

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

252

CR-6826-2015

Date of Decision:11.08.2017

Suresh Kumar

.....Petitioner

Versus

Devender Singh and others

.....Respondents

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

Present: Mr.Manvinder Singh Dalal, Advocate,  
for the petitioner.

None for the respondents.

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RAMESHWAR SINGH MALIK, J.(Oral)

Present revision petition, at the hands of decree-holder, filed under Article 227 of the Constitution of India, is directed against the order dated 02.09.2015 (Annexure P-5) passed by the learned trial court, thereby dismissing the application of the plaintiff-decree holder, seeking extension of time for depositing the requisite amount, in compliance of the decree dated 12.08.2013.

Notice of motion was issued. On completion of service, learned counsel appeared on behalf of the respondents on 17.01.2017 and sought time which was granted to him, adjourning the case for 09.03.2017. Thereafter, two more opportunities were granted to the learned counsel for the respondents vide order dated 09.03.2017 and 06.04.2017. When none came present on behalf of the respondents on 20.07.2017, yet another opportunity was granted adjourning the case for today. Similar is the position today. Neither anybody has come present on behalf of the respondents to oppose the revision petition nor any request for pass over has been made.

Heard learned counsel for the petitioner.

Facts are hardly in dispute. Petitioner was the plaintiff who filed the suit for possession by way of specific performance of the agreement to sell dated 04.09.2009. Suit of the plaintiff was decreed against defendant Nos.1 to 3, 5 and 6 on their admitting the averments taken by the plaintiff in his plaint. Plaintiff was directed to pay the amount of Rs.5 lacs to these defendants, who were directed to execute and register the sale-deed to the extent of 5/6<sup>th</sup> share of the suit property in favour of the plaintiff, within a period of two months vide order dated 12.08.2013 (Annexure P-2).

Operative part of the impugned order available at page 27 of the paper-book, reads as under:-

*“Accordingly, the suit filed by plaintiff Suresh Kumar stands decreed with costs against defendant Davinder Singh, Ranjit Singh, Kulwinder Singh, Surinder Kaur and Parminder Kaur to the effect that plaintiff is entitled to possession as owner to the extent of 5/6<sup>th</sup> share by specific performance of the agreement dated 4.9.2009 with regard to the house measuring 100 sq. yards as detailed in the headnote of the plaint comprised of khasra No.466, khata No.924/965 as per jamabandi for the year 2005-2006 situated at Taraf Jodhewal, New Shakti Nagar, Tehsil and District Ludhiana, on payment of sale consideration of Rs.5 lacs to these defendants and the defendant Nos.1, 2, 3, 5 and 6 are directed to execute and register the sale deed to the extent of 5/6<sup>th</sup> share of the suit property in favour of the plaintiff within a period of two months failing which the plaintiff shall be at liberty to execute and register the sale deed through agency of the Court.”*

Admittedly, plaintiff did not comply with the abovesaid order as he did not pay the amount of Rs.5 lacs to the abovesaid defendant Nos.1

to 3, 5 and 6. Much after the lapse of abovesaid stipulated period of two months, which ended on 11.10.2013, plaintiff moved an application dated 11.07.2014 (Annexure P-3) under Section 148 read with Section 151 CPC and under Section 28 of the Specific Relief Act, seeking extension of time to deposit the abovesaid amount of Rs.5 lacs. Defendant Nos.1 to 3, 5 and 6 filed their reply (Annexure P-4) opposing the prayer for extension of time made by the plaintiff. It was this application of the plaintiff which came to be dismissed by the learned trial court vide its impugned order dated 02.09.2015 (Annexure P-5).

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case noticed here-in-above, present revision petition has been found without any merit and the same is liable to be dismissed, whereas the impugned order deserves to be upheld, for the following more than one reasons.

A bare reading of the impugned order passed by the learned trial court will make it crystal clear that the learned trial court committed no error of law while passing the impugned order. The impugned order has been found based on true facts of the case as well as the law laid down by this Court which has been rightly followed by the learned trial court at the time of passing the impugned order. The relevant observations made by the learned trial court in para 5 to 8 of the impugned order, which deserve to be noticed here, read as under:-

*“Since it was one of the condition that plaintiff shall deposit the amount of balance sale consideration of Rs.5*

*lacs with the defendants within a period of two months and further if the defendants failed to execute the sale deed in favour of plaintiff, then plaintiff should file an execution in this respect, but plaintiff did not deposit Rs.5 lacs as per order of the Court and thereafter plaintiff has also not availed an opportunity by way of filing execution to get the sale deed execute in his favour as per order dated 12.8.13.*

*During the course of arguments, Ld.counsel for defendants relied upon case law titled as Salwant Singh Vs. Harinderpal Singh & others , 2014(4) CCC 355 (P&H) in which it was held that “Specific Performance-Extension of time to pay balance sale consideration. Time cannot be extended by restoring to provisions of Sections 148 and 151 CPC.*

*Ld.Counsel for defendants further relied upon case law titled as Rajinder Kumar Vs. Shri Kuldeep Singh & others, 2014(2) CCC 184 (S.C.) in which it was held that “Specific Performance-Time and fixed for payment in the Contract-Held, purchaser is obliged to pay the purchase money within a reasonable time.*

*Since plaintiff has filed the present application after a period of 1-1/2 years and further when the defendants' No.1, 2, 3, 5 and 6 failed to execute the sale deed in favour of plaintiff, then the plaintiff should file an execution in this respect as per the order of the Court dt. 12.08.2013, but since plaintiff did not comply with the order of the court. So, application of the plaintiff altogether is not maintainable in the present case.”*

In fact, just an identical question fell for consideration before this Court in **Salwant Singh Versus Harinderpal Singh and others, 2014 (4) PLR 44.** In Salwant's case(supra), this Court was called upon to deal with an identical fact situation as obtaining in the case in hand. The relevant observations made by this Court in para 5, 6 and 9, which can be

gainfully followed in the present case, read as under:-

*“Section 148 of the Code can be resorted to only where the performance of an act is prescribed or allowed by the Code of Civil Procedure, 1908. In the present case, the direction issued by the trial Judge was in exercise of grant of discretionary relief under the Specific Relief Act, 1963 calling upon the plaintiff to deposit the balance amount in the manner indicated with consequences of failure recorded in the judgment and the conditional decree. The arrangement was simply a court direction with no reference to the Code nor did the Code or its provisions allow or provide for it. Therefore, section 148 is of no avail to the petitioner.*

*Section 151 of the Code was not availed of and even if were, it would not help due to non-deposit of the balance sales consideration within the time allowed by the Court and with lack of steps taken for the next six years would to my mind plainly disentitle the petitioner to the grant of any further discretionary relief to meet the ends of justice. Justice was done by court but was frustrated by the plaintiff's own conduct. The decree has three limbs; (i) direction to plaintiff to deposit balance sale consideration of Rs.50,000/- within one month; (ii) the burden would then shift on the defendants being LRs of late Maqsudan Singh to execute sale deed in favour of the plaintiff; (iii) failing which the ball would return to the plaintiff's court to pray for execution and registration of the sale deed through court. The question which arises is as to how the three limbs of the decree are to be read in the light of the Limitation Act, 1963 which allows a decree of a court to be executable within 12 years. Article 136 prescribes:-*

*“Where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring period, when default in making the*

*payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.”*

*The learned trial Court has found no justification in extending time from one month to six years and particularly when the reasons ascribed for delay in approaching Court were not judicially acceptable. The ground taken in the application by the plaintiff of his travel to Assam soon after the decree in search of livelihood living far away from ground zero of the decreeing court allegedly suffering from 'severe mental depression' with no reliable medical proof presented to the trial court to believe only to return to his native village in Punjab in January 2012 is not a believable yarn. If he regained consciousness of the existence of the decree by filing the present application by conveniently forgetting to deposit of balance consideration in court does not appear to be just and sufficient cause to merit any serious consideration or indulgence by the Court. After six years of somnolence the decree though may be final ex parte but has settled valuable rights on the deceased seller of the property's LRs unaware in their wildest dreams that one day they can be visited with destruction from someone who may be unknown to them or long forgotten in memory. The first limb (i) was the key to start the other two limbs. If the key was not put in the ignition system of the court within one month granted, the decree looks like a vehicle with a rusted engine, unserviceable.”*

Under somewhat similar circumstances, the Hon'ble Supreme Court had also an occasion to deal with an almost similar proposition in

**Rajinder Kumar Versus Shri Kuldeep Singh and others, 2014 (15) SCC**

**529.** When the learned counsel for the petitioner was confronted with the

abovesaid factual and legal aspect of the matter, because admittedly the petitioner-plaintiff did not avail the opportunity granted to him by the learned trial court vide its abovesaid order dated 12.08.2013 (Annexure P-2), learned counsel has no answer and rightly so, it being a matter of record. In fact, the impugned order passed by the learned trial court has been found based on sound reasons and also in consonance with the true facts of the case, as well as the law laid down by the Hon'ble Supreme Court and this Court in the cases referred above and the impugned order deserves to be upheld, for this reason as well.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order passed by the learned trial Court, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India.

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 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, instant revision petition stands dismissed, however, with no order as to costs.

August 11, 2017  
seema

(**RAMESHWAR SINGH MALIK**)  
**JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No