

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.2883 of 2016 (O&M)

Date of decision:19.11.2018

Kapura

... Petitioner

Vs.

Phul Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Kumar Kansal, Advocate
for the petitioner.

Mr. S.N.Pillania, Advocate
for the respondent.

AMIT RAWAL J.

The present revision petition is directed at the instance of petitioner/defendant-judgment debtor against the impugned order dated 02.03.2016 (Annexure P-8), whereby, the trial Court in execution application granted the permission to deposit the remaining sale consideration of Rs.14,00,000/- and a sum of Rs.90,000/- towards the stamp charges.

It is contended that vide judgment and decree dated 12.03.2014 rendered in civil suit no.36 of 2012, suit of the respondent-plaintiff for specific performance of the agreement to sell dated 03.01.2012 was decreed and a period of three months from the date of decree, to deposit the balance sale consideration was granted. Three months expired on 11.06.2014 but no

such amount was deposited. On 31.05.2014, decree-holder filed an application (Annexure P-3) for execution of the decree which was objected to, vide Annexure P-4. However, on 15.05.2014, the respondent filed an application for granting permission to deposit the remaining sale consideration on the premise that he was ready to deposit the amount of Rs.90,000/- but the said application was opposed, vide Annexure P-7 but the trial Court, as noticed above, vide impugned order allowed the application.

In support of the aforementioned contention, relied upon the provisions of Section 28 of Specific Relief Act, 1963 which entail rescission of contract on account of non-deposit of the amount. The provisions of Section 148 CPC, in such circumstances would not apply. There was no interim stay or any other impediment for not complying with the decree.

Per contra, Mr. S.N.Pillania, learned counsel for the respondent supported the order under challenged by urging the provisions of Section 28 of Specific Relief Act, would not apply. Time can be enlarged subject to furnishing of satisfactory reply and explanation.

I have heard the learned counsel for the parties and appraised the paper book. It would be apt to reproduce the operative part of the decree which reads thus:-

“It is ordered that suit of the plaintiff succeeds and decreed with costs and a decree for specific performance of contract is passed in favour of plaintiff directing the defendant to execute and register the sale deed in favour of the plaintiff as per the

terms and conditions of the agreement dated 03.01.2012 pertaining to the suit land within three months from the date of decree after receiving balance sale consideration of Rs.14,00,000/- (Rs.14 lacs.) from the plaintiff alongwith a consequential relief of permanent injunction in favour of plaintiff and against the defendant restraining the defendant from alienating the suit property to anyone else, failing which, the plaintiff shall be entitled to get the sale deed executed through the process of the Court.”

Concededly, the application for deposit of amount is dated 15.05.2015. The period of three years had elapsed. The contents of the application read as under :-

- “1. That above noted execution is pending before this Hon'ble Court and is now fixed for today.
2. That a sum of Rs.14,00,000/- towards remaining sale consideration are payable to JD by the DH. The applicant/DH is ready to deposit the aforesaid remaining sale consideration in the Court or with the Zazir of the Court for payment to JD for execution and registration of sale deed in question.
3. That the total sale consideration in the case is Rs.16,00,000/-. A total sum of Rs.90,000/- towards stamp charges are payable for instrument of sale deed. The applicants/DH is also ready to deposit a sum of Rs.90,000/- for purchase of stamp papers for instrument of sale deed.

4. That the applicant/DH is present today before this Hon'ble Court and ready to deposit the aforesaid amount today. It is, therefore, prayed that necessary permission to deposit the remaining sale consideration of Rs.14,00,000/- and Rs.90,000/- towards stamp charges may kindly be granted to applicants/DH and Nazir of the Court be directed to do all the formalities for the same, in the interest of justice.”

No impediment has been disclosed for non-deposit of sale consideration. In such circumstances, the decree has become executable and the Court below could not have granted the extension for depositing the balance sale consideration. The impugned order is not sustainable and thus, is hereby set aside.

The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

November 19, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No