/respondent filed a suit for specific performance of agreement to sell dated 09.02.2004. The suit was decreed on 30.04.2010. Operative part of the decree reads as under:-

> *"It is ordered that suit is decreed with costs. The plaintiff is accordingly held entitled to a decree for the possession of the land in suit by way of specific performance of the agreement of sale dated 9.2.2004. The plaintiff is directed to deposit the sale consideration within a*

> *period of two months from today and thereafter, the defendant will get the sale deed executed within four months from today, failing which the plaintiff would be at liberty to approach the court."*

[3]. Thereafter decree-holder filed an execution petition before the executing Court for seeking execution of judgment and decree dated 30.04.2010.

[4]. Petitioner filed an objection on the premise that execution was not maintainable as the decree-holder had not deposited the balance sale consideration within the time prescribed in the decree. The said objection was objected to by the decree-holder and the executing Court vide order dated 08.08.2016 dismissed the same. That is how the present revision petition came to be filed before this Court.

[5]. Learned counsel for the petitioner vehemently contended that the trial Court has erred in dismissing the objection filed by the petitioner on the ground that judgment-debtor had preferred an appeal before the lower Appellate Court. The appeal was preferred by the petitioner/judgment-debtor only on 16.07.2010 which was after the period of two months granted to the decree-holder to pay balance sale consideration. The decree-holder never approached the judgment-debtor for execution of sale deed by depositing the

balance sale consideration.

[6]. Learned counsel for the petitioner emphasized that in terms of Order 21 Rule 34 CPC, the decree-holder was to deposit the amount by way of draft before the trial Court. On refusal of the judgment-debtor, the trial Court was required to serve a copy of draft as well along with the issuance of notice upon the judgment-debtor calling upon him to execute the sale deed. Learned counsel contended that Order 21 Rule 34 (1) and (2) CPC were not complied with. According to learned counsel for the petitioner delay in depositing the amount was fatal to the execution.

[7]. Learned counsel for the petitioner referred to the ratio of the following judgments to contend that the Court can extend time for depositing the amount under Section 28(1) of the Specific Relief Act and, therefore, Section 148 CPC would have no application:-

1. Kaniyattil Ummakulsumma vs. P.T. Vijayakumar, 2015 AIR (Kerala) 289;
2. Chanda (dead) through LRs. vs. Rattni and anr., 2007(2) RCR (Civil) 534;
3. Bhupinder Kumar vs. Angrej Singh, 2009(4) RCR (Civil) 248;
4. P.R. Yelumalai vs. N.M. Ravi, 2015(2) RCR (Civil) 585; and

5. Sulleh Singh vs. Sohan Lal, 1975 PLJ 400;

[8]. Learned counsel for the appellant submitted that the decree-holder failed to deposit the amount within the prescribed time and the application of the judgment-debtor should have been allowed in such an event. Although the Court has power to extend the time, but the discretion has to be exercised on the basis of material on record. The material on record was suggestive of the fact that the decree-holder has miserably failed to honour the decree. The Appellate Court did not grant any injunction in favour of the plaintiff, therefore, it was obligatory on the part of the decree-holder to honour the decree by depositing the amount within the time prescribed. Having failed to deposit the amount in time, the decree-holder had incurred disqualification and the Court in its own wisdom should not have granted indulgence in favour of the defaulter.

[9]. I have heard learned counsel for the petitioner at some length and have considered the submission in the light of aforesaid precedents.

[10]. It is a settled principle of law that the Court passing the decree in its jurisdictional ambit can extent the time under Section 28(1) of the Act and even separate application under Section 148 CPC is not required. In ***Bhupinder Kumar's*** case

(supra) application for extension of time was refused on the basis of material brought on record. In the instant case, material on record was considered to be sufficient for granting permission to the decree-holder to deposit the amount. The amount already stood deposited on the day when appeal was filed by the appellant before the lower Appellate Court. In ***P.R. Yelumalai's*** case (supra) even the Hon'ble Apex Court has observed that the Court has the discretion to extent the time upon an application made by the party. The extension of time can be granted even after expiry of the period originally fixed.

[11]. The appeal preferred by the judgment-debtor was dismissed on 30.11.2011. Judgment and decree was passed on 30.04.2010, whereby plaintiff was directed to deposit the balance sale consideration within a period of two months from 30.04.2010 and thereafter judgment-debtor was to get the sale deed executed within a period of four months from the date of passing of decree, failing which the plaintiff was held entitled to approach the Court.

[12]. Perusal of the judgment and decree revealed that there was no rider put in the relief clause that in the event of non-deposit of the balance amount, the suit would be deemed to be dismissed or otherwise. The balance sale consideration was

deposited by the plaintiff/decree-holder on 17.07.2010. The appeal was preferred by the judgment-debtor before the lower Appellate Court on 16.07.2010 i.e. within a period of four months given to the judgment-debtor for execution of sale deed on deposit of balance sale consideration within a period of two months. On filing of the appeal, decree-holder deposited the amount in question.

[13]. The judgment and decree was passed by the trial Court after assessing the merits of the case viz-a-viz. the readiness and willingness of the plaintiff to perform his part of obligation. The Court while passing the decree in its equitable jurisdiction has power to extend the time also. Since there was no rider placed in the relief clause that in the event of non-deposit of the amount, the suit would have the consequence of dismissal, therefore, the Court in its discretion can extend the time. The decree-holder cannot be denied to enjoy the fruits of the decree on such technicality. In ***Jarnail Singh (deceased) through LR vs. Manjit Singh and others, 2015(4) PLR, 121 (P&H)***, it was held that the trial Court has the discretion to extend the time in terms of Section 28 of the Act and the time can also be extended even in the absence of any application in appropriate cases.

[14]. Since 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 decreed by passing mere directions without any forfeiture of right of the plaintiff in the event of non-deposit of the amount within time prescribed, therefore, non-deposit of the amount within prescribed period was not having effect of rescinding the contract at the instance of the judgment-debtor. Otherwise, the suit was decreed on finding readiness and willingness on the part of the decree-holder. The judgment-debtor was not satisfied with the decree, even he filed an appeal against the judgment and decree of the trial Court. The amount was deposited on the next day of filing of the appeal before the lower Appellate Court.

[15]. In ***Tara Singh (since deceased) through his LRs Vs. Sandeep Kumar and others, 2016(1) PLR 408***, it was held that the Court passes the decree for specific performance shall incorporate necessary directions to the decree-holder for depositing the amount and shall not make it a mater of mere interference. 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. 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.

[16]. In ***Chanda (dead) through LRs'*** 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 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.

[17]. In the case of ***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."

[18]. 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. Such 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 to deposit the amount. The effect of the decree is to be seen, if there is condition stipulated in the decree by incorporating the consequences of non-deposit of balance sale consideration, then power of the Court to extend the time is to be perceived in discretionary ambit of the Court. If the decree does not show any contingency, then the power of the Court to enlarge the time would be in consonance with provisions of the Civil Procedure Code and Specific Relief Act. Reference can be made to the ratio laid down in ***Amar Nath Jain Vs. Ram Parkash Dhir, 1987 (1) PLR 490; 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.***

[19]. 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.

[20]. 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.

[21]. In view of aforesaid, I do not find any illegality or

infirmity in the impugned order dated 08.08.2016 passed by Civil Judge (Senior Division), SBS Nagar. Resultantly, this revision petition is dismissed.

[22]. The arguments as raised before the Court in respect of non-compliance of Order 21 Rule 34 CPC though not raised before the executing Court, but still this objection can be taken by the petitioner at relevant stage. Since the sale deed has not been executed so far, the petitioner would be at liberty to avail his remedies in accordance with law.

October 19, 2016 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No