

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

**CR No.8105 of 2016(O&M)
Date of Decision-11.01.2017**

Ishwar (since deceased) through his LRs and another .. Petitioners

Versus

Bhim Singh and another

... Respondents

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

Present: Mr. B.S. Bedi, Advocate for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged order dated 03.11.2016 passed by Civil Judge (Sr. Division), Kaithal whereby application under Section 28 of Specific Relief Act was dismissed.

[2]. Plaintiffs-respondents filed a suit for specific performance of agreement to sell dated 18.05.2005, directing the defendants to do the needful to confer proprietary and possessory rights of the suit land upon the plaintiffs on payment of balance sale consideration or any other sum which may be further determined by the Court. In alternative, a decree for recovery of Rs.17 lacs along with interest was also prayed.

[3]. Trial Court vide judgment and decree dated 28.02.2011 partly decreed the suit for recovery of earnest money along with interest with costs whereas the lower Appellate Court accepted the appeal of the plaintiffs and decreed the suit for specific performance

of agreement to sell dated 18.05.2005 with costs vide judgment and decree dated 12.01.2012. Defendants were directed to get the sale deed executed in favour of the plaintiffs on payment of balance sale consideration within a period of 2 months from the date of passing of the decree, failing which the plaintiffs were entitled to get the sale deed executed and registered through process of the Court and in that eventuality, the cost and expenses were to be borne by the defendants.

[4]. Judgments debtors/defendants filed RSA No.3730 of 2012 in the High Court which was dismissed on 07.11.2013. After the decree passed by the lower Appellate Court, decreeing the suit of the plaintiffs vide judgment and decree dated 12.01.2012, decree holders filed execution of the decree for registration of the sale deed by appointing a Local Commissioner and for delivery of possession and for deposit of balance sale consideration on 20.03.2012. An application for permission to deposit the balance sale consideration was filed by the decree holder on 24.03.2014.

[5]. Trial Court granted a decree for recovery of earnest money of Rs.9,77,000/- along with interest @ 10% per annum with costs which was quantified as Rs.90,340/-. The lower Appellate Court accepted the appeal with costs and a decree for specific performance was passed with a direction to the judgment debtors to get the sale deed executed as per agreement to sell dated 18.05.2005. Judgments debtors were granted two months to

complete the sale proceedings, failing which decree holder was held entitled to get the sale deed executed with the process of the Court. The cost was quantified as Rs.1,03,540/-. The judgment debtors remained unsuccessful in RSA No.3730 of 2012 in the High Court which was dismissed on 07.11.2013.

[6]. On the date of filing of execution, decree holders offered to deposit the balance sale consideration, but the same was not got deposited. The decree holders were ready and willing to deposit the balance sale consideration subject to fulfillment of conditions of decree, according to which the decree holders were entitled to costs of both the Court incurred by them which was quantified as Rs.90,340/- and Rs.1.03,481/- respectively i.e. Rs.1,93,821/- in total. After deducting the cost, the total balance sale consideration was to be paid by the decree holder to the judgment debtors that was quantified as Rs.8,22,079/-. Decree holders made a prayer to get the amount of Rs.8,23,000/- deposited as per balance sale consideration in view of terms of agreement to sell dated 18.05.2005.

[7]. The application for permission to deposit the balance sale consideration was contested by the judgment debtors on the ground that as per judgment and decree dated 12.01.2012, decree holders were obligated to deposit the balance sale consideration within two months. The filing of application on 24.03.2014, was belated enough to dismiss the execution. The decree and judgment dated 12.01.2012 was claimed to be inexecutable. Judgment debtor filed an

application under Section 28 of the Specific Relief Act on that premise.

[8]. Decree holder contested the said application. Decree holder asserted that the Court did not order that he has to deposit the sale consideration in the Court, nor the same was specified as to when the said amount has to be deposited by him in the Court. There was no rider place in the decree that if balance sale consideration is not deposited in the Court, then the suit shall be deemed to be dismissed. Decree holder emphasized that after passing of the decree, he offered the balance sale consideration to the judgment debtor, but the judgment debtor failed to do the needful. As per decree, decree holder could not approach the executing Court before expiry of 60 days from passing of the decree, therefore, decree holder after expiry of 60 days filed the execution on 20.03.2012 and made a specific prayer that the balance sale consideration be got deposited from him.

[9]. The executing Court issued notice to the judgment debtor before getting the same deposited. Judgment debtors remained unsuccessful in regular second appeal that itself fortified that judgment debtors were not contended with the judgment and decree passed by the lower Appellate Court and were not willing to accept the balance sale consideration. After dismissal of regular second appeal on 07.11.2013, judgment and decree of the lower Appellate Court merged in the judgment of the higher Court.

[10]. The executing Court vide order dated 03.11.2016 dismissed the application under Section 28 of the Specific Relief Act and allowed the application under Section 148 CPC for extension of time moved by the decree holders. That is how, the present revision petition came to be filed in this Court.

[11]. I have heard learned counsel for the petitioners.

[12]. Learned counsel for the petitioners has vehemently argued that period of two months came to be expired on 12.03.2012 and filing of execution was beyond the period of 2 months. Further application for depositing the balance sale consideration was delayed by more than two years, therefore, agreement to sell stood rescinded and the suit should have been dismissed by deeming fiction.

[13]. Learned counsel relied upon **Bhupinder Kumar Vs. Angrej Singh, 2009(4) RCR (Civil) 248, Onkar Nath and another Vs. Basher and others, 1985(2) PLR 432, Chanda Vs. Rattni, 1999(4) RCR (Civil) 621, Chanda (dead) through LRs. Vs. Rattni and another, (2007) 14 SCC 26, Tara Singh (since deceased) through his LRs Vs. Sandeep Kumar and others, 2016(1) PLR 408, Manoj Vs. Umesh and others, 2015(3) RCR (Civil) 1008, Gurdit Singh VS. Jagjit Singh, 1987(1) PLR 129, Amar Nath Jain Vs. Ram Parkash Dhir, 1987(1) PLR 490, Kedar Nath and others VS. Kanwal Bhatia, 1997(4) RCR (Civil) 625, Sham Kaur Vs. Malagar Singh and another, 2004(1) PLR 814, Mohinder Singh**

Vs. Gurdial Singh, 1996(3) RCR (Civil) 679, Nanha Vs. Risala and another, 2007(5) RCR (Civil) 655 and Sucha Singh Vs. Nand Lal, 2015(3) PLR 272.

[14]. The sum and substance in the aforesaid precedents were sought to be projected with reference to nature of decree passed in the present case. Under Section 28 of the Specific Relief Act, the Court has to see all the attending circumstances including the conduct of the parties. The Court has to see just and reasonable cause for extension of time for depositing the balance sale consideration. The provision in itself is a complete mechanism to provide necessary relief to both the sides in terms of decree for specific performance without requiring the parties to initiate separate proceedings. The object is only to avoid multiplicity of suits. The power of the Court in terms of Section 28 of the Act is discretionary in nature and the Court can extend the time for payment of balance sale consideration, even though it had earlier directed in the decree that the payment is to be paid by certain date and on failure, the suit to stand dismissed. The discretion has to be exercised in a judicious manner. Delay in depositing the amount has to be explained even in the absence of specific recital of penal consequence in the decree. The default in terms of payment of balance sale consideration has to be seen in conjunction with the conduct of the decree holder. According to learned counsel for the petitioners, where the Court has power to fix time and that power if not regulated by any statutory

limit, then the extension of time has to be granted on the facts and circumstances of the case.

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

[16]. Apparently, there was no default clause in the decree itself as no rider was placed that in the event of non-deposit of balance sale consideration, the suit shall be deemed to be dismissed. The main thrust of the learned counsel for the petitioners is that the discretion could not be exercised in favour of defaulting party after expiry of prescribed period and even the time in terms of Section 148 CPC cannot be extended in the absence of any reasonable explanation or material to justify delay in moving the application for extension of time. In such an eventuality, the contract between the parties came to an end and nothing remained to be enforced thereafter. In addition to the precedents cited hereinabove, the reference can be made to **V.S. Palanichamy Chettiar Firm Vs. C. Alagappan, 1999(1) RCR (Civil) 634, Birbal Singh Vs. Randhir Singh, 2015 (3) RCR (Civil) 1027** and **Resham Singh and others Vs. Manmohan Singh Kent and others, 1985 (1) PLR 278.**

[17]. In **Amar Nath Jain Vs Ram Parkash Dhir, 1987(1) PLR 490**, it was held that the time can be extended even in the absence of any application. The Court can use its discretion to extend the time for depositing the balance sale consideration, even if no specific

order for extension of such time was passed, no such an application was moved.

[18]. The discretionary power of the Court can be exercised to grant such permission to deposit the amount in the light of observations made in **Nanha Vs. Risala and another's case (supra)** and **Sucha Singh Vs. Nand Lal's case (supra)**. The Court has power to fix and extend the time for deposit of purchase money. If there is condition stipulated in the decree incorporating consequences of non-deposit of balance sale consideration, then powers of the Court to extend the time for payment of balance sale consideration are to be perceived in discretionary ambit of the Court. Such a discretion has to be exercised in view of facts and circumstances of the case. If the decree does not show any contingency for on happening of an event or default in terms of decree, the suit stands dismissed automatically, then the power of the Court to enlarge the time would be in consonance with the provisions of the Civil Procedure Code and Specific Relief Act.

[19]. 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 the power to extend the period under Section 148 of the CPC. The exercise of such discretion to extend time to comply with the decree would be in consonance with the provisions of the Civil Procedure Code and Specific Relief Act. The powers of the Court are not

merely declaratory or regulatory, but are substantive powers and can be invoked to import complete justice between the parties.

[20]. In nutshell, if there was no defaulting clause stipulated in the decree for payment of balance sale consideration, then the Court has a right to extend the time, even if the balance sale consideration was not deposited within stipulated period. Such extension of time can be ordered without application. Mere failure on the part of the decree-holder to deposit the amount does not render the decree ineffective or release the judgment debtor from his liability to satisfy the decree. It is only a willful default that makes the Court to refuse extension.

[21]. Section 28 of the Specific Relief Act is based on the principle that readiness and willingness of the party shall be at all times i.e. during the vendee's entitlement to secure the sale deed. Plaintiff has to prove the readiness and willingness for performance of contract during entire course of trial and after the decree till the execution of sale deed. The provisions in terms of Section 28 of the Specific Relief Act for rescission of decree in the same suit has to be applied only in established and intentional default on the part of the decree-holder. The exceptional situation compels the Court to examine in its discretion any particular circumstance. The decree obtained after full contest shall not be allowed to be interfered with any normal circumstances unless and until, the Court is satisfied that readiness and willingness on the part of decree-holder is lacking.

Such a finding cannot be recorded only on the fact that the amount was not deposited in Court. The contingency factor in not depositing the amount has to be looked into by the Court and the Court in its discretion can grant extension in time for such deposit for fulfilment of obligation under the decree.

[22]. In **Tara Singh (since deceased) through his LRs Vs. Sandeep Kumar and others case (supra)**, it was highlighted that the Court that passes the decree for specific performance shall incorporate necessary direction to the decree holder for depositing the amount and shall not make it a matter of mere inference. Normally, the directions are given to the defendant-judgment debtor only, but in case of decree for specific performance like a decree for redemption of mortgage and pre-emption, a specific and positive direction needs to be given to the plaintiff-decree holder. In the absence of such a direction, the Court passed the decree as a discretion to extend the time. A decree lawfully passed should not be allowed to be nullified very easily. Reference can be made to **Manoj Vs. Umesh and others case (supra)**.

[23]. Even in **Chanda Vs. Rattnis case (supra)** relied upon by learned counsel for the petitioners, the Apex Court has decided that a decree for specific performance is a preliminary decree and the Court cannot ordinarily annul the decree once passed lawfully. The Court does not cease to have power to extend the time even though the trial Court had earlier directed the decree holder to make the payment by certain date and even incorporated failure clause of

dismissal of suit in the event of non-deposit of the amount. The power exercisable under Section 28 of the Act is discretionary.

[24]. In case **Bharat Heavy Electricals Ltd. Vs. R.S. Avtar Singh and Co., 2013(1) RCR (Civil) 252**, the Hon'ble Apex Court laid down following principles as to the decretal amount and costs:-

“a) The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and cost and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.

b) the legislative intent in enacting sub-rules 4 and 5 is clear to the pointer that interest should cease to run on the deposit made by the judgment debtor and notice given or on the amount being tendered outside the Court in the manner provided in Order 21 Rule 1 sub-clause (b)

c) If the payment made by the judgment debtor falls short of the decreed amount, the decree holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards cost and finally towards the principal amount due under the decree.

d) Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit interest on that part of the principal sum will cease to run thereafter.

e) In cases where there is a shortfall in deposit of the principal amount, the decree holder would be entitled to adjust interest and cost first and the balance towards the principal and beyond that the decree holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for re-appropriation.”

[25]. After hearing learned counsel for the petitioners, I found that the Court in its discretion, if stipulates the time for payment of balance sale consideration without imposing any preliminary condition of default, then the Court would have power to extend the period in terms of Section 148 CPC. The exercise of such discretion to extend the time for complying with the decree 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 in nature and can be invoked to impart complete justice between the parties.

[26]. Since there was no default clause stipulated in the decree, therefore, the Court has a right to extend the time, even if, the balance sale consideration was not deposited within stipulated period. Such extension of time can be ordered even in the absence of application for extension of time. Mere failure on the part of the decree holder to deposit the amount does not render the decree ineffective. A decree obtained after lawful contest should not be allowed to interfere on normal contingencies unless and until, the

Court is satisfied that the plaintiff was not ready and willing to deposite the balance sale consideration.

[27]. After passing of decree by the lower Appellate Court, the judgment debtor was not satisfied with the decree and ventured to challenge in regular second appeal. The same was dismissed only on 07.11.2013. Even the cost imposed by both the Courts below was the subject matter of necessary calculations.

[28]. After appreciating full text of the litigation, I do not find any justifiable reasons to interfere in the impugned order dated 03.11.2016 passed by Civil Judge (Sr. Division), Kaithal. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

11.01.2017
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Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No