

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

CR No.1887 of 2017 (O&M)

Date of decision: March 17, 2017

Sukha Singh

...Petitioner

Versus

Amrik Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. S.K. Arora, Advocate
for the petitioner.

JASPAL SINGH, J.

Challenge in the instant revision petition is to order dated September 8, 2016 passed by the Civil Judge (Junior Division), Faridkot vide which, an application filed by the petitioner/plaintiff for extension/grant of time to deposit the balance sale consideration has been dismissed.

Undisputedly, petitioner/plaintiff filed a suit against the respondent/defendant for possession by way of specific performance of agreement to sell dated May 27, 2010 executed by the defendant in respect of the land subject matter thereof which stood decreed vide judgment and decree dated December 8, 2015. The operative part of which reads as under:-

“Hence in view of the above discussion, I find that plaintiff is entitled to get relief of possession as owner by way of specific performance of the agreement of sale dated 27.05.2010. Accordingly, suit of plaintiff is decreed with costs, for possession by way of specific performance of the agreement of

sale dated 27.05.2010 and defendant is directed to execute the sale deed in terms of this agreement in favour of the plaintiff, after receiving the balance sale consideration, within the period of three months failing which plaintiff shall be at liberty to get the sale deed executed through execution proceedings within one month thereafter by depositing balance sale consideration in the court. Decree sheet be prepared and file be consigned to record room”.

The contention of learned counsel for the petitioner is that in compliance of the directions given in the aforesaid judgment and decree, the petitioner could not deposit the balance sale consideration within the stipulated period of one month due to illness and as such, he earlier moved an application for extension of time which was allowed vide order dated April 7, 2016 whereby one month time was granted to him to deposit the balance sale consideration. Even, within the stipulated period of one month, petitioner could not deposit the amount which necessitated the filing of another application for extension of period for the same purpose which was also allowed by the trial Court vide order dated May 30, 2016 vide which he was again directed to deposit the remaining balance sale consideration on or before July 1, 2016. Since the petitioner/plaintiff was suffering from serious ailment, he could not approach the Court for depositing the amount on or before July 1, 2016 which necessitated the filing of yet another application which was moved by him on September 8, 2016 after his recovery from illness. However, that application has been declined vide impugned order dated September 8, 2016 which is absolutely against the principles of natural justice and is a result of non-appreciation of the facts and

circumstances of the case. In fact, the petitioner/plaintiff had been fighting/contesting his case since 2012 and as such, there could be no reason for him not to deposit the balance amount except for some genuine reason i.e. his serious illness. The declining of application for extension of time to deposit the balance sale consideration in compliance of the directions given in judgment and decree dated December 8, 2015 has resulted into causing serious prejudice to the petitioner which would amount to the dismissal of the suit and he would be debarred from reaping the fruits of the judgment and decree passed in his favour.

This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner to find the same to be without any legal and factual justification.

Undoubtedly, suit for possession by way of specific performance of agreement to sell dated May 27, 2010 was decreed vide judgment and decree dated December 8, 2015 whereby the petitioner/plaintiff was granted one month time to deposit the balance sale consideration. However, he failed to deposit the same within the stipulated period of one month i.e. by July 1, 2016. Thereafter, on the basis of an application moved by him, vide order dated April 7, 2016, one month time was extended to deposit the balance sale consideration but he failed to comply with the said order. Rather subsequent thereto, he moved another application which was also allowed vide order dated May 30, 2016 whereby he was granted time to deposit the amount on or before July 1, 2016. Meaning thereby, petitioner was granted ample opportunity to deposit the balance sale consideration vide two different orders spreading over a period

of approximately six months but he did not deposit the balance sale consideration. Due to non-deposit of the balance sale consideration within a stipulated time, a legal right has accrued to the opposite party which cannot be scuttled down simply at the instance of the petitioner/plaintiff, especially in the circumstances when period spreading over six months has already been granted to him. Moreover, extension of time cannot be claimed as a matter of right by the petitioner/plaintiff and in the facts and circumstances of the case, this Court is of the considered view that application moved on September 8, 2016 for the third time seeking extension of time has rightly been dismissed by the learned trial Court. It appears that petitioner/plaintiff does not intend to deposit the balance sale consideration or that he is not in a position to deposit the amount and is garnering time by moving applications one after the other for extension of time. The dismissal of the application is legally as well as factually justified. Impugned order does not call for any interference by this Court especially in the circumstances that the discretion has been judicially exercised by the learned trial Court.

Dismissed.

March 17, 2017
m. sharma/avin

(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No