

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

C.R. No.1035 of 2012

Date of Decision.11.05.2018

Shivdev Singh Sandhu

.....Petitioner

Vs

Surjit Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naresh Kaushal, Advocate
for the petitioner.

Mr. M.S. Sachdev, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

The revision petition is directed against the impugned order dated 11.1.2012 whereby the objection to the petition under Section 36 of the Arbitration and Conciliation Act filed on behalf of the respondents against execution of the arbitral award dated 7.5.1999 ordering for specific performance of the agreement dated 12.04.1999, has been allowed and the petition filed under Section 36 has been dismissed.

The agreement dated 12.04.1999 was entered between Surjit Singh, Arvinder Kaur, Shiv Dev Singh and Jatinder Kaur regarding House No.660-B, Mall Road, Model Town, Jalandhar. Since the agreement contained arbitration clause, the dispute was referred to the arbitrators namely Jasbir Singh, Joginder Singh and Joginder Kapoor. Though the respondents disputed the reference of dispute to the arbitrators and had also filed suit against the award being passed on the ground of fraud and misrepresentation. As per

the contents of the award, the petitioner-vendee was required to pay a sum of Rs.7,10,500/- to Surjit Singh and his wife Arvinder Kaur within a period of two months from the date of award enforceable being a decree under the Code of Civil Procedure. As per the contention, execution of the aforementioned award was filed in the year 2002 but later on it was again revived in 2011 as previous court had no jurisdiction.

Mr. Naresh Kaushal, learned counsel appearing on behalf of the petitioners submitted that the objections at the instance of the respondents against the enforcement of the award have erroneously been accepted by the Court below as they were not maintainable. The respondents had challenged the award in the civil court on the ground that the same had been obtained by fraud and misrepresentation, which is pending adjudication, therefore, there was no occasion for the petitioners to pay amount of Rs.7,10,500/- to the respondents i.e. Surjit Singh and Arvinder Kaur, thus, the award could not be rendered inexecutable, for, the respondents had not moved any application for rescission of the contract as per the provisions of Section 28 of the Specific Relief Act. In the other revision petition, specific objection regarding the jurisdiction and maintainability of the suit was taken and issue in this regard was framed. This Court allowed the revision petition bearing No.4325 of 2006 treating the aforementioned issue as preliminary. Since the litigation was pending, the amount as ordered had not been deposited nor any occasion arose for extension of time.

Mr. M.S. Sachdev, learned counsel appearing on behalf

of the respondents submitted that as per the provisions of Section 28 of the Specific Relief Act and the settled law, even in the absence of an application moved by the respondents for rescission of the contract, the decree dated 07.05.1999 is rendered unenforceable, for, the vendee had not deposited the amount nor moved an application for extension, for, provisions of Section 148 of the Civil Procedure Code are not applicable as the Specific Relief Act is a complete Code, even in the absence of expression that it would become unenforceable in case the amount is not deposited within two months. No other explanation has come forward for not depositing the amount. Even in the suit also, there was no interim stay. In support of his contention, relied upon the judgment of Hon'ble Supreme Court in **Prem Jeevan Vs. K.S. Venkata Raman and another AIR 2017 SC 623**, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Kaushal.

The Hon'ble Supreme Court in the judgment **Prem Jeevan's** case held that if the parties do not deposit the amount nor show any impediment owing to any interim stay or reasons of not depositing the amount, the decree of specific performance becomes inexecutable. The petitioners have miserably failed to prove any steps or attempt being made for paying the amount of ₹7,10,500/- showing the bona fides. Had such steps been taken for depositing the aforementioned amount, the things would have been different.

However, the present execution application (Annexure P-17) was

instituted on 11.01.2012. No explanation has come forth during all this period what the petitioner had been doing.

In view of what has been noticed above, I am of the view that the impugned order allowing the objections is perfectly legal and justified and did not suffer from any illegality and perversity, much less, cannot be said to be passed without jurisdiction. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

May 11, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No