

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

**CM No.15194-CII of 2016 and  
CM No.15606-CII of 2016 in/and  
Civil Revision No.89 of 2013  
Date of Decision: 29.08.2016**

**Gayatri Devi and another**

**.....Petitioners**

**Vs**

**Darshan Ram and another**

**.....Respondents**

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

Present:Mr. Naveen Batra, Advocate  
for the petitioners.

Mr. B.S. Rana, Senior Advocate with  
Mr. Rajinder Paul Singh, Advocate  
for the respondents.

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**RAJ MOHAN SINGH, J**

**CM No.15606-CII of 2016**

For the reasons mentioned in the application, the same is allowed. Date of hearing is preponed for today and with the concurrence of both the parties, the main is taken up for final disposal.

**Civil Revision No.89 of 2013**

[1]. Petitioners have assailed the order dated 23.11.2012 (Annexure P-5) passed by Civil Judge (Sr. Divn.) Anandpur

Sahib, whereby application for depositing the balance sale consideration for execution of sale deed was allowed.

[2]. Respondent Darshan Ram filed suit for specific performance with consequential relief of permanent injunction or in alternative a decree for recovery of Rs.32,000/- against Bachna son of Ganga Ram. The said suit was decreed by the trial Court on 30.08.1996 in the following manner:-

*“13. In view of my findings on the issues discussed above, the suit of the plaintiff is decreed for the specific performance of the agreements dated 22.05.92 and 5.6.92 and accordingly, the defendant is directed to execute the sale deed in respect of 0 kanal 4 marlas of the land measuring 0 kanal 8 marlas bearing kh. No.146 and in respect of 0 Kanal 1½ marlas being 1/2 share as depicted with the letters 'ABCDEF' in plan 'B' as shown in site plan Ex.P3 after the removal of the Chhappar raised thereon on receipt of the balance sale consideration. It may be stated that the 1/2 share of the abadi area will be subject to partition between the plaintiff and the other co-sharer namely Rattna, brother of the defendant. The defendant is directed to execute the sale deed regarding the suit property within a period of two months, failing which the plaintiff shall be entitled to get the same executed by way of executing the decree. The plaintiff is obliged to deposit the balance sale consideration with the Court within a period of two months. The suit of the plaintiff is decreed*

*with costs. Decree sheet be prepared accordingly.*

*Announced.  
30.8.96*

*Additional Civil Judge (Sr. Divn.)  
Anandpur Sahib”*

[3]. Vide the aforesaid order, defendant was directed to execute the sale deed within a period of two months in respect of the suit land, failing which the plaintiff was held entitled to get the same executed by way of executing the decree. Plaintiff was obliged to deposit the balance sale consideration with the trial Court within a period of two months. Perusal of the operative part of the judgment and decree dated 30.08.1996 did not disclose any default clause that in the event of non-deposit of the amount, any consequence would follow out of the same.

[4]. The judgment and decree of the trial Court was further affirmed by the lower Appellate Court. In the execution, judgment-debtor filed objections on the ground that the decree-holder was directed to deposit the balance sale consideration within a period of two months from passing of the judgment. Since the decree-holder failed to deposit the balance sale consideration as per the decree, therefore, he was liable for violating the terms of the decree and was not entitled to maintain the execution. Judgment-debtor also moved an application for rescission of agreement to sell dated 22.05.1991 and agreement to sell dated 05.06.1992.

[5]. Decree-holder moved an application for deposit of balance sale consideration in favour of judgment-debtor. The said application was opposed by the judgment-debtor. The stand of the decree-holder was that after passing of the judgment and decree dated 30.08.1996, the decree-holder tried many times and offered remaining sale consideration to the judgment-debtor, but he did not receive the same. Earlier application dated 17.08.2002 was dismissed on 05.10.2002. Civil Revision No.173 of 2003 was filed before this Court, which was allowed on 27.04.2011 by observing that the decree did not contain any clause in respect of consequences of default of depositing the balance sale consideration. The absence of such clause does not lead to an automatic rescission of contract or render the decree inexecutable on account of default in depositing the balance sale consideration.

[6]. Learned counsel for the petitioners asserted that the judgment and decree dated 30.08.1996 was specific in terms of direction to the decree-holder to deposit balance sale consideration within a period of two months, but the decree-holder did not deposit the same within time prescribed and, therefore, the violation would entail rescission of agreement to sell and the decree has become inexecutable. Learned counsel also submitted that no application for extension of time to

deposit the amount was ever made. Civil Revision No.173 of 2003 decided on 27.04.2011 did not allow the application for deposit of the amount, rather set aside the order dated 05.10.2002 with a direction to the trial Court to decide the application afresh in accordance with law. Learned counsel further submitted that in the absence of any application for extension of time, decree-holder cannot allowed to deposit the amount.

[7]. Learned counsel for the petitioners relied upon **V.S. Palanichamy Chettiar Firm vs. C. Alagappan, 1999(1) RCR (Civil) 634** to contend that in the absence of extension for not depositing the balance sale consideration as per the decree, the discretion should not be exercised in favour of defaulting party i.e. decree-holder after expiry of such a period. Secondly, in terms of Section 148 CPC, even the extension of time cannot be granted in the absence of any reasonable explanation or material to justify delay in moving said application for extension of time. In such event, contract between the parties came to an end and nothing remained to be enforced thereafter. Learned counsel also relied upon **Birbal Singh vs. Randhir Singh, 2015 (3) RCR (Civil) 1027** and **Resham Singh and others vs. Manmohan Singh Kent and others, 1985 (1) PLR 278** on the same proposition.

[8]. On the other hand, learned Senior counsel for the respondents relied upon **Amar Nath Jain vs. Ram Parkash Dhir, 1987(1) PLR 490** to contend 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 such time was passed, nor such an application was moved.

[9]. Learned Senior counsel for the respondents also relied upon **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 vs. 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** in support of his plea that discretionary power of 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 extent time for

payment of balance sale consideration are 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. The decree did not show any contingency for on happening an event or default in terms of decree, suit would stand 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.

[10]. The Court in its discretion, if stipulates the time for balance sale consideration without imposing any pre-emptory condition in the event of default, then the Court would have the power to extend the period under Section 148 of the CPC. The exercise of such discretion to extend time to comply with the decree would be in consonance with the provisions of the Civil Procedure Code and Specific Relief Act. The powers of the Court are not merely declaratory or regulatory, but are substantive powers and can be invoked to import complete justice between the parties.

[11]. In nutshell, if there was no defaulting 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 wilful default that makes the Court to refuse extension.

[12]. Civil Court decree for specific performance was passed on 30.08.1996, therein two months' time was granted for depositing the balance sale consideration. Against such decree, an appeal was filed on 05.10.1996, in which interim order regarding stay of execution was granted. The appeal was dismissed by the lower Appellate Court on 19.07.2001. Execution was filed on 22.12.2001. On 07.08.2002, decree-holder filed an application for deposit of balance sale consideration, whereas the judgment-debtor filed an application under Section 28 of the Specific Relief Act on 10.09.2002, which was accepted on 05.10.2002 and the application of the decree-holder for deposit of balance sale consideration was also dismissed on 05.10.2002. Against both the causes of action, Civil Revision No.173 of 2003 was filed which was allowed on 27.04.2011 and the case was remanded back to the executing Court for fresh decision. Executing Court dismissed the application under Section 28 of the Specific Relief Act and accepted the application for deposit of balance sale

consideration by the decree-holder vide the impugned order.

[13]. Section 28 of the Specific Relief Act is based on the principle that readiness and willingness of the party shall be at all times i.e. driving the vendees entitlement to secure the sale deed. Plaintiff has to prove the readiness and willingness for performance of contract during entire course of trial and after the decree till the execution of sale deed. The provisions in terms of Section 28 of the Specific Relief Act for rescission of decree in the same suit has to be applied only in established and intentional default on the part of the decree-holder. The exceptional situation compels the Court to examine in its discretion any particular circumstance. The decree obtained after full contest shall not be allowed to be interfered with any normal circumstances unless and until, the Court is satisfied that readiness and willingness on the part of decree-holder is lacking. Such a finding cannot be recorded only on the fact that the amount was not deposited in Court. The contingency factor in not depositing the amount has to be looked into by the Court and the Court in its discretion can grant extension in time for such deposit for fulfilment of obligation under the decree.

[14]. Keeping in view the facts and circumstance, more particularly non-existence of default clause in the decree itself,

this Court is of the considered view that the trial Court has not committed any jurisdictional error in accepting the application of the decree-holder. The revision petition is accordingly dismissed.

August 29, 2016  
*Atik*

**(RAJ MOHAN SINGH)**  
**JUDGE**

|                           |          |
|---------------------------|----------|
| Whether speaking/reasoned | Yes / No |
| Whether reportable        | Yes / No |