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

**Civil Revision No.8201 of 2017
Date of Decision: 08.12.2017**

Khusbu Bhatia

.....Petitioner

Vs

Devender Singh Rawat

....Respondent

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

Present: Mr. Arun Singla, Advocate for
Mr. Amit Choudhary, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 06.09.2017 passed by the Civil Judge (Jr. Divn.) Faridabad whereby application under Section 28 of the Specific Relief Act (hereinafter for short 'the Act') filed in execution petition was dismissed.

[2]. Brief facts are that the plaintiff/respondent filed a suit for specific performance. The suit was decreed by the trial Court vide judgment and decree dated 05.05.2016 and the plaintiff was directed to pay the remaining sale consideration to the defendant within a period of three months from the date of

judgment and thereafter defendant was directed to execute the sale deed within a period three months. In the event of failure on the part of the defendant to execute the sale deed within the stipulated period, the plaintiff was held entitled to get the sale deed executed with the process of the Court.

[3]. The defendant filed an appeal before the lower Appellate Court on 01.07.2016 which is statedly pending. Defendant/judgment-debtor did not receive the amount. After waiting for a period of three months, the decree-holder filed the execution of the judgment and decree on 19.08.2016. Period of three months expired on 05.08.2016. Now the petitioner seeks rescission of contract under Section 28 of the Act on the basis of intervening period of 14 days between the date of expiry of three months and filing of execution on 19.08.2016.

[4]. Learned counsel for the petitioner by relying upon **Prem Jeevan Vs. K.S. Venkata Raman and another, 2017(2) Civil Court Cases 001 SC** contended that the Court must ensure strict compliance of the conditions stipulated in the decree which has the effect of nullifying the decree.

[5]. I have heard learned counsel for the petitioner.

[6]. In **Prem Jeevan's** case (supra), the consideration before the Hon'ble Apex Court was in respect of a case where a

decree for specific performance was granted in favour of the plaintiff on 25.09.2008 vide which the defendant was directed to execute and register the sale deed in favour of the plaintiff within a period of two months from the date of passing of the decree after receipt of balance sale consideration. It was also ordered that in case defendant refuse to receive the balance sale consideration with interest the plaintiff would be at liberty to deposit the same in the Court and seek execution of decree with the process of the Court. Plaintiff therein claimed to have issued a cheque on 04.12.2008 for the amount in question, but the same was returned by the judgment-debtor and thereafter decree-holder applied for execution after about two years of non-acceptance of the cheque. Judgment-debtor sought rescinding of the decree on the ground that the amount was not deposited by the decree-holder within the stipulated time and the decree had become inexecutable in the absence of extension of time. Keeping in view the period of about two years in filing the execution after return of the cheque, the Hon'ble Apex Court held that in the absence of any application for extension of time, the execution for obtaining specific performance was not maintainable.

[7]. In the instant case against the judgment and decree dated an appeal was preferred before the lower Appellate Court

even before expiry of three months. The appeal was filed on 01.07.2016 which is still pending. The filing of application which is soon after expiry of three months time i.e. 19.08.2016 cannot be covered by the ratio of **Prem Jeevan's** case (supra) as there was delay of more than 2 years 2 months and the facts were not at par with the present case.

[8]. In view of **Tara Singh (since deceased) through his LRs vs. Sandeep Kumar and others, 2016(1) PLR 408** wherein it was held that the decree which was lawfully passed should not be allowed to be nullified in the routine manner. Even as per ratio of **Prem Jeevan's** case (supra), if two views are possible on the facts of the case, then the view favouring sustainability of the decree must be adopted. The Court does not cease to have power to extend the time and the provision in terms of Section 28 of the Act is discretionary in nature. There was no rider in the decree passed by the trial Court that in the event of failure of the decree-holder to deposit the amount, the decree shall have to be rendered as nullity.

[9]. In view of **Amar Nath Jain vs. Ram Parkash Dhir, 1987(1) PLR 490** the time can be extended even in the absence of any application filed by the decree-holder. The Court can use its discretion for extending the time for depositing the amount, even if no specific order for extension of time was

passed, nor such an application was moved. This is so because in the instant case, the judgment-debtor filed an appeal before the lower Appellate Court even before expiry of period of three months and the said appeal is still pending. In the absence of any conditions stipulated in the decree, the consequence of non-deposit of such amount would be of no consequence as the Court passing the decree in its discretion has power to extend the time as well.

[10]. In view of law laid down in **Gurdip Singh vs. Jagjit Singh, 1987(1) PLR 129; Smt. Sarupi and others vs. Har Gianand others, AIR 1975, Punjab and Haryana 231; Kedar Nath Dhingra and another vs. Kanwal Bhatia, AIR 1998, Punjab and Haryana 86; Chintambaran vs. Viswambaran, 2001 AIR (Kerala) 205; Sham Kaur vs. Malagar Singh and another, 2004(1) PLR 814; Mohinder Singh Vs. Gurdial Singh, 1997(1) PLR 73; Nanha vs. Risala and another, 2007(5) RCR (Civil) 655 and Sucha Singh vs. Nand Lal, (2015-3) PLR 272**, it can be visualized that in the absence of any condition stipulated in the decree, incorporating consequences of non-deposit of balance sale consideration, the powers of the Court to extend the time for payment of balance sale consideration are to be perceived in discretionary ambit of the Court and such discretion has to be exercised in view of the

facts and circumstances of the case. The decree itself did not show any contingency on happening of a particular event. Therefore, the suit was not to be dismissed automatically in the absence of such rider clause in the decree and therefore, the power of the Court to enlarge the time would be in consonance with the provisions of the Civil Procedure Code as well as Specific Relief Act and would fall in the discretionary ambit of the Court for extending the time.

[11]. In view of aforesaid facts and circumstances, I do not find any error of jurisdiction in the order dated 06.09.2017 passed by the trial Court, nor the same is found to have suffered with any perversity. This revision petition is dismissed.

December 08, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No