

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2320 of 2016

Date of Decision: March 23rd, 2018

Mangal Singh

...Petitioner

Versus

Amrik Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Gourav Goel, Advocate,
for the petitioner.

Mr.C.L.Verma, Advocate,
for the respondent.

AMIT RAWAL, J.

Petitioner-defendant No.2-judgment debtor is in revision petition against the impugned order, whereby the objections filed by him vis-a-vis the decree dated 24.4.2012 granting specific performance of the agreement to sell dated 12.5.2007, had been dismissed.

It would be in the fitness of things to give brief preface of the matter.

Respondent-plaintiff instituted a Civil Suit No.530 of 22.7.2008 seeking specific performance of the agreement to sell aforementioned, which was decreed by the trial Court vide judgment and decree dated 24.4.2012, whereby the respondent-plaintiff was given two months' time to deposit the balance sale consideration with a further direction to the petitioner-defendant to execute the sale deed in favour of the respondent-plaintiff. The aforementioned judgment and decree was assailed by the petitioner-defendant vide Civil Appeal No.2352 of 18.5.2012 (i.e.

Before the period of two months could expire). The aforementioned appeal was dismissed vide judgment and decree dated 2.1.2014. The Regular Second Appeal No.2890 of 2014 was preferred before this Court, which was dismissed vide judgment dated 29.9.2014. During the pendency of the aforementioned regular appeal, respondent-plaintiff submitted an application (Annexure P-6) dated 8.8.2014 seeking permission of the Court to deposit the balance sale consideration, i.e., ₹3,30,000/-. On 30.8.2014, the trial Court passed the order (Annexure P-7) on the execution application along with misc.application, which reads thus:-

“Execution Application no.43 of 2014.

Amrik Singh

Versus

Surinder Kaur

Present: Ms.Anita Kaura Adv.for DH.

Report of Execution Clerk seen. Execution be registered in the relevant register under rules. Alongwith the execution application, an application seeking permission to deposit balance sale consideration in the Court also filed. Heard. In view of the averments made in the application, the same be allowed and decree holder is granted permission to deposit the balance sale consideration in the Court. Now to come up on 23.09.2014 for further proceedings.

Dated: 30.08.2014

Sd/- (Rupinder Singh)

ACJ (SD)/Phagwara”

The aforementioned execution application was objected to by the petitioner-judgment debtor that the judgment and decree of the trial Court had become unexecutable for non-deposit of the amount of ₹3,30,000/- and the Court could not grant the extension. It is the aforementioned objections which have been dismissed vide impugned order. Hence the present revision petition.

Mr.Gourav Goel, learned counsel appearing on behalf of the

petitioner-judgment debtor submitted that the impugned order is not sustainable in law, for, there was no impediment or bar upon the respondent-plaintiff in not depositing the balance sale consideration, even if the appeal before the Lower Appellate Court was pending. No explanation has come on record. The application for extension of time is bereft of reasons. Except that, it has been submitted that the appeal was dismissed by the Lower Appellate Court on 2.1.2014. At the best, the application could have been moved within a period of two months to show the intention of depositing the money. In support of his contention, relied upon the provisions of Section 28 of the Specific Relief Act, 1963 (for short “1963 Act”) to contend that the statutory provisions provide the decree to be unexecutable. Even if the application for rescission of the contract or decree had not been moved, the decree had become unexecutable. In support of his contention, he has taken the aid of the judgment rendered by the Hon'ble Supreme Court in **P.R.Yelumalai Versus N.M.Ravi, 2015 (2) Civil Court Cases 680 (SC)** to contend that in case the purchaser fails to deposit the amount within the said period or further two months granted by the Court, the Court cannot extend the time, **Prem Jeevan Versus K.S.Venkata Raman & Anr., 2017 (2) Civil Court Cases 001 (S.C.)** to contend that where the deposit had not been made within the stipulated time or extension had not been sought before the expiry of the period for deposit, the decree becomes unexecutable and on similar lines **Jarnail Singh (deceased) through LR Vs. Manjit Singh and others, 2015 (4) PLR 121.**

On the other hand, Mr.C.L.Verma, learned counsel appearing on behalf of the respondent-plaintiff relied upon the judgment rendered by the Hon'ble Supreme Court in **Ramakutty Gupta Versus Avara, 1994 AIR**

(SC) 1699 to contend that since the appeal was continuation of a suit and the same was filed within the period given by the Executing Court, there was no occasion for the respondent-plaintiff to deposit the amount, for, it was uncertain whether the judgment and decree would sustain. Section 148 of the Civil Procedure Code imposes an obligation upon the Court as and when any application is moved to enlarge/extend the time. Even the Regular Second Appeal was also pending when the application was filed and there was no interim stay, therefore, there is no illegality and perversity. The objections were not maintainable, for, the petitioner-judgment debtor did not move any application for rescission of the contract.

I have heard the learned counsel for the parties and appraised the paper book.

The question raised before this Court is regarding the applicability of provisions of Section 28 of 1963 Act or Section 148 of the Civil Procedure Code apply. For the sake of brevity, both the Sections are extracted herein below:-

“Section 28 of the Specific Relief Act

28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in

default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.

“Section 148 of Civil Procedure Code

148. Enlargement of time.- *Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.”*

On perusal of the aforementioned provisions, it is evident that if the purchaser fails to deposit the balance sale consideration within the time prescribed by the Court, the vendor has a liberty to apply to the same Court to have the contract rescinded and on such application, the Court may rescind the contract, which, according to the contention of Mr.Verma would mean that when no such application was moved for rescission of the contract, the application on behalf of the respondent-decree holder seeking extension of time submitted in the month of May, 2014 was maintainable. This contention, in my view, is not tenable and wholly misplaced, for, no explanation has come forward as to why the balance amount was not deposited within the time period. If at all, the respondent-plaintiff was afraid of outcome of the appeal against him, he could have got the refund of the amount, but non-deposit of the balance sale consideration is also one of the ingredients of readiness and willingness, for, it has to be from the date of the execution of the agreement to sell, during its subsistence, till filing of the suit and passing of the decree. The aforementioned view of mine is supported by the ratio decidendi culled out in two judgments, i.e., **Sita Ram Versus Radhey Shyam, 2007 (4) RCR (Civil) 533** and **B.Vijaya Bharathi Versus P.Savitri & others, 2017 (4) CCC 291 (SC)**.

The respondent-plaintiff, despite having a decree in his favour, did not deposit the amount of balance sale consideration and, thus, the readiness and willingness was lacking. The aforementioned view of mine has been reiterated by the Hon'ble Supreme Court in **Prem Jeevan's case (supra)** in paragraphs 10 to 14 which read thus:-

“(10) In absence of the said time being extended, the decree-holder could execute the decree only by making the payment of the decretal amount to the judgment-debtor or making the

deposit in the court in term of the said decree. In the present case, neither the said deposit was made within the stipulated time nor extension of time was sought or granted and also no explanation has been furnished for the delay in the making of the deposit. No doubt, as contended by the learned counsel for the decree-holders, relying on judgment of this Court in Ramankutty Guptan v.Avara– (1994) 2 SCC 642, in an appropriate case the Court which passed the decree could extend the time as envisaged in the Specific Relief, 1963. In the present case no such steps have been taken by the decree-holders.

(11) In above circumstances, the contention, advanced on behalf of the decree-holders, respondents herein, that unless the judgment-debtor seeks rescission of the contract in terms of Section 28 of the Specific Relief Act, the decree remains executable in spite of expiry of period for deposit, with the only obligation on the part of the decree-holders to pay interest, cannot be accepted.

(12) Section 28 of the Specific Relief Act is as follows:

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.”

(13) There is no doubt that the above provision permits the judgment-debtor to seek rescission of a contract and also permits extension of time by the Court but merely because rescission of contract is not sought by the judgment-debtor, does not automatically result in extension of time.

(14) In view of the above, we allow these appeals, set aside the order passed by the High Court and restore the order of the

Executing Court. No costs.

(15) The respondents-decree holders will be entitled to withdraw the amount deposited by them."

In **P.R.Yelumalai's case (supra)**, the Hon'ble Supreme Court in Paras 11 to 15 has held as under:-

"11. Arguments were also made by the learned counsel on both sides as to which Court had the power to grant extension of time and several authorities were cited on this point. However, we find that after the execution Court had dismissed the execution proceeding on the ground of delay in depositing the amount, the same question was dealt with by the original side of the Trial Court as well in the application for extension of time. Since both the Courts have given concurrent findings that the case for extension of time was not made out, we are of the opinion that dealing with the question as to which Court had the jurisdiction to decide this point, will be an exercise in futility. It would suffice to say that the Court has the discretion to extend the time upon an application made by the party required to act within a stipulated time period. Extension of time can be granted even after the expiry of the period originally fixed. In Johri Singh v. Sukh Pal Singh and Ors., (1989) 4 SCC 403, this Court observed:

"This Section empowers the Court to extend the time fixed by it even after the expiry of the period originally fixed. It by implication allows the Court to enlarge the time before the time originally fixed. The use of 'may' shows that the power is discretionary, and the Court is, therefore, entitled to take into account the conduct of the party praying for such extension."

12. From a perusal of the judgment and decree dated 15.2.2007 passed by the Trial Court, it is clear that the period of one month granted for depositing the balance consideration started from the date of decree. From the records it appears that the decree was signed on 27.2.2007. Therefore, the period

of one month started from 27.2.2007 and ended on 26.3.2007. After extension of two months was granted, the last date for depositing the amount of balance consideration fell on 26.5.2007. As the Civil Court was not working on 26.5.2007 and next date i.e., 27.5.2007 was Sunday, the Plaintiff-Buyer was to deposit the amount on 28.5.2007, which was the re-opening day. However, there is no evidence on record to show that he made efforts to deposit the balance consideration on 28.5.2007 or made an application on 28.5.2007. The R.O. is dated 29.5.2007 and deposit was made on 29.5.2007. Thus, the Plaintiff-Buyer failed to comply with the decree and the suit stood dismissed automatically.

13. The Trial Court rightly held that the decree-holder did not make the deposit within the time stipulated by the Court nor the deposit of the balance consideration was made through the mode as stipulated by the Court, and that being the case, the suit will have to be deemed as dismissed. The Trial Court further held that the decree-holder is not entitled to seek execution of decree, which does not exist in the eye of law and consequently the Trial Court dismissed the execution petition. Further, we have already discussed the order of the Trial Court in the application for extension of time and we do not take the contention of the Plaintiff-Buyer that the application was dismissed solely on the technical ground and that the application was filed after a delay of 3 weeks. The Trial Court has discussed full merits of the application and given a finding that there is no evidence to show that the plaintiff had made any effort to deposit the amount on the 28.05.2007. The application was dismissed on its merits and not merely on the technical grounds. Further, we accept the submission of the learned counsel for the Defendant-Seller that the Plaintiff-Buyer had even failed to make the deposit through the mode of payment as required by the decree.

14. Having given above findings, the obvious corollary is that since the Plaintiff-Buyer failed to comply with the terms of the

decree, the suit stood dismissed as the order passing the decree was a peremptory order. In light of this, we do not find it necessary to address the arguments made by the counsel on the point of bona fide purchaser. Further, the contention that the acceptance of deposit made by the Plaintiff-Buyer on 29.05.2007 is an implied grant of extension of time is a misplaced one. Reliance cannot be placed on [Md. Alimuddin v. Waizuddin and Anr.](#), (1998) 9 SCC 108, as in that case there was an application for extension of time which was granted, though at the risk of the depositor, along with the deposit of amount. This Court in the said case held that when the Court had allowed the application for extension of time in its wisdom, there was no reason to disturb it later. In the present case, there is rather a reverse situation wherein the Trial Court has dismissed the application for extension of time giving due reasons. In view of above findings, the question as to whether the Plaintiff-Buyer was required to give notice of the amount deposited also need not be answered, although we believe that had the Plaintiff-Buyer, irrespective of any obligation under law, given notice of the deposit made to the Defendant-Seller it would have helped the case of the Plaintiff- Buyer.

15. Thus, in the present case, the Plaintiff-Buyer has clearly defaulted on time of depositing as well as the mode of payment. The decree was self- operative and the suit stood dismissed for non-compliance of the decree. Further, the Plaintiff-Buyer also failed to make out a case for condonation of delay. In view of these findings, we are of the opinion that the questions formulated by the High Court in the order of remand are not required to be answered by the Trial Court. Consequently, the appeal filed by the Plaintiff-Buyer is dismissed and the appeal filed by the Defendant- Seller is allowed. There shall be no order as to costs.”

Respondent-plaintiff has not given any explanation of not moving the application (Annexure P-6) after dismissal of the appeal in

January, 2014 as the appeal was filed before the expiry of one month of passing of the judgment and decree dated 24.4.2012. In case, the application had been submitted within another one month thereof, the period spent in the appeal was liable to be condoned. Once the Statute itself provides the procedure for rendering the decree unexecutable, in my view, the provisions of Section 148 of CPC would not come to the aid and help of any decree holder for seeking extension of time. A party can take the aid of the provisions when the Statute itself does not specify any time. All these factors, in my view, had not been considered in correct perspective by the trial Court while rejecting the objections of the petitioner. Thus, the judgment and decree dated 24.4.2012 granting the specific performance of the agreement to sell had become unexecutable.

Mr.Goel submitted that his client is willing to return the earnest money of ₹70,000/- along with interest to the respondent-plaintiff. The aforementioned prayer of Mr.Goel is fair and proper.

In view of what has been noticed above, the petitioner-defendant is directed to refund the amount of ₹70,000/- along with interest @ 9% per annum. Impugned order is set-aside. Revision petition stands allowed.

March 23rd, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No