

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

**Civil Revision No.3695 of 2016
Date of Decision: 11.10.2017**

Pritam Singh and another

.....Petitioners

Vs

Karan Garg

....Respondent

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

Present: Mr. Mandeep Kumar Dhot, Advocate
for the petitioners.

Mr. Harshit Jain, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners are aggrieved of the orders dated 23.09.2015 and 04.05.2016 passed by the Civil Judge (Jr. Divn.) Dhuri vide which objection petition under Order 21 Rule 34 CPC was dismissed and the objections filed by the judgment-debtors in the execution were also dismissed.

[2]. Brief facts are that the respondent filed a civil suit for specific performance of the agreement to sell dated 13.11.2006 and for permanent injunction in respect of half share in the suit property. The suit was decreed by the Civil Judge (Jr. Divn.)

Dhuri with costs and the defendants were directed to execute the sale deed within a period of two months in favour of the plaintiff on receipt of balance sale consideration. The plaintiff was also directed to deposit the balance sale consideration within one months. However, it was made clear that if the defendants did not execute the sale deed within a period of two months, the plaintiff was held entitled to execute the sale deed through the process of the Court. Defendants were further restrained from alienating the suit property to any other person except the plaintiff.

[3]. Against the judgment and decree of the trial Court, the judgment-debtors filed Civil Appeal No.8-A of 2010 before the lower Appellate Court on 24.02.2010 i.e. within the period of two months. It was not denied by the petitioners/judgment-debtors that the execution of judgment and decree dated 15.01.2010 was stayed by the lower Appellate Court in the aforesaid appeal. Ultimately the appeal was dismissed by the lower Appellate Court vide judgment and decree dated 05.11.2012. Thereafter the decree holder deposited the balance sale consideration on 11.12.2012.

[4]. Learned counsel for the petitioners submitted that the deposit of balance sale consideration in totality was beyond the period of two months granted by the trial Court. In support of his

contention, learned counsel by relying upon **Birbal Singh vs. Randhir Singh, 2015(3) R.C.R. (Civil) 1027;** **Sukhdev Singh vs. Nirmal Singh, 2016(2) R.C.R. (Civil) 298** and **P.R. Yelumalai vs. N.M. Ravi, 2015(2) R.C.R. (Civil) 585** contended that no extension of time for deposit of balance sale consideration was ever sought and granted by the Court, therefore, the deposit made by the decree-holder was beyond the period prescribed by the trial Court. Section 28 of the Specific Relief Act would come into play. In the absence of moving any application, even delay of 1 day cannot be condoned. The Court has the discretion to extent the time upon the application made by the party and the extension can be granted even after expiry of the period originally fixed, but filing of application is *sine qua non*.

[5]. On the other hand, learned counsel for the respondent submitted that the trial Court decreed the suit on 15.01.2010. Period of two months was given for deposit of the amount. That period would have ended on 15.03.2010, but before that the judgment-debtors filed appeal before the lower Appellate Court on 24.02.2010 and get the execution of the decree stayed upto 05.11.2012. The appeal was dismissed by the lower Appellate Court. The decree of the trial Court stood merged in the decree of the lower Appellate Court and soon thereafter the remaining

sale consideration was deposited on 11.12.2012 within two months from the date of judgment and decree of the lower Appellate Court.

[6]. On facts, learned counsel argued that the deposit made by the decree-holder was well within limitation, for which no application was required to be moved before the executing Court. Learned counsel further submitted that the question of law as tried to be formulated by learned counsel for the petitioners is not attracted in the present case. It is not a case of extension of time by any stretch of imagination. The deposit made was well within limitation from the decree of the lower Appellate Court. Learned counsel submitted that in view of ratio laid down by the Hon'ble Apex Court in **Tara Singh (since deceased) through his LRs. Vs Sandeep Kumar and others, 2016 (1) PLR 408**, the decree in question cannot be allowed to be nullified even on facts as well as on legal position.

[7]. I have heard learned counsel for the parties.

[8]. It is a settled principle of law that the decree lawfully passed should not be allowed to be nullified very easily. The sustainability of the decree must be adopted even if two views are possible on the facts of the case. The Court does not cease to have powers to extent the time. There was no rider in

the decree that in the event of failure on the part of the decree-holder to deposit the balance sale consideration the decree was to be rendered as nullity. The provision of Section 28 of the Specific Relief Act is discretionary in nature. Even in appropriate cases, the time can be extended in the absence of any application filed by the decree-holder. The Court can use its discretion to extend the time for deposit of the amount even after no specific order for extension of time was passed, nor such an application was moved.

[9]. The Court has power to fix and extend the time for deposit of balance sale consideration. In the absence of conditions stipulated in the decree, the consequence of non-deposit of such amount would be of no consequence as the Court passing the decree in its discretion has power to extent the same as well. Reference can be made to **Amar Nath Jain Vs. Ram Parkash Dhir, 1987(1) PLR 490.**

[10]. Though there is no legal proposition to be culled out in the present case as the case is squarely rested on the factual matrix and the case where no such extension is involved. The deposit made by the decree-holder on 11.12.2012 was well within limitation. Even for the sake of meeting out the legal proposition as projected by the petitioners, the law laid down in **Gurdip 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 can be relied in

the context of absence of any conditions stipulated in the decree incorporating consequence of non-deposit of the balance sale consideration. The power of the Court to extend the time for payment of balance sale consideration can 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.

[11]. Since the decree did not show any contingency on happening of a particular event, therefore, the suit was not to be dismissed automatically in the absence of any such rider clause and, therefore, the power of the Court to enlarge the time would be in consonance with the provisions of CPC as well as Specific Relief Act and the same would fall in the discretionary ambit of the Court for extending the time. A decree for specific performance by its nature is a preliminary decree. The powers of the Court under Section 28 of the Act are discretionary. The

Court cannot ordinarily annul the decree once passed as the Court does not cease to have the power to extend the time even though the trial Court had earlier directed in the decree. The Court in its discretion, if stipulates the time for deposit of balance sale consideration without imposing any pre-emptory condition in the event of default, the Court would have power to extend as well. Such exercise would be in consonance with the provision of the Act. The powers of the Court are not merely declaratory or regulatory, but are substantive powers and are meant to impart complete justice between the parties. In the absence of any default clause stipulated in the decree for payment, the payment made by the decree-holder on 11.12.2012 cannot be faulted with as there was no such delay in depositing the amount and secondly the legal position as enumerated above would make the deposit on 11.12.2012 to be fully justified in law.

[12]. For the reasons recorded hereinabove, I do not wish to interfere in the impugned orders passed by the trial Court. This revision petition is accordingly dismissed.

October 11, 2017

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No