

107.

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

Civil Revision No.8256 of 2015 (O&M)

Date of decision:11.02.2016

Gurpartap Singh (deceased, through his LR) ... Petitioner

versus

Paramjit Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Sherry K. Singla, Advocate,
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The revision petition is against an order rejecting an objection brought at the execution stage in a suit for specific performance. The trial Judge granted a strange decree of a relief for specific performance and simultaneously also an alternative relief for recovery of money, if the sale deed could not be executed for any unforeseen circumstances. The defendant had preferred an appeal and when the appeal was still pending, the decree holder filed an application under Section 28 of the Specific Relief Act read with Section 151 CPC to seek for extension for deposit beyond a period of 5 months before when the decree holder was bound to be pay the

balance of sale consideration of ₹ 10,07,500/-. The court allowed the application directed the deposit and ordered notice to the judgment debtor. The judgment debtor made an objection that the court could not have passed the order for deposit without notice to him and that further there was no justification for not complying with the terms of the decree as originally contained. The court has rejected the objection through the impugned order and the judgment debtor is in revision.

2. It is an admitted case that even the appeal filed by the defendant was dismissed and he has preferred a second appeal before this court and it is pending here. The High Court had granted stay of delivery of possession but there has been no stay relating to the execution of the sale deed itself. In a situation where the decree holder believes to be himself fettered by the pendency of the appeal and did not deposit the money initially but did make a deposit within a reasonable time such as in this case instead of depositing before 27.09.2009, the deposit was made on 26.03.2010 when the appeal was still pending. Ideally the court should have ordered notice in the application to the judgment debtor and then passed the order which it did not do. I have examined the reasons given and the objection which the petitioner is now putting forward and I will hold that it was surely a situation that warranted extension of time when the appeal was pending. After all, it cannot be that the defendant

preferred the appeal merely for the fun of it and he was still willing to execute the sale deed. His conduct to prefer an appeal itself was a vindication for the plaintiff to believe that the defendant was not willing to execute the sale deed and, therefore, he could not immediately deposit. If he was setting out this explanation for non-deposit and made the deposit in March 2010, it affords a justification for the court not to rescind a decree and allow for further process in execution. There is no justification for rescinding even the decree when the defendant is still contesting the decree already passed in an appeal before this court.

3. The order of stay obtained for delivery will protect the defendant for the present and the ultimate adjudication before this court will decide on whether the plaintiff could have the benefit of having obtained a sale through the court or not. There could be no other objection which the judgment debtor could have.

4. The revision petition is without merit and it is dismissed.

(K.KANNAN)
JUDGE

11.02.2016
sanjeev