

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

**Civil Revision No.1975 of 2016 (O&M)
Date of Decision: 21.08.2017**

**Ujjagar Singh and another Petitioners
Vs
Sangeeta Respondent**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.S. Sodhi, Advocate
for the petitioners.

Mr. Bhag Singh, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners are aggrieved of the order dated 21.12.2015 passed by the Civil Judge (Jr. Divn.) Ambala whereby application under Section 28 of the Specific Relief Act (hereinafter to be referred as 'the Act') filed by the judgment-debtors was dismissed.

[2]. Brief facts are that a suit for possession by way of specific performance filed by the plaintiff/respondent was decreed vide judgment and decree dated 02.11.2010. The operative part of the judgment reads as under:-

“As a sequel to my aforesaid discussion and observations, the suit of the plaintiff succeeds. Hence it is decreed with costs. Resultantly, I direct defendants No.1 &

2 to get the sale-deed executed in favour of plaintiff regarding suit property in terms of agreement to sell, Ex.P1, dated 23.9.2009 after receiving balance sale consideration with regard to the land detailed and described in the head-note of the plaint, within two months from getting certified copies of this judgment. However, costs of this suit Rs.1,44,370/- as well as counsel fee assessed at Rs.5000/- would be minus therefrom. It is pertinent to mention here that no relief is being claimed by the plaintiff against defendant no.3. Therefore, no relief is given to her against defendant no.3. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.”

[3]. The aforesaid judgment and decree was unsuccessfully challenged before the lower Appellate Court and the appeal was dismissed by the lower Appellate Court on 19.07.2013. There was a compromise effected between the parties on 19.09.2013 and that is why no regular second appeal was preferred by the judgment debtors.

[4]. Concededly out of total decretal amount of Rs.35 lacs, an amount of Rs.8 lacs was paid towards earnest money and an amount of Rs.25,44,500/- was deposited in the trial Court which is still lying deposited there. An amount of Rs.1,44,370/- was awarded towards cost of litigation besides an amount of Rs.5000/- towards counsel fee. The total computation would give rise to a figure that out of decretal amount, only an amount of Rs.6,130/- was remaining. The aforesaid calculations have

been admitted by learned counsel for the petitioners during course of the arguments

[5]. In the execution filed by the decree-holder, the application under Section 28 of the Act came to be filed on the ground that total amount was not paid within the stipulated period as granted by the trial Court.

[6]. Learned counsel for the petitioners by relying upon **Kabal Singh vs. Paramjit Kaur, 2012(1) PLR 1991** contended that in the event of failure on the part of decree-holder to comply with the directions of the Court, the time could have been extended by the Court itself in terms of Section 148 CPC and in the event of no such extension, the decree has to be treated as unexecutable and there cannot be any enlargement in time for depositing the amount of balance sale consideration in terms of Section 148 CPC.

[7]. Learned counsel further by relying upon **Sukhdev Singh vs. Nirmal Singh, 2016(2) R.C.R. (Civil) 298** contended that in case of non-compliance of the decree i.e. non-deposit of the amount within the stipulated period, rescission of agreement in terms of Section 28 of the Act would come into being and the trial Court was legally required to rescind the agreement itself.

[8]. I have considered the submissions made by learned

counsel for the parties.

[9]. Perusal of the judgment and decree of the trial Court reveals that there was no rider attached to the decree that in the event of failure on the part of the plaintiff to deposit the balance sale consideration, the suit would be deemed to have been dismissed. The perusal of the impugned order dated 21.12.2015 shows that vide order dated 17.05.2014, the decree-holder has already placed on record the receipt of payment of balance sale consideration along with the draft sale deed and thereafter both the parties concededly stated that there were chances of compromise between them. In the light of plea of compromise, the decree-holder has already deposited the amount and it cannot be claimed that the decree holder has not paid the amount of balance sale consideration. The only dispute is with regard to the calculation with reference to the reconciliation of different heads under which the amount had to be computed.

[10]. There was no default clause in the decree passed by the trial Court. While decreeing the suit, there was no rider placed in terms of default of the decree-holder that in the event of non-deposit of the amount within prescribed time, the decree was having effect of rescission at the instance of judgment-debtors. In the appeal filed by the judgment-debtors, execution of the decree was stayed and the appeal was ultimately

dismissed on 19.07.2013. The interim order was subsisting during pendency of the first appeal.

[11]. In view of law laid down in **Tara Singh (since deceased) through his LRs vs. Sandeep Kumar and others, 2016(1) PLR 408** the Court that passes the decree for specific relief 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 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 decree-holder. In the absence of such direction, the Court who has passed the decree has the discretion to extend the time as well. The decree lawfully passed should not be allowed to be nullified very easily. The law laid down in **Manoj vs. Umesh and others, 2015(3) RCR (Civil) 1008** can be taken notice of in the aforesaid context, where the Court can extent the time after decree, if the decree was passed by the Court containing a stipulation as to time which it provided for.

[12]. In **Chanda vs. Rattni, 1994(4) R.C.R. (Civil) 621**, the Hon'ble Apex Court had decided the that the decree for specific performance has to be 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 power exercisable under Section 28 of the Act is discretionary and the Court does not cease to have the power to extend the time, particularly when there was no rider attached in terms of the relief clause.

[13]. In view of ratio laid down in **Amar Nath Jain vs. Ram Parkash Dhir, 1987(1) PLR 490** no indulgence can be granted to the judgment debtors in nullifying the decree passed by the competent Court. Even in the absence of any application for extension of time, the time can be extended by the Court by using its discretion for depositing the amount.

[14]. 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 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,** 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.

[15]. In the present case since the amount was deposited in the Court and only dispute with regard to Rs.6,130/- remained between the parties that too is the subject matter of reconciliation of different heads for which amount was deposited including cost of the litigation and the counsel fee, therefore, in my considered opinion, Section 28 of the Act is not attracted to the facts of the present case. Consequently, this revision petition is dismissed.

August 21, 2017

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No