IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.7875 of 2016 (O&M)
Date of Decision:07.12.2016

Dharam Pal and others **......Petitioners**

Versus

Baldev Raj **.....Respondent**

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

Present: Mr. Gurinder Pal Singh, Advocate
for the petitioners.

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RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 28.09.2016 passed by Additional Civil Judge (Senior Division), Pehowa vide which application filed by the petitioners under Section 28 of the Specific Relief Act, 1963 for rescinding the agreement to sell dated 30.12.2004 was dismissed.

[2]. The suit of the plaintiff-decree holder for possession by way of specific performance of agreement to sell dated 30.12.2004 was partly decreed against the judgment debtors and their brother Sant Ram vide judgment and decree dated 28.10.2011. After the decree, Sant Ram had executed the sale deed of his share in favour of the decree holder. However,

judgment debtors namely Dharam Pal and Joginder Singh preferred an appeal before the lower Appellate Court which was dismissed vide judgment and decree dated 30.01.2014.

[3]. Decree holder filed an execution on 28.10.2011. However, judgment debtors also preferred regular second appeal against the judgment and decree dated 30.01.2014 passed by the lower Appellate Court. Regular Second Appeal was dismissed by this Court on 13.05.2014. Even SLP filed against the judgment of this Court was also dismissed on 24.11.2014.

[4]. During pendency of the execution petition, the land in question was transferred by the judgment debtors in favour of Phoolo Devi, Suraj Bhan, Raj Kumar, Sushil, Debo Rani and Ashok Kumar vide relinquishment deed dated 21.10.2014. The aforesaid transferees/objectors are none other than the family members of the judgment debtors. The transfer was a collusive affair and was an intended attempt to prolong the execution of decree. The objections and the application filed by the objectors-petitioners was to the effect that the decree holder did not deposit the balance sale consideration within 60 days and he deposited the same after a period of 3 years. The balance sale consideration was deposited on 21.10.2014 as against the period of 60 days for depositing the same. SLP was dismissed

on 24.11.2014 and the amount was deposited just one month prior to that. The petitioners claimed that the decree could not have been executed as the plaintiff had failed to honour the terms and conditions of the decree.

[5]. I have heard learned counsel for the petitioners.

[6]. 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 as discretion to extend the time. A decree lawfully passed should not be allowed to be nullified very easily. It was observed in ***Manoj VS. Umesh and others, 2015 (3) RCR (Civil) 1008,*** 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.

[7]. In ***Chanda Vs. Rattni, 1999(4) RCR (Civil) 621***, the Hon'ble Apex Court has decided that a decree for specific

performance has been described as a preliminary decree. The power under Section 24 of 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.

[8]. In case ***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.*
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> *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)*
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> *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."

[9]. In case titled as ***V. Kala Bharathi and others Vs. The Oriental Insurance Co. Ltd., Chittor, 2014(2) RCR (Civil) 573***, the principles and guidelines enunciated in ***Bharat Heavy Electricals Ltd's case (supra)*** were followed.

[10]. It was discussed in ***Amar Nath Jain Vs. Ram Parkash Dhir, 1987 (1) PLR 490*** that the 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.

[11]. In view of ratio laid down in ***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***, the 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 for deposit of purchase money. The effect of the decree is to be seen, if there is condition stipulated in the decree incorporating consequences of non-deposit of balance sale consideration, then power of the Court to extend the time for payment of balance sale consideration is to be perceived in discretionary ambit of the Court and such discretion has to be exercised in view of the facts and circumstances of the case. If the decree does not show any contingency for on happening of an event or default in terms of decree, the suit stands dismissed automatically, then the power of the Court to enlarge the time would be in consonance with the provisions of

the Civil Procedure Code and Specific Relief Act.

[12]. Since in the instant case, judgment debtors relinquished their rights in favour of Phoolo Devi etc., therefore, thereafter, they cannot turn around and object to the execution of the decree. Petitioners who have not come to the Court with clean hands do not deserve any equitable relief. It is also a settled principle of law that all objections in terms of Order 21 Rule 97 CPC are not necessarily to be decided by way of following proper procedure. Any frivolous objection cannot be decided by way of adopting procedure of framing issues and allowing the parties to lead evidence just to delay execution of decree in question.

[13]. There was no rider attached with the decree that in the event of non-deposit of the amount within stipulated period, the decree would have the affect of nullification. The court passing the decree in its legal discretion can enhance the time for depositing the time in question and the aforesaid view has been endorsed in the aforesaid precedents and were reiterated even thereafter.

[14]. In view of reasons as mentioned above, I do not find any ground to set aside the impugned order dated 28.09.2016 passed by Additional Civil Judge (Senior Division), Pehowa. Trial Court has not committed any error of jurisdiction, nor the

impugned order has suffered with any perversity. This revision petition is accordingly dismissed.

07.12.2016 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No