

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.8156 of 2017
Date of Decision:30.11.2017

Anil Kumar and another

...Petitioners

Versus

Iqbal Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Vikas Bahl, Sr. Advocate with
Ms.Japneet Kaur, Advocate for the petitioners.
Mr.V.K. Jindal, Sr. Advocate with
Mr.Divanshu Jain, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Judgment debtors are in the revision petition against the order dated 26.10.2017, rejecting the application filed by the judgment debtors for dismissal of the execution proceedings. Some facts are required to be noticed.

A decree for specific performance of the agreement to sell was passed against the judgment debtors on 9.12.2011. The decree passed by the trial court reads as under:-

“This suit is coming on 9th day of December 2011 for final disposal before me (Ajaib Singh, PCS, Civil Judge (SD) Mohali) in the presence of Sh. T.C. Gupta Adv. counsel for the plaintiff and Sh. Anil Kaushal Adv. counsel for the defendants No.1 to 3 defendant no.4 proceeded against ex parte. It is hereby ordered that the suit of the plaintiff is decreed but without costs for possession of the suit property semi built plot bearing No.C-80 situated in phase Vi Industrial Area Mohali with full proprietary rights & partial construction thereon

including all the fitting and fixture, sewerage and electricity power fittings etc on executing sale/transfer deed by defendant no.3 general power of attorney of defendants no.1 & 2 original allottee of the same on receipt of balance sale consideration after adjusting of Rs. 13,46, 000/- in favour of the plaintiff within a period of two months failing which the plaintiff shall follow legal recourse by depositing balance sale consideration within a period of three months to the said effect through competent court of law with consequential relief of permanent injunction for restraining the contesting defendants from alienating the suit property by way of sale, gift, mortgage or in any manner to any body else except the plaintiff or his nominee.

It is not in dispute that judgment debtors-defendants filed first appeal and the decree holder was on a caveat. The appeal came up for hearing on 12.1.2012. The judgment debtors had also filed an application for grant of stay. On 15.3.2012, the zimni order passed by the court reads as under:-

“Reply to the stay application has been filed by the respondent No.1. Summons of respondents No.2 and 3 received back unserved. However, injunction application filed against Respondent/Plaintiff is pending. The learned counsel for the Respondent/Plaintiff submits that he has not objection if the operation of the impugned decree and judgment is stayed till the disposal of the appeal. Now fresh summons of Respondent No.2 and 3 be summoned for 24.5.2012.”

The appeal remained pending and was dismissed by the court on 12.11.2014. Judgment debtors filed regular second appeal, which was dismissed in limine on 13.7.2015. Special Leave Petition filed before the Hon'ble Supreme Court was also dismissed on 27.11.2015.

Decree holder filed first execution petition on 1.2.2012, wherein decree holder had disclosed that there is no appeal against the judgment and decree. The aforesaid execution petition was dismissed in default on 27.7.2013 as first appeal was pending and decree holder was appearing in the court.

Immediately after dismissal of the first appeal on 12.11.2014, decree holder filed an application on 19.12.2014, requesting the court to grant permission to deposit the amount under the decree. The permission was granted on 20.12.2014 and the amount was deposited on 26.12.2014 in the Treasury.

Thereafter, the decree holder filed a second execution petition in February 2015. In this execution petition, notice was issued to the judgment debtors. Some third party objections were filed, which were dismissed on 18.11.2015 in the presence of learned counsel for the judgment debtors. The court passed the order, which reads as under:-

“Sh.Rajesh Gupta, Advocate counsel for the DH.

Sh.H.S.Saini, Advocate counsel for the JD.

XXX XXX XXX XXX
XXX XXX XXX

“The draft of sale deed stands approved and therefore Sh Shiv Partap, Judgment Writer of this Court is appointed as Local Commissioner to execute the relevant documents before the Competent Authority and complete all other formalities for transfer of the property from the name of the JDs in the name of decree holder and his fee is assessed Rs. 2000/- which is to be paid by the decree holder. The report after necessary

compliance regarding transfer of the property be submitted to this Court on 24.12.2015.”

Pursuant to this order, the sale-deed was executed by the Local Commissioner appointed by the court in favour of the decree holder on 21.12.2015 as judgment debtor did not come forward to execute the sale-deed. The learned court was notified that this sale-deed has been executed and this fact was noticed by the court in the order dated 24.12.2015. The relevant extract thereof is as under:-

“Sh.Rajesh Gupta, Advocate counsel for the DH.

Sh.H.S.Saini, Advocate counsel for the JD.

“Sale deed is executed by the Local Commissioner. Copy of the sale deed is produced on file. Decree-holder filed an application for issuance of warrants of possession. So warrants of possession are ordered to be issued for 04.02.2016.”

It may be noticed that learned counsel for the judgment debtors was present even on that date.

Judgment debtors filed an application on 11.10.2017 for dismissal of the execution petition on the ground that there was no extension of time and the deposit made by the decree holder is beyond the time fixed by the court as per judgment dated 9.12.2011. The aforesaid application filed by the judgment debtors had been dismissed by the court after noticing the facts in detail.

I have heard the learned counsel for the parties at length and with their able assistance gone through the documents available in the paper-book as well as the daily orders produced by the learned counsel for

the respondents during the course of hearing.

Learned senior counsel for the petitioners has raised three following arguments:-

- (i) Since there was no extension of time, therefore, the suit filed by the plaintiff would be deemed to have been dismissed as the decree passed in favour of the plaintiff was a conditional decree;
- (ii) In the absence of any order of extension, mere pendency of the first appeal would not extend the time.
- (iii) Decree holder has concealed the factum of pendency of filing of first execution application and dismissal thereof, while filing the second execution application.

On the other hand, learned counsel for the respondents has submitted that immediately after dismissal of the first appeal, application for deposit of the amount was filed before the trial court and amount was deposited. He has further submitted that it is a decree of the first appellate court, which is to be executed as the decree of the trial court has emerged with the decree of the first appellate court. He has further submitted that the amount was deposited on 26.12.2014, whereas the petitioner has filed this application only in the year 2017. He has submitted that now at this stage the judgment debtors are precluded from raising this objection as the counsel for the judgment debtors was present when draft sale deed was approved and thereafter sale deed was executed.

I have considered the submissions of the learned counsel.

It is not in dispute that in the first appeal, judgment debtors had

filed an application for stay of the execution of the appeal. Decree holder filed reply to the application. When counsel for the plaintiff did not oppose the prayer of the stay, the court passed an order on 15.5.2012, Although learned senior counsel for the petitioners has tried to submit that there is no specific order of stay but from the reading of the order, it is clear that once the prayer for stay of execution was not opposed by the counsel for the plaintiff-respondent then obviously injunction would be deemed to have been granted.

It is not in dispute that counsel for the judgment debtors was present when the draft sale-deed was approved and in subsequent proceedings once the judgment debtors had failed to object at the relevant time and the sale deed has already been executed through court commissioner in the year 2005, the application filed by the judgment debtors on 11.10.2017 was clearly not maintainable.

Learned senior counsel for the petitioners has submitted that while filing the first execution petition, petitioners had mentioned that there is concealment of fact on the part of the decree holder as in the execution petition, it has been mentioned that no appeal has been preferred.

The execution petition is dated 27.1.2012. Decree holder had stated as under:-

“...No, as no notice has been recd. By the DH till date...”

From the reading of the aforesaid, it is clear that decree holder had only stated that no notice has been received by the decree holder till date. The appeal was filed on 12.1.2012. However, counsel for the caveator/plaintiff was not present. The court issued notice to the counsel

for 2.2.2012. That is how, decree holder stated in the execution petition that no notice has been received. In the considered opinion of this Court, there is no concealment of fact.

In view of discussion made above, there is no scope for interference in the order passed by the trial court.

Revision petition is dismissed.

30.11.2017
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No