

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.4454 of 2016 (O&M)

Date of Decision:21.02.2017

Sarabjit Kaur

.....Petitioner

Versus

Gurpreet Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Rakesh Gupta, Advocate,
for the petitioner.

Mr.Dhirinder Chopra, Advocate,
for respondent No.1.

RAMESHWAR SINGH MALIK, J.(Oral)

Present revision petition is directed against the order dated 25.05.2016 (Annexure P-1) passed by the learned trial Court, whereby application moved by the petitioner filed under Section 151 of the Code of Civil Procedure (for short "the CPC") for staying the execution proceedings, during pendency of her application under Order 9 Rule 13 CPC read with Section 151 of CPC, was declined.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record that the petitioner was defendant No.7 in the suit filed by respondent No.1, for possession by way of specific performance of agreement to sell dated 12.03.2003. Defendant No.7-petitioner was proceeded against ex parte. Thereafter, the suit was decreed vide ex parte judgment and decree dated 09.12.2011. Petitioner-defendant

No.7 never moved any application for setting aside the order, whereby she was proceeded against ex parte. However, she filed an application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 09.12.2011. This application was moved on 05.02.2016 i.e. after more than four years of passing of the above-said ex parte judgment and decree.

During the pendency of the application of the petitioner under Order 9 Rule 13 CPC, she moved another application under Section 151 CPC, for staying the execution proceedings. It was this application which has been dismissed by the learned trial Court vide impugned order dated 25.05.2016.

After hearing the learned counsel for the parties at considerable length, going through record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the impugned order has not been found suffering from any patent illegality or perversity, the same deserves to be upheld.

It has gone undisputed before this Court that during the pendency of the application under Order 9 Rule 13 CPC read with Section 151 CPC filed by the petitioner, sale-deed has already been executed in favour of the decree holder-plaintiff through the court orders. In this view of the matter, it was too late in the day for the petitioner to move the application under Section 151 CPC for staying the execution proceedings. It is so said because the sale-deed already stands executed in favour of the decree-holder. In this view of the matter, it can be safely concluded that the learned trial Court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

So far as the judgments relied upon by learned counsel for the petitioner in **Devidner Pal Singh and another Versus Narinder Pal Singh and others** passed in C.R.No.722 of 2016, decided by this Court on 12.04.2016, **Amrik Singh Versus Jasbir Singh**, 1995 (3) RRR, page 519 and **J.K.Chowdhury Versus Ashis Banerji**, AIR 1981 Punjab and Haryana, page 51, are concerned, there is no dispute about the observations made therein. However, on a close perusal of the cited judgments, none has been found to be of any help to the petitioner, being distinguishable on facts. As noticed here-in-above, sale-deed has already been executed in favour of the decree-holder.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533, **Union of India Vs. Amrit Lal Manchanda and others**, 2004 (3) SCC 75, **State of Orissa Vs. Md. Illiyas**, 2006 (1) SCC 275 and **State of Rajasthan VS. Ganeshi Lal**, 2008 (2) SCC 533.

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's case** (supra), reiterating its view taken in **Amrit Lal Manchanda's case** (supra) and **Mohd. Illiyas's case** (supra), which can be gainfully followed in the present case, read as under:-

11. "12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts.

Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned

Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's

speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep

the path to justice clear of obstructions which could impede it Ed. See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

Reverting to the facts of case in hand, learned executing court had already ordered and got executed the sale-deed in favour of the decree holder-plaintiff/respondent No.1 herein. Under these circumstances, the application moved by the petitioner under Section 151 CPC, was rightly held not maintainable by the learned trial Court, at this belated stage of the execution proceedings. So far as, the application under Order 9 Rule 13 CPC read with Section 151 of CPC filed by the petitioner is concerned, the same shall be decided by the learned trial Court, in accordance with law.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that no fault can be found with the impugned order passed by the learned trial Court and the same deserves to be upheld. The present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the instant revision petition stands dismissed, however, with no order as to costs.

February 21, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No