

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

C.R. No.1840 of 2017

Date of Decision.05.04.2018

M/s Dwarkadhis Projects Pvt. Ltd.

.....Petitioner

Vs

Ramji Lal Saini

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Yash Pal Gupta, Advocate
for the petitioner.

Mr. S.S. Khurana, Advocate
for the respondent.

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AMIT RAWAL J.(ORAL)

The present revision petition is directed against the order dated 11.01.2017 (Annexure P-2) at the instance of the petitioner-judgment debtor whereby the objection of the decree holder against the execution filed by the judgment debtor had been allowed and the petitioner-Judgment Debtor has been directed to hand over the possession of the flat to the decree holder before next date of hearing, failing which warrant of possession had been ordered to be issued.

Before advertng to the argument of learned respective counsel for the parties, it would be in the fitness of things to refer to few facts for adjudication of the present revision petition. On 20.12.2006, the respondent-decree holder booked two bed-room flat of the size of 1200 sq. ft. @₹1488/- per sq. ft in the project of the petitioner. Resultantly, an application for provisional registration was executed and an amount of ₹2,50,000/- was deposited as initial amount booking with the petitioner.

On 22.06.2007, the respondent-decree holder was allotted an

apartment bearing No.D-4/02 having super area of approximately 1200 sq. ft. under Construction Linked Installment Payment Plan and another terms and conditions which were entered into. On 08.12.2007, agreement to sell was entered between the petitioner and the respondent containing various terms and conditions. The petitioner is stated to have sent three reminders for payment of the balance installments. Therefore, dispute arose between the parties and the respondent challenged the action of the petitioner by filing an application under Section 22 (C) of the Punjab Legal Services Authorities Act, 1987. Vide award dated 31.05.2013 (Annexure P-3), the Permanent Lok Adalat disposed of the aforementioned application in the following manner:-

“14. Therefore, as a result of discussion held in foregoing paras, the application succeeds. The parties to the application are hereby directed as follows:-

1. The respondent shall not charge any interest whatsoever from the applicant.

2. The respondent shall intimate the applicants in writing, within a period of one month from the date of receipt of copy of award regarding;

(a) the balance payment, if any, exclusive of interest to be paid by the applicant.

(b) the status of development work at the site.

3. On payment of the balance amount, the respondent shall deliver the possession, after development of the flat in question, to the applicant within a period of 3 months, failing which, the respondent shall pay interest @9%

per annum to the applicant on the deposited amount from the date of respective deposits till he delivery of possession of the flat.

4. In case the respondent is unable to deliver the possession of the flat to the applicant, for whatever, reason, it (respondent) shall refund the amount with interest @9% per annum on the deposited amount from the date of respective deposits.

15. The application is disposed of accordingly. File be consigned to record-room.

As per the award *ibid*, the petitioner was directed to intimate the respondent in writing within a period of one month from the date of receipt of copy of award regarding balance amount, if any, excluding the interest, status of development work at the site and on receipt of the balance amount, the petitioner was directed to deliver the possession after development of the flat in question within a period of three months, failing which the petitioner was ordered to pay interest @9% to the respondent on the deposited amount from the date of respective deposits till the delivery of possession of the flat.

Mr. Yash Pal Gupta, learned counsel appearing on behalf of the petitioner submitted that clause 4 of the award envisaged a situation that the petitioner would refund the amount along with interest @9% on the deposited amount to the respondent in case it was unable to deliver possession of the flat for whatsoever reason. It is in that backdrop of the matter, the execution application dated 02.09.2013 (Annexure P-4 colly) on behalf of the petitioner was filed stating therein that the petitioner had

approached the respondent and made an effort to hand over cheque of ₹12,27,020/- vide cheque No.116072 dated 21.07.2013 but the respondent refused to accept the aforementioned amount. The respondent filed the objection (Annexure P-5) to the execution application and replication to the aforementioned objection was filed by the petitioner vide Annexure P-6 (colly).

The Executing Court during the pendency of the execution application directed the petitioner to file the calculation sheet which was submitted and as per the aforementioned sheet dated 16.07.2016, an amount of ₹8,42,880/- only was paid as the respondent had not shown any cheque of ₹10 lacs, which was reflected in the calculation sheet (Annexure P-7).

Vide impugned order dated 11.01.2017, the Executing Court issued directions as indicated above. The aforementioned impugned order is not sustainable in the eyes of law as the respondent had never paid a sum of ₹10 lacs to the petitioner. Even after raising the strong objection, the Ld. Civil Judge wrongly interpreted the fact that the respondent had paid a sum of ₹8,42,800/- over and above a cheque of ₹10 lacs but the fact of the matter is that cheque was not credited in the account of the petitioner. The cost of the flat was more than ₹27 lacs and therefore, it could not have been handed over @₹8,42,880/-. Since the petitioner was unable to deliver the possession, therefore, direction No.4 was pressed into service, which has wrongly and erroneously been mis-interpreted, thus, urges this Court for setting aside the order under challenge.

Per contra, Mr. S.S. Khurana, learned counsel appearing on

behalf of the respondent-decree holder while passing on some documents to

this Court submitted that the present revision petition deserves dismissal for two reasons namely:-

(i) The petitioner has not brought to the notice of this Court zimni order dated 27.07.2017 of this Court whereby a bank draft of ₹10 lacs was handed over in the name of the petitioner to the counsel appearing for the petitioner without any demur/objection. The entire story of not receiving the amount of ₹10 lacs was a coined one, for, the respondent had specifically written a letter dated 13.07.2013 to the petitioner for enclosing a cheque bearing No.624712 dated 13.07.2013 amounting ₹10 lacs of State Bank of India which was never encashed by the petitioner, thus, there was no fault of the respondent in complying with the direction of the Permanent Lok Adalat. A photocopy of the draft bearing No.373175 dated 10.07.2017 brought in this Court has also been shown to this Court.

(ii) The revision petition is also liable to be dismissed in view of the order dated 31.08.2017 passed by the Executing Court whereby in pursuance of the issuance of warrant of possession, the respondent had already taken possession of the flat bearing No.D-4/02 in the presence of the Manager of the petitioner namely Amit and Parkash and aforementioned fact is reflected in the report of the bailiff. No objection had been raised by either of the parties, 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. Yash Pal Gupta and the reason is not one but many. The directions of the Permanent Lok Adalat except direction No.4 were in favour of the petitioner. The petitioner had not complied with aforementioned direction as respondent had sent the cheque dated 13.07.2013 which was never encashed. In the entire story the petitioner had not mentioned about the aforementioned cheque. Even notice of motion was got issued without disclosing the aforementioned fact. It is not the fault of the respondent as he sent the cheque but the same was not encashed. No reasons have come forward for not allotting the flat to the respondent as per direction No.2 & 3. In fact, the petitioner had burdened unnecessary litigation by filing execution application. During the course of hearing, the order dated 31.08.2017 on which Mr. Khurana relied upon had not been disclosed. For the sake of brevity, the order dated 31.08.2017 is reproduced as under:-

“Warrant of possession against the applicant/JD M/s Dwarkadhish received back duly served. In the report of bailiff, it is specifically stated that the possession of flat No.D-4/02 has been handed over to DH Sh. Ramji Lal and now nothing remains to be paid from his site. The statement of Manager namely Amit and Parkash on behalf of JDs M/s Dwarkadhish is there in the report of bailiff. Separate statement of DH Ramji Lal is also taken by the bailiff wherein it is stated that he has peacefully taken the possession of flat No.D-4/02 Tower No.4 and he has also received the keys and has got the flat. Bailiff has also taken the signature of witnesses who was present at the time of handling over the

possession to DH Sh. Ramji Lal. Therefore in these circumstances nothing remains to be executed in the present execution petition and therefore the execution petition is ordered to be dismissed being fully satisfied. No objection of new account has been raised by either of the party. Accordingly the execution is hereby consigned to the record room after due compliance.”

The aforementioned fact has not been denied by the petitioner, much less, receipt of payment of ₹10 lacs. In my view, the respondent had complied with the direction of the award and rightly so, the trial Court allowed the objections of the decree holder.

For the reasons aforementioned, I am of the view that there is no illegality and perversity in the order under challenge, much less, the same cannot be said to be passed without jurisdiction or beyond jurisdiction. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

April 05, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No