

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

**CR No.1014 of 2017(O&M)
Date of Decision: 22.11.2017**

Ramesh Kumar

.....Petitioner

Versus

Radha Kishan

... Respondent

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

Present:Mr. Chand Ram Olla, Advocate
for the petitioner.

Mr. Rajesh Sethi, Advocate with
Mr. Ajay Jain, Advocate
Mr. Pridhi Jaswinder Sandhu, Advocate
Mr. Tushar Gera, Advocate and
Mr. Karan Bathla, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 08.01.2015 passed by the Civil Judge (Junior Division), Hisar whereby objections filed by the petitioner were dismissed.

[2]. Vide the impugned order, objections were dismissed vide a detailed order after noticing the fact that the suit for possession through specific performance of agreement to sell dated 02.04.2004 filed by the plaintiff/deGREE holder was decreed *ex parte* vide judgment and decree dated 03.11.2006. Thereafter, an application under Order 9 Rule 13 CPC filed by the defendant/judgment debtor for setting aside the *ex parte* order dated 19.10.2004 and judgment and decree dated

03.11.2006 was dismissed vide order dated 15.05.2012. An appeal filed against the order dated 15.05.2012 was also dismissed.

[3]. In the ex parte judgment and decree for specific performance dated 03.11.2006, directions were issued to the judgment debtor to execute the sale deed as per terms and conditions of the agreement to sell dated 02.04.2014. After dismissal of the application under Order 9 Rule 13 CPC by the trial Court as well as by the Lower Appellate Court, the decree holder sought execution of judgment and decree of the trial Court wherein objections were filed by the judgment debtor. Those objections were dismissed by the executing Court vide order dated 08.01.2015. An appeal was preferred against the said order.

[4]. Lower Appellate Court vide order dated 21.12.2015 allowed the appeal thereby directing the judgment debtor to pay an amount of Rs.1,40,000/- along with interest @ 6 % from the date of filing of the suit till final realisation of the amount. The order of the Lower Appellate Court dated 21.12.2015 was however set aside in Civil Revision No.179 of 2016 by the High Court and the judgment debtor was relegated to pursue his remedy against the order dated 08.01.2015 passed by the trial Court in accordance with law. Thereafter, the present revision

petition was filed in this Court.

[5]. While issuing notice of motion on 13.02.2017, following order was passed:-

“Learned counsel for the petitioner submits that out of total amount of ` 1,60,000/-, an amount of ` 20,000/- has already been paid and the remaining amount of ` 1,40,000/- will be deposited in three equal instalments within a period of six months from today. Learned counsel further submits that the petitioner undertakes to deposit the first instalment within a period of one month from today.

Notice of motion for 31.03.2017.

However, the operation of impugned order dated 02.02.2017 (Annexure P-4) shall remain stayed for a period of one month from today.

In case, the amount of first instalment is not deposited within a period of one month from today, the interim order passed by this Court shall stand vacated.”

[6]. Learned counsel for the petitioner submitted that the property is the only residential house available to the petitioner and the same is protected in terms of Section 60(1) (ccc) CPC. Learned counsel relied upon **Narender Singh Vs. Krishan and others, 2017(3) RCR (Civil) 225** and contended that the only residential house cannot be attached in execution of a decree.

[7]. On the other hand, learned counsel for the respondent relied upon **Bikram Singh Vs. Surjit Singh and others,**

2004(4) RCR (Civil) 422, Mahender Kumar Vs. Mangal Singh,

2013(4) RCR (Civil) 342, Sheela Rani Vs. Punjab and Sind

Bank Ltd., 1994(1) PLR 583 and contended that what is exempted under Section 60(1) (ccc) CPC is the sale and attachment of a residential house in occupation of the judgment debtor. The decree in the present case is for specific performance of agreement to sell of the house, therefore, the residential house is not being attached or sold in execution of the decree, but the decree for specific performance is being executed and as a consequence thereof, the possession is being sought by the decree holder. Suit for specific performance at the instance of the decree holder was in relation to the residential house agreed to be sold by the defendant to the plaintiff. The parties entered into a lawful agreement to sell, suit was decreed and the decree holder is enforcing the decree. Judgment debtor cannot contend that the property could not be sold. Even the conduct of the judgment debtor himself is violative of his own stand as even after passing of the decree, he has already sold away some part of the suit property.

[8]. Vide order dated 20.09.2017, both the parties intended to file their respective affidavits in the context of assertion and denial in respect of the residential house being the only property with the petitioner.

[9]. In compliance to the aforesaid order, affidavits have been filed and the same were taken on record. In the affidavit dated 03.10.2017 filed by the petitioner, he has mentioned that he has no other residential house in India except the house in question where his family members are residing. As against this, respondent has also filed an affidavit dated 03.10.2017 to the effect that assertion made by the petitioner that the suit property is the only residential house with the petitioner and is protected in terms of Section 60(1) (ccc) CPC is false and fraudulent inasmuch as that the petitioner has tried to hoodwink the Court by raising the aforesaid plea. On the one hand, the petitioner is trying to take benefit of Section 60(1) (ccc) CPC and on the other hand, he has alienated part of the suit property vide sale deed No.5361 dated 15.09.2017 in favour of Smt. Soma Devi wife of Shri Basti Ram, resident of Satya Nagar, D N College Road, Hisar.

[10]. During the course of arguments, the aforesaid fact was got ascertained from the petitioner who was present in person. He candidly admitted the aforesaid fact that part of the suit property has been sold by him in favour of aforesaid Smt. Soma Devi as he was in dire need of finances.

[11]. The case law relied upon by the petitioner was in respect of suit for recovery whereas as per ratio laid down in

Bikram Singh's case (supra) and **Mahender Kumar's case (supra)**, no exception can be made out in favour of the petitioner, particularly when he himself has not come to the Court with clean hands.

[12]. Though, respondent has filed CM No.23821-CII of 2017 for initiating appropriate criminal proceedings against petitioner under the relevant provision, but I deem it appropriate not to take cognizance of the said application in this revision petition. However, liberty is granted to the respondent to take recourse to his remedies available to him in accordance with law in some different Forum.

[13]. Therefore, in any case, there is no substance in this revision petition. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed. All the miscellaneous applications are accordingly disposed of.

22.11.2017

prince

Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No