

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

CR No. 5261 of 2017(O&M)

Date of decision: 11.8.2017

Kanwaljit Singh

....Petitioner

VERSUS

Major Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sharad Mehra, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against orders dated 10.07.2017 (Annexure P-1), 15.07.2017 (Annexure P-2) and 19.07.2017 (Annexure P-3) passed by the Additional Civil Judge (Senior Division) Baba Bakala whereby application filed by the petitioner under Section 28 of the Specific Relief Act, 1963 (in short 'the Act') was dismissed, application of the respondent Major Singh seeking permission to deposit the balance sale consideration was allowed and the objections filed by the petitioner against execution were also dismissed, respectively.

A brief backdrop of the case is that Major Singh and others filed a suit for joint possession by way of specific performance of agreement to sell dated 02.06.2005 executed by Barjinder Singh and Kawaljit Singh sons of Amar Singh regarding land measuring 22 Kanals 8 Marlas and 1/5th share out of land measuring 97 kanals and 50 Kanals 2 marlas detailed in head-note of the plaint. The suit was instituted in September 2006 and it culminated in judgment and decree dated

20.05.2011 passed in favour of the plaintiffs by the Additional Civil Judge (Senior Division), Baba Bakala. The appeal preferred by the unsuccessful defendants did not find favour with the first Appellate Court. The matter came up before this Court in Regular Second Appeal No.6259 of 2014 whereby findings recorded by the Courts below were affirmed. Barjinder Singh filed a petition for Special Leave to Appeal before Hon'ble the Supreme Court and the same was dismissed on 19.02.2016.

The successful decree holders filed an execution petition for decree to reach fruition. The unsuccessful judgment debtor(s) initially filed an application that as decree holder did not deposit the entire balance sale consideration within the stipulated period and also did not send legal notice to the defendants in terms of the decree passed by the trial Court, the decree dated 20.05.2011 has automatically rescinded and is non-executable. After seeking reply from the decree holders and having heard counsel for the parties at length, the application was dismissed by the Court vide order dated 10.07.2017 (Annexure P-1). On the other hand, the application filed by the decree holders for permitting them to deposit an amount of Rs.2,44,725/- on the premise that they had already deposited an amount of Rs.42,79,250/- on 19.08.2011 but due to some inadvertent mistake on the part of previous counsel Sh. J.S. Gill, Advocate (since deceased) they could not deposit Rs.2,44,725/-, balance price of land measuring 55 kanals 18 marlas, subject matter of agreement to sell was allowed vide order dated 15.07.2017 (Annexure P-2). The present petitioner filed an objection petition that came to be dismissed by the Court vide order dated 19.07.2017 (Annexure P-3).

Counsel for the petitioner has submitted that decree by the trial Court was passed on 20.05.2011 and the decree holders were directed

to deposit balance sale consideration within three months from that day and thereafter to send notice to the defendants through registered post. It is argued that the decree holders admittedly did not deposit the entire balance sale consideration within the stipulated period of three months nor they send a legal notice to the judgment debtors, therefore, they have violated the terms and conditions of the decree, thus, the decree is liable to be rescinded in exercise of jurisdiction under Section 28 of the Act. It has further been argued that plea raised by the decree holders for deposit of an amount of Rs.2,44,725/- is without any foundation, therefore, discretion exercised by the executing Court permitting the decree holders to deposit the aforesaid amount after about 5 years of passing of the decree by the trial Court vide order dated 15.07.2017 cannot stand the test of judicial scrutiny and liable to be set aside. Another submission made by counsel is that the decree holders raised a plea before the executing Court that the JDs are owners of approximately 39 Kanals of land but they sought execution qua land measuring 55 kanals 18 marlas.

I have heard counsel for the petitioner, perused the paper-book particularly the orders impugned and various annexures appended with the petition.

It is undisputed position of the case that the litigation started by the decree holders/plaintiffs about a decade ago finally culminated in favour of the plaintiffs/decreed holders when Hon'ble the Supreme Court dismissed the petition for Special Leave to Appeal on 19.02.2016. It is not disputed that an amount of Rs.10,80,000/- was paid to the JDs towards earnest money qua land in dispute and an amount of Rs.42,79,250/- was deposited by the decree holders on 19.08.2011, well before expiry of the stipulated period of three months allowed in the decree. The decree

holders filed application for permission to deposit the balance sale consideration of Rs.2,44,725/- on the plea noticed hereinbefore.

Hon'ble the Supreme Court in **Chanda (dead) through LRs Vs. Rattni and another, 2007(2) RCR (Civil) 534** has held in para 9, reads thus:-

“9. The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the Court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The Court does not cease to have the power to extend the time even though the trial Court had earlier directed in the decree that payment of balance price to be made by certain date and on failure suit to stand dismissed. The power exercisable under this Section is discretionary.”

In the case at hand, after a protracted legal battle for more than a decade, the respondents/decreed holders came out to be successful to seek execution of specific performance of contract of sale dated 02.06.2005. They deposited more than Rs.40 lakhs with the Court well before expiry of stipulated period of three months allowed by the trial Court. The plea of the respondents/decreed holders is that calculation with regard to outstanding liability of the decree holders was made by their previous counsel Sh. J.S. Gill, Advocate (since deceased) and due to miscalculation, there was shortfall of an amount of Rs.2,44,725/- out of balance sale consideration. The very fact that the decree holders had already paid/deposited more than Rs.51 lakhs, there was no reason for them to make a deficient deposit to the extent of Rs.2,44,725/- at the risk of failing in their pursuit for specific performance of agreement to sell dated 02.06.2005. When the facts and circumstances of the present case

are examined in the light of enunciation in **Chanda (dead) through LRs case** (supra), judicial discretion exercised by the executing Court negating plea of the petitioner qua rescission of the contract/decreed and permitting the decree holders to deposit the balance sale price cannot be faulted with.

Counsel for the petitioner has made a vain attempt to contend that the decree holders have raised a plea that JDs are owner of land less than in regard whereof a decree has been passed in their favour. If the decree holders despite noticing some deficiency in title of the JDs still want to get the decree executed on payment of the entire sale consideration, it would be the risk of the decree holders that they would get the lesser land by paying the entire money as per decree. On the other hand, such a decision of the decree holders, in no terms can cause prejudice to the petitioner giving him a cause of grievance to express.

No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

AUGUST 11, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no