

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

**CR No.6742 of 2016 (O&M)
Decided on: 24.10.2016**

Sudesh Rani

....Petitioner

Versus

Sandeep Bansal and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Vikram Singh, Advocate
for the petitioner.

REKHA MITTAL, J.

CM No.21754-CII of 2016

Allowed as prayed for.

Annexures P7 and P8 are taken on record subject to just
exceptions.

Disposed of accordingly.

MAIN CASE

The present petition lays challenge against order dated
23.09.2016 (Annexure P6) vide which application of the petitioner
filed under Section 28 of the Specific Relief Act, 1963 for rescission of
agreement to sell dated 07.07.2007 and decree dated 01.09.2010 has
been dismissed.

Counsel for the petitioner has submitted that Sh. Babu Ram
(Judgment-debtor) was owner of residential house in dispute and
executed an agreement to sell on 07.07.2007 in favour of Sandeep
Bansal (respondent No.1) for a sale consideration of Rs.5 lacs and
alleged to have received a sum of Rs.1 lac as earnest money and the

sale deed was to be executed on 07.01.2008. The time for execution of sale deed was extended up to 21.04.2008. Sandeep Bansal filed civil suit No.495 of 2008 on 15.11.2008 seeking specific performance of agreement to sell dated 07.07.2007. Babu Ram did not contest the proceedings that ultimately culminated in judgment and decree dated 01.09.2010. The respondent – decree-holder did not make an attempt to get the sale deed executed and registered nor deposited the balance sale consideration of Rs.4 lacs within a period of 3 months in terms of the decree passed by the Court. The decree-holder filed the execution petition No.35/2011 on 15.03.2011. He did not deposit the balance sale consideration even by that time. A draft sale deed was filed in the Executing Court on 01.09.2012 and the decree-holder was directed to deposit balance sale consideration upto 06.10.2012. It is further argued that balance sale consideration was eventually deposited in the Court on 15.03.2013 and the sale deed was executed in favour of the decree-holder by a Local Commissioner (Isham Singh) Reader of the Court on 17.12.2013. The Court issued warrants of possession in favour of the decree-holder and the petitioner for the first time came to know about the ex parte decree dated 01.09.2010 when bailiff of the Court visited the disputed house to deliver possession to the decree-holder on 16.03.2015.

It is argued that the petitioner purchased the property in dispute from Babu Ram vide registered sale deed No.3078 dated 20.07.2011 and as such, she is in possession of the house as owner. It is vehemently argued that as the respondent/decreed-holder failed to deposit the balance sale consideration within the stipulated period of 3

months as per the decree dated 01.09.2010 and there is no order passed by the Executing Court extending time for deposit of balance sale consideration vide endorsement made on the application dated 14.03.2013 (Annexure P3), the agreement to sell dated 07.07.2007 and the decree dated 01.09.2010 are liable to be rescinded by setting-aside the order impugned. It is further argued that the Court below has wrongly relied upon the judgment of this Court ***"Jarnail Singh (deceased) through LR vs Manjit Singh and others"***, 2015(4) PLR 121 to negate plea of the petitioner. 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) RCR (Civil) 585.

I have heard counsel for the petitioner and perused the paperbook particularly the order impugned.

Before advertng to the factual controversy and the submissions made by counsel for the petitioner, it is appropriate to take note of the observations of Hon'ble the Supreme Court of India in ***"Chanda (dead) through LRs vs Rattni and another"***, 2007(2) RCR (Civil) 534 wherein the Court in para 9 of the judgment has held, quoted thus:-

"The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the Court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The Court does not cease to have the power to extent the time even though the trial Court had earlier

directed in the decree that payment of balance price to be made by certain date and on failure suit to stand dismissed. The power exercisable under Section is discretionary."

In the instant case, the trial Court passed the judgment and decree dated 01.09.2010. The operative part of the decree reads as follows:-

"Keeping in view the aforesaid discussion, suit filed by the plaintiff succeeds and decreed with costs. Therefore, a decree for possession of once house/plot No.198 as detailed and described in the headnote of the plaint by way of specific performance of agreement to sell dated 07.07.2007 is passed in favour of the plaintiff and against the defendant. The defendant is directed to execute and registered the sale deed in favour of the plaintiff on receipt of balance sale consideration within 3 months from the date of decree, failing which plaintiff shall be entitled to get the same executed through the Court."

A plain reading of the aforesaid extract would make it evident that there is no direction in the decree to the decree-holder to deposit the balance sale consideration much less as to what would happen if the purchase money is not deposited/paid within the time fixed. In *Chanda's case (supra)* Hon'ble the Supreme Court has even gone to the extent of saying that the Court does not cease to have the power to extend the time even though the trial Court had earlier directed in the decree that payment of balance price is to be made by certain date and on failure suit to stand dismissed. Under these circumstances, the Court was competent to extend the time to deposit

the balance sale consideration.

The JD did not come forward to execute and register the sale deed in favour of the decree-holder within 3 months from the date of decree rather got registered sale deed dated 20.07.2011 in favour of the present petitioner who bought litigation. The application for execution of the decree was filed on 15.03.2011 and the draft sale deed was filed in the Court on 01.09.2012. Subsequent thereto, the decree-holder filed an application seeking permission to deposit the balance sale consideration of Rs.4 lacs and the Court on 15.03.2013 ordered "*Rs.4 lacs be deposited at own responsibility.*" After the necessary deposit was made by the decree-holder, the Court appointed Reader of the Court (Isham Singh) to execute the sale deed and eventually the Local Commissioner executed the sale deed in favour of the decree-holder and on behalf of the JD on 17.12.2013.

The instant application for rescission of the agreement to sell dated 07.07.2007 and decree dated 01.09.2010 was filed by the petitioner in March, 2016, approximately 3 years after deposit of balance sale consideration and more than 2 years after the sale deed was executed in favour of the decree-holder through process of the Court. As the decree passed in favour of the respondent did not provide for any period during which the decree-holder was obligated to deposit the balance sale consideration much less adverse consequence thereof in case of failure of the decree-holder to comply with such directions coupled with the factum that the Executing Court allowed the decree-holder to deposit the balance sale consideration at his own responsibility and the amount was actually deposited on 15.03.2013 and

thereafter the sale deed dated 17.12.2013 was executed in favour of the decree-holder by a representative of the JD appointed by the Court, it amounts to extension of time by the Court for deposit of balance sale consideration. As the petitioner did not challenge the orders passed by the Court appointing a Local Commissioner for execution of the sale deed as well as the sale deed dated 17.12.2013 executed in favour of the decree-holder on behalf of the JD through process of the Court, the petitioner, in the given circumstances, cannot be allowed the relief seeking rescission of the contract as well as the decree that already stands executed in part.

This apart, the petitioner cannot seek rescission of the agreement and decree by filing an application after a lapse of more than 2 years since deposit of balance sale consideration and even execution of the sale deed. The question of rescission of the decree otherwise is not open for consideration after the decree had already been executed in part before an application for rescission by invoking Section 28 of the Specific Relief Act had been filed by the petitioner who claims to have stepped into the shoes of the JD on the basis of sale deed executed in his favour after the JD had already lost the litigation in the year 2010.

In *Jarnail Singh's case (supra)* this Court has held that the judgment in *P.R. Yelumalai's case (supra)* does not make out any such law that even a delay of one day in making the deposit would entail forfeiture of the right to decree-holder. On the other hand, the Court was holding that the Court that grants a decree would have discretion to extend the time and on a matter of fact in that case, the Executing Court rejected the execution petition on the ground of delay when the decree-

holder sought for a similar prayer for extension of time before the Court on the trial side, the Court dismissed it and the Appellate Court had also dismissed it. Hon'ble the Supreme Court found that there was no compelling reason to modify the decision of the Courts below. The law made, however, is that the trial Court will have a discretion to extend the time. Section 28 of the Specific Relief Act which deals with rescission of decree in suit of specific performance itself makes possible for the Court to extend the time. The counsel's argument is that such an application for extension must be filed and if it is not filed, the Court will reject it. There is no such compulsion that there should be an application filed. If a lodgement is filed for deposit by Court to allow the amount to be deposited and if he has deposited it, I will not find that there was any serious lapse on his part.

Counsel for the petitioner, though has submitted that the Court has committed an error by relying upon the judgment in *Jarnail Singh's case (supra)* but failed to point out as to how an error was committed by the Court below or by this Court while interpreting the judgment in *P.R. Yelumalai's case (supra)*. As has been noticed hereinbefore, in view of the scenario in the present case that the Court allowed the decree-holder to deposit balance sale consideration on 15.03.2013, necessary deposit was made on the same date and thereafter a sale deed has been executed in favour of the decree-holder through process of the Court and the application for rescission of the agreement and decree was filed after a long delay of 2-3 years, I do not find it meritorious that the discretion exercised by the Court below needs to be interfered with.

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

24.10.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No