IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CR No.149 of 2015(O&M)**
**Date of Decision-13.11.2018**

Kishan Lal (through LR Ranjana Devi and others)
... Petitioners
Versus
Mahesh Kumar ... Respondent

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

Present: Mr. Rakesh Gupta, Advocate and
Mr. Rajeev Godara, Advocate
for the petitioner.

Mr. Ajay Jain, Advocate for
for the respondent.

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***RAJ MOHAN SINGH, J.***

[1]. Petitioners have challenged the order dated 17.12.2014 passed by Civil Judge (Senior Division), Rewari, whereby two applications filed by the petitioners were dismissed with costs.

[2]. One application was filed for staying the confirmation of sale under Order 21 Rules 58, 59 read with Sections 141 and 151 CPC. Another application was filed under Section 47 read with Sections 141 and 151 CPC by the LRs of Kishan Lal on the ground that the decree has not been passed on merits.

[3]. Applications were contested by the decree holder on the ground that the applications were filed to delay the matter and the same were not maintainable. Applicants were stopped by their own act and conduct. Kishan Lal was the judgment debtor.

Kaushal Kishore was son of Kishan Lal. Legal heirs of Kishan Lal filed objections on 19.12.2009 which were dismissed by the executing Court on 29.05.2013. The appeal filed by the legal heirs was also dismissed by the Additional District Judge, Rewari on 12.05.2014. Thereafter, vide order dated 30.07.2014, Desh Raj was appointed as Local Commissioner to execute the sale deed in favour of the decree holder. Sale deed No.337 dated 07.08.2014 was executed and registered in favour of the decree holder.

[4]. Civil Judge (Senior Division), Rewari vide impugned order dated 17.12.2014 found that the suit for specific performance was filed by the plaintiff/decree holder against Kishan Lal on 02.01.1996. Defendant appeared and filed his written statement. After closure of plaintiff's evidence, defendant availed several opportunities for leading defence evidence, but ultimately, failed to lead any evidence and was proceeded against *ex parte* vide order dated 22.11.2001. Judgment and decree dated 02.01.2002 was passed by the trial Court, thereby decreeing the suit *ex parte* against the defendant and directions were issued to the defendant to perform his part of contract by executing the sale deed in favour of the plaintiff/decree holder within three months from the date of passing of judgment and decree after receiving the balance sale consideration.

[5]. An application under Order 9 Rule 13 CPC was filed by the LRs of Kishan Lal for setting aside the *ex parte* judgment and decree. The application was dismissed. Thereafter, execution petition was filed by the decree holder on 25.04.2009. Notice of execution petition was given to the judgment debtor who filed objections which were dismissed by the executing Court on 29.05.2013//30.05.2013. The appeal filed against the said order was also dismissed by the Additional District Judge, Rewari on 12.05.2014.

[6]. Perusal of the impugned order would show that except the factual pleas, no arguments were raised and the executing Court dismissed the applications with costs of Rs.3000/- to be deposited in the Legal Services Fund.

[7]. I have heard learned counsel for the parties.

[8]. Learned counsel for the petitioners on the strength of ***Jeet Singh Vs. Gursewak Singh and others, 2015(3) RCR (Civil) 82*** submitted that under Section 22(2) of Specific Relief Act, the execution of a decree cannot be granted unless and until possession is specifically prayed in the suit while seeking the relief of specific performance of contract by way of execution of sale deed. Trial Court cannot grant relief of possession as the same is barred in terms of Section 22(2) of the Specific Relief Act.

[9]. Perusal of the aforesaid judgment would show that the Court appreciated the cited precedents and held that ***Nathu Ram Vs. Chhotu Singh, 2013(1) RCR (Civil) 517*** is per inquirium as the same was rendered without reference to the provision in terms of Section 22(2) of the Specific Relief Act. The Court while relying upon ***Adcon Electronics Pvt. Ltd. Vs. Daulat, 2002(1) RCR (Civil) 806*** held that the Court cannot grant relief of possession of land or other immoveable property, subject matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immoveable property is specifically prayed for. ***Nathu Ram's case (supra)*** was held to be not applicable and the same was held to be per inquirium.

[10]. On the other hand, learned counsel for the respondent relied upon ***K. Krishnan Vs. A. Valarmathi, 2017(1) RCR (Civil) 36 (Madras), Smt. Sunita Devi Vs. Dinbandhu Shah, 2010(4) RCR (Civil) 506 (Jharkand), Sarverunnisa Begum Vs. Syed Rafeeq, 2015(5) RCR (Civil) 738 (Andhra Pradesh), Babu Lal Vs. M/s Hazari Lal Kishori Lal and others, 1982 AIR (SC) 818*** and ***Bhupinder Singh and others Vs Sukhdev Singh and another, 2017(1) PLR 756*** and contended that ***Adcon Electronics Pvt. Ltd. case (supra)*** has already been explained in the aforesaid judgments with reference to Sections 22(2) and 28 of the Specific Relief Act. The ratio laid down in ***Babu Lal's case (supra)*** was never cited before the Court dealing with ***Jeet Singh's case (supra)***. In the light of provisions in terms of

Sections 22(2) and 28(3) of the Specific Relief Act, it can be appreciated that the aforesaid question came to be debated in ***Babu Lal's case (supra)*** wherein after interpreting the provision of Sub Section 3 of Section 28 of the Specific Relief Act, the Hon'ble Apex Court found that when the statute itself envisages relief of possession, Section 22 of the Specific Relief Act cannot be read in isolation. High Court in ***CR No.5255 of 2014*** titled ***Gurjant Singh Vs. Harbans Kaur and others*** decided on 07.04.2016 has also taken the same view.

[11]. For the reasons recorded in ***Bhupinder Singh and others case (supra)***, the ratio of ***Adcon Electronics Pvt. Ltd. case (supra)*** and ***Jeet Singh's case (supra***) was duly explained. It was held that Section 22 of the Specific Relief Act cannot be read in isolation when Section 28 of the Specific Relief Act envisages relief of possession. On conjoint reading of both the provisions, it is manifest that the Court can at any stage of proceedings grant relief of amendment of plaint, in the absence of relief sought in the main suit and therefore, the plaintiff need not to seek amendment. The sale deed has already been executed with the intervention of the Court.

[12]. In the light of aforesaid legal position on the subject matter coupled with factual scenario of the case, it can be noticed that the defendant was proceeded against *ex parte* on 22.11.2001 and *ex parte* judgment and decree for specific

performance was passed on 02.01.2002. An application under Order 9 Rule 13 CPC filed by the judgment debtor was dismissed and the same has attained finality. Even the objections filed in the execution proceedings were dismissed by the executing Court on 29.05.2013/30.05.2013. Appeal was also dismissed by Additional District Judge on 12.05.2014. Those orders have already attained finality. It appears from the record that the judgment debtor now through LRs/petitioners do not want culmination of proceedings by any legal means.

[13]. The concept of finality of judgment has been explained by the Hon'ble Apex Court in ***Indian Council for Enviro-Legal Action Vs. Union of India and others, 2011(3) RCR (Civil) 779***, wherein the maxim *'interest Republicae ut sit finis litium'* was considered to the effect that the litigation must end after a long hierarchy of remedies at some stage. Apparently, the application under Order 9 Rule 13 CPC filed by the judgment debtor was dismissed and the same has also attained finality. Secondly, the objections filed during execution were also dismissed and the said order was upheld in appeal on 12.05.2014 by the Additional District Judge, Rewari. It is necessary to put a quietus at some stage of litigation. It is rare that in an adversarial system, despite the judges of the highest court doing their best, one or more parties may remain unsatisfied with the most correct decision. Opening door for a further appeal could be opening a flood gate which will cause more wrongs in the society at large at the cost of

rights. The conclusion is that the controversy between the parties must come to an end at some stage and the judgment of the higher court must be permitted to acquire finality. It would be improper to allow the parties to file application after application in the endless process. Finality of judgment is absolutely imperative and great sanctity is attached to the finality of the judgment.

[14]. It is an onerous duty of the Court to ensure undue enrichment is not drawn by the losing party by invoking the process of the Court, even after finality of some stage of litigation. While curbing the aforesaid tendency, the Court would be fully justified in resorting punitive action when the legal process is found to have been abused. Doctrine of *stare decisis* is very valuable principle of precedent which cannot be departed in the ordinary circumstances. The ratio laid down in ***Manganese Ore (India) Ltd. vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur (1976) 4 SCC 124*** and ***Green View Tea & Industries vs. Collector, Golaghat and another, 2002(2) R.C.R. (Civil) 362*** can be relied in the aforesaid context.

[15]. The Court should not be hampered by any technical rule and interpretation at the time of applying principles of *res judicata* as the same is a fundamental principle which sustains rule of law in ensuring finality in litigation. The aforesaid order has an universal application and is in the interest of the State that there should be an end to the litigation and no one should be

vexed twice in the litigation on the same cause of action. It is a settled principle of law that the executing Court cannot go beyond the decree. The view expressed by the Hon'ble Apex Court in ***Vedic Girls Senior Secondary School Vs. Rajwanti (SC) 2007(2) SCT 272*** was in consonance with the earlier view expressed in ***State of Punjab Vs. Krishan Dayal Sharma, AIR 1990 SC 2177***. In view of ratio laid down in ***Pratibha Singh Vs. Shanti Devi Prasad, (2003) 2 SCC 330***, no technical objection can defeat the decree which had attained finality after dismissal of the application under Order 9 Rule 13 CPC and after dismissal of the objections filed by LRs of the judgment debtor in the execution. In my considered opinion, there has to be a quietus to the litigation.

[16]. For the reasons recorded hereinabove, this revision petition is dismissed.

**(RAJ MOHAN SINGH)**
**JUDGE**

13.11.2018
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Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No