

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

**CR No.4271 of 2017
Date of Decision-05.09.2017**

Joga Singh ... Petitioner
Versus
Satpal Singh ... Respondent

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

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Abhishek Bajaj, Advocate
for the petitioner.

Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate
for the caveator/respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 20.05.2017 passed by the Executing Court, whereby the application under Section 28 of the Specific Relief Act for rescission of agreement to sell dated 05.01.2001 was dismissed.

[2]. Plaintiff/respondent filed a suit for possession by way of specific performance of agreement to sell dated 05.01.2001 in respect of 9 kanals, 5 marlas of land against the defendant/petitioner.

[3]. The suit was decreed on 18.09.2008 and the defendant was directed to get the sale deed executed and registered in terms

of agreement to sell dated 05.01.2001 in respect of suit land within a period of four months from the date of passing of the judgment and decree after getting the balance sale consideration of the agreement to sell and to hand over the vacant possession of the suit land to the plaintiff. In case, defendant fails to get the sale deed executed and registered within a period of four months from the date of passing of judgment and decree, the plaintiff was held entitled to get the sale deed executed and registered through the Court. Plaintiff was also directed to make good the deficiency in court fee within one month from the date of judgment and decree, failing which the suit was to be dismissed.

[4]. Defendant filed an appeal before the first Appellate Court and the same was dismissed on 29.01.2010. Lower Appellate Court directed the defendant to execute the sale deed within a period of two months from 29.01.2010 after getting the balance sale consideration of the agreement to sell and to hand over the vacant possession of the land in question to the plaintiff. In case, defendant fails to get the sale deed executed and registered in the period of two months from 29.01.2010, then the plaintiff was held entitled to get the sale deed executed and registered through the Court.

[5]. Defendant remained unsuccessful in Regular Second Appeal before the High Court, which was dismissed on 27.01.2015. SLP filed before the Hon'ble Apex Court is statedly pending, but no stay has been granted.

[6]. Learned Senior Counsel for the petitioner submitted that in view of judgment and decree of the Lower Appellate Court, the amount was to be deposited within two months from 29.01.2010 i.e. upto 29.03.2010, but the same was deposited on 14.05.2011 and was clearly beyond the time prescribed by the Lower Appellate Court and there was no application filed along with deposit for extension of time in terms of Section 148 CPC.

[7]. On 04.05.2011, the executing Court passed the following order:-

“J.D. did not comply with decree dated 18.09.2008 despite expiry of more than two and half years. So, J.D. is directed to get execute the sale deed on or before 14.05.2011, failing which sale deed shall be executed by way of appointment of Local Commissioner through Court as per rule on submission of proposed draft of sale deed.”

[8]. On 14.05.2011, the executing Court passed the following order:-

“Present: Shri B.S. Bhinder, Advocate for DH.

None for JD.

JD did not comply with decree dated 18.09.2008 by way of execution of sale deed despite direction order dated 04.05.2011. DH did not deposit balance sale consideration in compliance of decree till so far. So, DH shall be at liberty to deposit balance sale consideration amount in compliance of decree at his own responsibility and file be now put up on 11.06.2011 for

production of proposed draft etc. and further proceedings.

Sd/-

(Dr. Sanjeev Arya)

ACJ (SD), Kurukshetra

14.05.2011”

[9]. By referring to order dated 14.05.2011, learned Senior Counsel for the petitioner contended that despite the order dated 04.05.2011, the decree holder did not deposit the amount and the perusal of order dated 14.05.2011 reveals that the decree holder did not deposit the balance sale consideration in compliance of the decree and therefore, it was ordered that the amount shall be deposited by the decree holder at his own responsibility.

[10]. Learned Senior Counsel relied upon **Prem Jeevan Vs. K.S.Venkata Raman and another, 2017(2) Civil Court Cases 001 (SC)** and contended that the Court must ensure strict compliance of the conditions stipulated in the decree which has the effect of nullifying the decree. The issue for consideration before the Hon’ble Apex Court was in respect of a case where a decree for specific performance was granted in favour of the plaintiff on 25.09.2008, directing the defendant to execute and register the sale deed in favour of the plaintiff in respect of suit land within two months from the date of passing of the decree after receipt of balance sale consideration. It was also ordered that in case defendant refused to receive the balance sale consideration with interest, the plaintiff

would be at liberty to deposit the amount in Court and obtain the sale deed through process of the Court. Plaintiff claimed to have issued a cheque on 04.12.2008 for the amount in question, but the same was returned, as not accepted by the judgment debtor and thereafter, decree holder applied for execution after about two years of non-acceptance of the cheque. Judgment debtor filed an application before the Executing Court on the ground that since the amount was not deposited by the decree holder within the stipulated time, therefore, the decree has become inexecutable in the absence of extension of time. Keeping in view the period of about 2 years in filing the execution after returned of the cheque, the Hon'ble Apex Court found that there was no document to show that there was any enlargement of time granted by the Court for paying the purchase money under Section 28(1) of the Specific Relief Act. In the absence of any application for extension of time that was computed to be about 2 years, 2 months, the Hon'ble Apex Court held that the execution for obtaining specific performance was not maintainable. However, the Hon'ble Apex Court has also observed that in case where two views are possible on the facts of the case, the one, which would sustain the decree, must prevail.

[11]. Learned Senior Counsel further relied upon **Chanda (dead) through LRs. Vs. Rattni and another, 2007(2) RCR (Civil) 534** and contended that in view of non-compliance of the decree holder in terms of payment of balance sale consideration within the

period specified, the application for rescission of agreement should have been allowed by the executing Court. Learned Senior Counsel also relied upon **Bhupinder Kumar Vs. Angrej Singh, 2009(4) RCR (Civil) 249** to the same effect and submitted that it was held that although the Court has power to extend the time for making payment of balance sale consideration, but in the absence of any justifiable reasons, the Court can refuse to extend the time for depositing the balance sale consideration.

[12]. At last, learned Senior Counsel relied upon **V.S. Palanichamy Chettiar Firm VS. C. Alagappan, 1999(1) RCR (Civil) 634** and contended that extension of time for making the payment of balance sale consideration in terms of a decree after inordinate delay in the absence of any application cannot be entertained and discretion cannot be exercised in favour of the decree holder even on equity and extension cannot be granted to comply with the decree.

[13]. Learned Senior Counsel for the respondent submitted that the order dated 14.05.2011 has to be read in conjunction with the order dated 04.05.2011. On 11.06.2011, it was noticed by the Executing Court that the amount was deposited by the decree holder vide separate challan dated 17.05.2011. The execution clerk of the Court was directed to verify the contents mentioned in the proposed sale deed and the case was adjourned to 06.08.2011. In compliance to the aforesaid order dated 11.06.2011, the Executing

Court has observed that the proposed draft of the sale deed was seen and the same was found to be correct. Since the judgment debtor did not execute the sale deed despite giving sufficient time, therefore, the Court was of the opinion that the sale deed cannot be executed without assistance of the Local Commissioner and Hardwari Lal, Ahlmad was appointed as Local Commissioner with a direction to execute the sale deed in favour of the judgment debtor as per rules. The order dated 06.08.2011 came to be passed after noticing the conduct of the judgment debtor that even despite deposit of the balance sale consideration, he did not execute the sale deed and as a consequence of that, a Local Commissioner was appointed by the Executing Court. The order dated 06.08.2011 was never assailed by the judgment debtor and the sale deed was executed. Learned Senior Counsel contended that after execution of the sale deed, Section 28 of the Specific Relief Act cannot be resorted to. For ready reference, the order dated 06.08.2011 is reproduced hereasunder:-

“Present: Shri B.S. Bhinder, Advocate for DH.

None for DH.

Report of clerk/civil Ahlmad regarding proposed draft of sale deed seen. It found to be correct. Since J.D did not execute sale deed despite giving sufficient time, so I am satisfied that this sale deed cannot be executed without assistance of Local Commissioner on behalf of Court. Resuntantly Hardwari Lal, Ahlmad in the Court is appointed Local Commissioner who will execute sale

deed on behalf of court in favour of D.H, according to registration act in the office of Tehsildar Shahabad as per rules. His fee is assessed Rs.700/- which shall be paid by the decree holder. Further decree holder will pay all expenses regarding registration as required under rules. Robkar be also issued separately on the deposition of fee. Report be now awaited for 01.10.2011 qua satisfaction of decree.

Sd/-

(Dr. Sanjeev Arya)

ACJ (SD), Kurukshetra

06.08.2011”

[14]. In view of aforesaid facts, learned Senior Counsel contended that the filing of execution on 09.04.2010 and thereafter, proceedings in terms of orders dated 31.07.2010, 09.09.2010, 08.10.2010, 29.01.2011, 26.03.2011, 04.05.2011 and 14.05.2011 would make the case of no latch and omission on the part of the judgment debtor. Judgment debtor had already complied with the directions of the Court dated 04.05.2011 and 14.05.2011 by depositing the amount on 14.05.2011/17.05.2011 and thereafter, orders dated 11.06.2011 and 06.08.2011 came to be passed by the executing Court, wherein conduct of the judgment debtor was highlighted in not executing the sale deed and ultimately, the sale deed was executed and registered with the process of the Court. With reference to the aforesaid facts, learned counsel contended that there was no such delay of about 2 years and 2 months as noticed by the Hon'ble Apex Court in **Prem Jeevan's case (supra)**

and therefore, the case is not covered by the ratio laid down by the Hon'ble Apex Court in **Prem Jeevan's case (supra)**. The sale deed stood executed on 13.09.2011 and thereafter, execution was withdrawn with a liberty to file fresh execution for remaining cause of action in accordance with law. Since the judgment debtor never challenged the orders dated 04.05.2011, 14.05.2011 and 06.08.2011, therefore, the judgment debtor cannot be allowed to entertain the application under Section 28 of the Specific Relief Act after execution of sale deed on 13.09.2011.

[15]. I have considered the submissions made by learned counsel for the parties.

[16]. In order to understand the controversy, it would be relevant to refer to the chronological order of events took place in this case. Lower Appellate Court dismissed the appeal vide judgment and decree dated 29.01.2010. The execution was filed on 09.04.2010. On 31.07.2010, judgment debtor appeared before the executing Court and sought time for filing objections. The case was adjourned to 09.09.2010. On 09.09.2010, the case was further adjourned to 08.10.2010 at the request of judgment debtor. On 08.10.2010, the case was fixed for filing of objections, but at that stage, the parties stated before the Executing Court that a compromise is likely to be effected between the parties, therefore, some time be given for that purpose. In view of submissions made by the parties, the case was adjourned to 29.01.2011 for

compromise. On 29.01.2011, the judgment debtor suffered a statement that he will pay the amount to the decree holder and therefore, some time be given to him. In view of statement made by the judgment debtor, the case was adjourned to 26.03.2011 for compromise as well as for consideration of objections, if any, filed by the judgment debtor. On 26.03.2011, the case was further adjourned to 04.05.2011 for compromise as well as for consideration.

[17]. Evidently, the order dated 04.05.2011 is suggestive of the fact that judgment debtor himself did not comply with the decree dated 18.09.2008 despite expiry of more than two and half years, therefore, judgment debtor was directed to get the sale deed executed on or before 14.05.2011, failing which the sale deed was to be executed by process of the Court. Perusal of the aforesaid order has not created any aspersion on the alleged fault of the decree holder. The said order was against the judgment debtor and judgment debtor did not assail the said order in any Forum. Thereafter, the order dated 14.05.2011 came to be passed. In the said order also it was noticed by the Executing Court that judgment debtor did not comply with the decree dated 18.09.2008 by way of execution of sale deed despite direction issued by the Executing Court on 04.05.2011. Thereafter, it was noticed that the decree holder did not deposit the balance sale consideration in compliance of the decree till date, therefore, decree holder was held to be at

liberty to deposit the balance sale consideration in compliance of the decree at his own responsibility and the case was adjourned to 11.06.2011.

[18]. Since the executing Court passed the order dated 04.05.2011 directing the judgment debtor to execute the sale deed on or before 14.05.2011 without creating any aspersion on the conduct of the decree holder, therefore, the order dated 14.05.2011 has to be read in conjunction with the order dated 04.05.2011. The decree holder deposited the amount in question on 14.05.2011/17.05.2011 as per separate challan. In view of above, the orders dated 04.05.2011 and 14.05.2011 were duly complied with. From the date of judgment and decree dated 29.01.2010 passed by the Lower Appellate Court, filing of execution petition on 09.04.2010 and after passing of interlocutory orders on record, the deposit of the amount on 14.05.2011 cannot be treated to be a period covered by the observations made by the Hon'ble Apex Court in **Prem Jeevan's case (supra)**.

[19]. In view of facts and circumstances of the case, the ratio laid down in **Tara Singh (since deceased) through his LRs. Vs Sandeep Kumar and others, 2016 (1) PLR 408** is wholly attracted to the present case, wherein it was held that the decree lawfully passed should not be allowed to be nullified very easily. Even as per ratio laid down in **Prem Jeevan's case (supra)**, the Hon'ble Apex Court has observed that when two views are possible on the facts of the

case, the view favouring sustainability of the decree must be adopted. The Court does not cease to have power to extend the time and the provision in terms of Section 28 of the Specific Relief Act is discretionary in nature. There was no rider in the decree that in the event of failure on the part of the decree holder to deposit the amount, the decree shall have to be rendered as a nullity. Even in appropriate cases as per ratio laid down in **Amar Nath Jain Vs. Ram Parkash Dhir, 1987(1) PLR 490**, the time can be extended in the absence of any application filed by the decree holder. The Court can use its discretion for extending the time for depositing the amount, even if no specific order for extension of time was passed, nor such an application was moved. The Court has power to fix and extend the time for deposit of sale consideration. In the absence of condition stipulated in the decree, the consequences of non-deposit of such amount would be of no consequence as the Court passing the decree in its discretion has power to extend the time as well.

[20]. Since the order dated 04.05.2011 was never assailed by the judgment debtor, therefore, the judgment debtor cannot turn around to say that the conditions of the decree were not complied with. The decree did not contain any rider clause regarding nullification of the decree in the event of non-deposit of the amount in the prescribed period.

[21]. In view of 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, it can be visualized that in the absence of any condition stipulated in the decree, incorporating consequences of non-deposit of balance sale consideration, the powers of the Court to extend the time for payment of balance sale consideration are 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. The decree itself did not show any contingency on happening of a particular event. Therefore, the suit was not to be dismissed automatically in the absence of such rider clause in the decree and therefore, the power of the Court to enlarge the time would be in consonance with the provisions of the Civil Procedure Code as well as Specific Relief Act and would fall in the discretionary ambit of the Court for extending the time.

[22]. Even as per factual matrix of the case, the extension was not on extensive basis as from the decree of the Lower Appellate Court dated 29.01.2010. The execution itself was filed on 09.04.2010 and thereafter, there was an effort for compromise

between the parties as per orders dated 31.07.2010, 08.10.2010, 29.01.2011 and 26.03.2011. Thereafter, on 04.05.2011, the conduct of the judgment debtor was highlighted and no aspersion was created against the conduct of the decree holder. The deposit of the amount thereafter on 14.05.2011/17.05.2011 would not nullify the decree in any manner.

[23]. The Court passing the decree for specific performance should incorporate necessary directions to the decree holder for depositing the amount. The Court should not make it a matter of mere inference. Normally, directions are given to the judgment debtor only, but in case of decree for specific performance, a specific and positive direction needs to be given to the plaintiff/decreed holder and in the absence of any such direction, the Court passing the decree has discretion to extend the same. The decree lawfully passed should not be allowed to be nullified very easily. This Court in **Tara Singh (since deceased) through his LRs' case (supra)** held the aforesaid proposition. The Court can extend the time after decree, if decree was passed by the Court containing stipulation as to time which it provided for. A decree for specific performance by its nature is a preliminary decree. The powers of the Court under Section 24 of the Act are discretionary. The Court cannot ordinarily annul the decree once passed as the Court does not cease to have power to extend the time even though the trial Court had earlier directed in the decree.

[24]. The Court in its discretion, if stipulates the time for balance sale consideration without imposing any pre-emptory condition in the event of default, then the Court would have power to extend the time. Such exercise would be in consonance with the provisions of Civil Procedure Code as well as Specific Relief Act. The powers of the Court are not merely declaratory or regulatory, but are substantive powers and are meant for to impart complete justice between the parties. Since there was no default clause stipulated in the decree for payment of balance sale consideration, therefore, the Court has a right to extend the time.

[25]. As per facts and circumstances of the case as enumerated above, there was no such delay in depositing the amount in view of orders dated 04.05.2011 and 14.05.2011 passed by the Executing Court. Section 28 of the Specific Relief Act is based on the principle that readiness and willingness of the parties shall be at all times. Plaintiff has to prove his readiness and willingness for performance of the agreement during entire course of trial and after the decree till the execution of the sale deed. The conduct of the judgment debtor can be deprecated even after deposit of the balance sale consideration when he did not come forward for execution of the sale deed and the Court had to resort to lawful process for execution of the sale deed. A decree obtained after full contest should not be allowed to be interfered in normal contingencies unless and until, the Court is satisfied that readiness

and willingness on behalf of the decree holder is lacking in all material particulars. Apparently, no such case has been proved on record against the decree holder.

[26]. In view of above, I do not find any illegality or infirmity in the impugned order dated 20.05.2017 passed by the Executing Court. Resultantly, this revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

05.09.2017
Prince

Whether reasoned/speaking	Yes/No
Whether Reportable	Yes/No