

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

CR No.6424 of 2017 (O&M)

Date of decision : 06.12.2017

Gurmukh Singh (deceased) through his LR

...Petitioner

Versus

Sushil Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Adarsh Jain, Advocate for the petitioner.

Mr. Sandeep Arora, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The Judgment Debtor is in the revision petition against the order dated 29.08.2017 passed by the learned Executing Court.

Some facts would be required to be noticed. Pursuant to a suit for possession by way of specific performance of the agreement to sell, a decree was passed in favour of the Decree Holder on 04.03.2011. The operative part of the judgment reads as under:-

“Relief

17. In view of my findings on above mentioned issues, the suit of plaintiff for specific performance of contract dated 17.5.2002 is decreed with costs and plaintiff is entitled to get the possession of suit property, so described in head note of the suit, upon execution of sale deed of that property. It is made clear that plaintiff shall deposit the remaining sale consideration of Rs.1,00,000/- in court within one month from today, for its withdrawal by defendant, being balance sale consideration. While defendant shall execute the sale deed qua suit property in favour of plaintiff with in two

months from today after withdrawal of remaining sale consideration from court. In case of default on the part of defendant, regarding execution of sale deed, plaintiff shall remain at liberty to get the sale deed executed through court. Further, the suit of plaintiff for permanent injunction, restraining defendant from alienating the suit property in favour of any other person except plaintiff is also decreed. Decree sheet be prepared and file be consigned to record room.

Pronounced.

Dt. 4.3.2011

Sd/-

Baljinder Singh, PCS

Addl. Civil Judge, Sr. Divn. Sunam.”

The defendant filed first appeal, which was dismissed on 11.12.2014.

It is not in dispute that the Decree Holder deposited the amount of ₹78,700/- on 31.03.2011 i.e. after a period of 27 days from the date when the trial Court passed the decree.

It is further not in dispute that after the deposit of the amount, the sale deed was executed in favour of the Decree Holder on 08.02.2012. The Decree Holder further sold some part of the property to one Gobinder Singh vide sale deed dated 10.06.2015. Gobinder Singh filed an application for impleadment which was allowed and Gobinder Singh was impleaded as party.

The Decree Holder filed an application for delivery of possession on 08.01.2015. Those proceedings were pending when the Judgment Debtor for the first time filed two application-one objection petition and second application for rescission on the agreement to sell in July,

2017. It was pleaded that as per the decree, the total amount required to be deposited by the Decree Holder was ₹1,00,000/-, whereas the Decree Holder has only deposited ₹78,700/- which is short by ₹21,300/-. The Decree Holder filed reply and explained that he has adjusted the cost of the suit i.e. ₹16,750/-, cost of the appeal i.e. ₹550/-, counsel fee for execution ₹3300/- and ₹400/- as expenses of the execution and, therefore he has deposited the entire amount.

Learned trial Court after considering these aspects of the matter, dismissed the objection petition filed by the Judgment Debtor.

Learned counsel for the petitioner has submitted that once the Decree Holder has not been complied with the decree in letter and spirit, which is in the nature of the preliminary decree, therefore, the Decree Holder cannot be permitted to now execute the decree. He has submitted that at the most, the cost awarded by the Court while decreeing the suit i.e. ₹16,750/- could be adjusted and the remaining amount could not be adjusted. He has further submitted that there cannot be any estoppel against the Judgment Debtor as the application for rescission of the agreement could be filed at any point of time.

On the other hand, learned counsel for the Decree Holder has submitted that on 28.05.2011, order whereof has been extracted above, the Judgment Debtor was present when Decree Holder reported to the Court that the balance amount of ₹78,700/- has been deposited. He has submitted that Judgment Debtor never objected at that point of time and did not point out that there is deficiency in the payment of the amount. He has submitted that after a period of six years, the Judgment Debtor cannot be permitted to

raise such objection.

I have considered the submissions of the learned counsel for the parties and with their able assistance gone through the record of the case.

It is not in dispute that the Decree Holder deposited the amount of ₹78,700/- on 31.03.2011. It is further not in dispute that the Decree Holder was entitled to adjust the cost awarded by the trial Court. The order dated 28.05.2011 reads as under:-

“JD appeared for compliance of the judgment and decree dated 4.3.11. JD reported to have deposited the balance sale consideration of Rs.78,700/- and same be verified by the Nazir. Now sale deed is ordered to be executed in favour of the DH as per judgment & decree dated 4.3.2011. Sh. Sukhdeep Singh Ahlmad is appointed as Local Commissioner at the fee of Rs.1500/- to be paid by the DH and he shall get the sale deed executed on filing draft sale deed by the DH within 7 days on or before 15.6.11.”

It is clear from the reading of the order that the Judgment Debtor was present on 28.05.2011. The Judgment Debtor filed objections. The objections were dismissed and the Court ordered the Local Commissioner to execute the sale deed vide order dated 03.02.2012. This order was also passed when counsel for the Judgment Debtor was present. The order reads thus:-

“Present: Counsel for the parties.

Heard on the objections filed by JD. It is pleaded that he has not received any amount from DH and he has filed appeal against the decree dated 4.3.2011 which is still pending. DH is not entitled to recover any amount. From the perusal of the file it revealed that the decree in this case

is for the specific performance of the agreement dated 17.5.2002 and it is not a money decree. There is no stay by any appellate Court so that objections are false and frivolous, the same are dismissed. In view of the application of the DH dated 21.1.2010 the fresh proposed sale deed filed alongwith the application is approved. The Local Commissioner has already been appointed. Now the sale deed be executed on behalf of JD/Court on or before 21.2.2012.”

On 21.02.2012, it was reported to the Court that the sale deed has been executed by the Local Commissioner. At that time also, counsel for the Judgment Debtor was present. The order reads as under:-

“Present:- Counsel for the parties.

The decree holder has got executed a sale deed from the LC, copy of which is put on file. The counsel for the DH has withdrawn the execution partially satisfied and decree holder will filed separate proceedings for taking possession of the property of which sale deed is executed. The execution is dismissed as with drawn partially satisfied. File be consigned to the record room.”

In spite of the fact that the Judgment Debtor was in knowledge of these facts, he never raised any objection that the amount deposited is insufficient to meet with the decree or there is any shortfall in the deposit. As noticed above, this objection was taken by the petitioner-Judgment Debtor for the first time on 18.07.2017.

In the considered opinion of this Court, the Judgment Debtor cannot be permitted to object to the execution of the decree on the ground that the deposit is short at this stage. Still further, the Decree Holder had deposited the amount and intimated to the Court. The deposit made by the

Decree Holder was never objected to by the Judgment Debtor. Even the Court did not point out that the deposit was deficient.

In these circumstances, now it is too late at this stage to reopen the entire issue.

Further, on reading of the order dated 03.02.2012, it is clear that it was the Judgment Debtor who was objecting to the execution of the decree on the ground that he had filed first appeal and, therefore, the decree should not be allowed to be executed. The Judgment Debtor had further filed objections which were dismissed on 03.02.2012. Now after a period of more than 5 years after the sale deed has been executed, the Judgment Debtor cannot be permitted to raise an objection that deposit made by the Decree Holder was deficient by few thousands rupees.

For the reasons recorded above, this Court does not find any good ground to interfere with the order passed by the learned Executing Court.

Revision petition is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

06.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No