

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

C.R. No.1338 of 2014

Date of Decision.21.03.2018

Mohinder Kaur and others

.....Appellants

Vs

Harbhajan Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.S. Jaswal, Advocate
for the appellants.

Mr. Ranjit Sharma, Advocate
for respondent Nos.1 and 2.

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AMIT RAWAL J.(ORAL)

The petitioners-defendants are aggrieved of the impugned order 7.11.2013 (Annexure P-7) whereby the application submitted under Section 28 of the Specific Relief Act for rescission of the agreement dated 4.7.1975 and annulment of the judgment and decree dated 26.2.1979, has been dismissed.

The facts as emanated from the revision petition are that the respondents-plaintiffs instituted the suit bearing No.60 of 1977 on 5.1.1976 for specific performance of the agreement to sell in respect of the suit land on the premise that in lieu thereof, a sum of ₹2000/- was received by Kartar Kaur-defendant No.1 against the total sale consideration of ₹36,000/-. The stipulated date for execution and registration of the sale deed was 15.12.1975. However, the petitioners-defendants did not come forward, resulting into cause of action for filing the present suit. The aforementioned suit was decreed vide judgment and decree dated 26.2.1979 whereby the period of two months was granted to deposit the balance sale consideration.

The conceded position on record is that the aforementioned consideration

was deposited within the time prescribed. However, the petitioners-defendants assailed the aforementioned judgment and decree by preferring regular first appeal bearing No.744 of 1979 before this Hon'ble Court. The aforementioned regular first appeal was dismissed on 12.03.2003, however, during the interregnum, this Court vide order dated 31.03.1980 permitted the decree-holder to withdraw the amount with liberty that the respondent-decree holder would have further opportunity for depositing the amount, if necessary, after the decision in RFA No.744 of 1979.

Mr. B.S. Jaswal, learned counsel appearing on behalf of the petitioners submitted that the respondents-plaintiffs instituted an execution application dated 24.09.2004 seeking possession without any sale deed, which was objected to by the petitioners on the premise that the execution application was not maintainable for not having deposited the amount. However, the respondents-decree holders moved another application dated 18.08.2008 (Annexure P-3) seeking liberty of the trial Court for depositing the balance sale consideration which was allowed by the Executing Court at the back of the petitioners-judgment debtors. The petitioners-judgment debtors moved application (Annexure P-4) under Section 28 of the Specific Relief Act for rescission of the contract on account of non-deposit of balance sale consideration as the decree had become inexecutable. The aforementioned application has been dismissed vide impugned order dated 7.11.2013 (Annexure P-7). In support of his contention, he relied upon the ratio decidendi culled out by Hon'ble Supreme Court in **Prem Jeevan vs. K.S. Venkata Raman and another AIR 2017 (SC) 623** to contend that the decree holder is required to give explanation of not depositing the amount within the period in case decree envisaged specific period of depositing the

balance sale consideration and the period cannot be extended. Even the request for payment of interest on the balance sale consideration was held to be unacceptable. He also made reference to the judgment of Hon'ble Supreme Court in *Bhupinder Kumar Vs. Angrej Singh 2009(4) RCR (Civil) 248* and various other judgments pertaining to non-deposit of the balance sale consideration. In other words, he contended that a fresh cause of action had not accrued to the decree holder to deposit the amount within the period prescribed in the original decree and having failed to do so, the decree had become inexecutable, thus, urges this Court for setting aside the order under challenge.

He further submitted that the application (Annexure P-3) was not maintainable before the trial Court as it was this Court which had jurisdiction to grant the liberty. All these aspects have not been taken into consideration by the trial Court, therefore, there is gross illegality and perversity.

On the other hand, Mr. Sharma, learned counsel appearing on behalf of the respondents-decree holders submitted that the request made to the trial Court was on the premise that it was in the domain of the Executing Court but keeping in view the fact that the judgment of this Court merged into the decree of the trial Court and as such, alleged failure on the part of the decree holders could not come to the rescue of the petitioners-judgment debtors, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book. The facts noticed above are not in controversy i.e. decretal of the suit, dismissal of the appeal and withdrawal of the balance sale consideration permitted by this Court. It would apt to reproduce order dated

31.03.1980 passed during the pendency of the regular first appeal permitting the decree holder to withdraw the amount:-

“Heard. The amount deposited in pursuance of original decree be refunded to the depositors, the respondent will have further opportunity for depositing the amount if necessary after the decision of RFA 744/79.”

The aforementioned regular first appeal was dismissed on 12.03.2003 and this Court did not grant time to the decree holder to deposit the balance sale consideration. The decree holder as indicated above moved an application for possession and thereafter, realizing that the balance sale consideration was not deposited, an application dated 18.08.2008 (Annexure P-3) was moved for deposit of the aforementioned amount. It is outcome of that application, the application (Annexure P-4) was moved, which was dismissed. There is no dispute to the ratio decidendi culled out in the judgments cited supra that where the decree specifies a particular time to deposit the amount and the decree holder failed to deposit the same, the decree for specific performance shall become inexecutable as per the provisions of Section 28(1) of the Specific Relief Act.

Now the point to be determined by this Court is whether the decree holder can be made to be suffered on the lapse of the Court or not, for, the maxim *“Actus curiae neminem gravabit”* i.e. mistake of the court is no longer *res integra* in view of the decision rendered by Hon’ble Supreme Court in **Jang Singh Vs. Brij Lal and another AIR 1966 (SC) 1631** wherein paragraph 6 and 8, the Hon’ble Supreme Court held that no act of courts should harm a litigant. This Court while dismissing the regular first appeal did not grant liberty to the decree holder to deposit the amount. The

submission of Mr. Jaswal that the decree had become inexecutable is wholly misconceived, much less, devoid of merit. It was the judgment of this Court which granted time to the decree holder, no doubt the decree holder was required to move the application before this Court.

The decree holders in compliance of the original decree dated 26.02.1979 had deposited the balance sale consideration within the time prescribed, therefore, readiness and willingness was not wanting as it is no longer in dispute that it has to be during all the period i.e. from the date of agreement till filing of the suit, during the pendency of the suit and till the decree passed and execution thereof. In my view, the trial Court had not taken into consideration the mistake of the Court but the fact of the matter is that the aforementioned maxim does come to the rescue of the decree holder and would not help the petitioners-judgment debtors to seek rescission of the contract.

In view of the aforementioned, I do not find any illegality and perversity in the order under challenge as the same cannot be said to be passed without jurisdiction or beyond jurisdiction. No ground for interference is made out. Resultantly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

March 21, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No