

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.2145 of 2012
Date of decision:13.09.2018

Binder Singh

... Petitioner

Vs.

Nazar Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. K.K.Garg, Advocate
for the petitioner.

None for the respondents.

AMIT RAWAL J.

Petitioner-judgment debtor has assailed the impugned order dated 31.01.2012 (Annexure P-4), whereby, an application submitted under Section 28 of the Specific Relief Act, 1963 (hereinafter referred to as “1963 Act”) for recession of the contract resulting into a decree dated 14.02.2002 in a suit for specific performance of the agreement to sell, has been dismissed.

The respondent-plaintiff/decreed holder instituted a civil suit bearing No.803 of 1995 seeking specific performance of the agreement to sell. The aforementioned suit was decreed, vide judgment and decree dated 14.02.2002 calling upon the defendants to get the sale deed executed within a period of two months from the date of passing of the decree on receipt of the remaining amount of consideration. The decree-holder filed an

execution application dated 11.02.2003 (Annexure P-1) alongwith an application for depositing the remaining balance sale consideration of ₹39,350/-. The petitioner-judgment debtor moved an application for recession of the contract for want of compliance of decree, in essence, the plaintiff did not deposit the balance sale consideration within a period of one month. The aforementioned application after contest, has been dismissed.

Mr. K. K.Garg, learned counsel appearing on behalf of the petitioner-judgment debtor submitted that plaintiff miserably failed to comply with the judgment and decree. No doubt, the judgment and decree, aforementioned, was assailed by the petitioner-defendant before the First Appellate Court but the same was dismissed on 03.01.2003 but there was no interim order, the plaintiff was, thus, not prevented for complying with the directions contained in the judgment and decree dated 14.02.2002. The language of Section 28 giving a cause to the judgment debtor for recession of the contract is clear and un-ambiguous and thus, urged this Court for setting aside the impugned order by accepting the present revision petition.

The revision petition was admitted, vide order dated 07.08.2013. The same reads as under:-

“Heard.

Admitted.

To be heard within six months.

Operation of the impugned order shall remain stayed

meanwhile.”

There is no representation on behalf of the respondents. The revision petition is of 2012 and there is interim order. Accordingly, I proceed further to decide the petition.

I have heard the learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Garg. The operative part of the judgment and decree dated 14.02.2002 reads as under:-

“It is ordered that the suit of the plaintiff is decreed with costs and defendant no.1 is directed to get the sale deed executed in terms of agreement dated 3.5.1992 on receipt of the remaining amount of sale consideration within a period of 2 months from the date of passing of the decree.

In case, the defendant no.1 failed to execute the sale deed within a period of 2 months, from the date of passing of decree, the plaintiff shall deposit the remaining amount of consideration within a period of one month and thereafter get the sale deed executed through Court.”

Concededly, the aforementioned judgment and decree within a period of limitation was assailed by the petitioner before the First Appellate Court and the same was dismissed on 03.01.2003. The execution application was filed on 11.02.2003 (Annexure P-1). No doubt, there was no stay of the implementation of the judgment and decree of the trial Court (Annexure P-5) but predicament of the plaintiff was writ large as he did not know

whether the appeal would succeed or otherwise. The malafide or different intention of the plaintiff would have been writ large, had the remaining amount not been deposited alongwith the execution application.

In such circumstances, the trial Court, in my view, has not committed any illegality in dismissing the application. It is also a matter of record that judgment-debtor/Nachhattar Singh in response to the application seeking permission for depositing the balance sale consideration came out with a reply that he was ready to get the sale deed executed on receipt of the balance sale consideration. Filing of the revision petition is an act of volte-face which is not permitted, in other words, petitioner-defendant was estopped to wriggle out from the stand taken in the reply to the application.

No ground for interference in the impugned order is made out, much less the order cannot be said to have been passed without jurisdiction.

Revision petition stands dismissed. Interim order dated 07.08.2013 passed by this Court is hereby vacated.

(AMIT RAWAL)
JUDGE

September 13, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No