

In the High Court of Punjab and Haryana at Chandigarh

CR No.3372 of 2015 (O&M)

Reserved on 11.5.2018

Date of Decision:- 1.6.2018

Sohan Lal (deceased) Through LRs Renu Verma and others

.....Appellants

Versus

Surinder Pal Soni and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. Yowan Sharma, Advocate, for the appellants.

None for respondent No.1.

Mr. M.K.Chouhan, Advocate, for respondents No.3 to 5.

GURVINDER SINGH GILL, J.

1. The petitioner (defendant before the lower Court) assails order dated 23.2.2015 passed by learned Civil Judge (Sr. Division), Panchkula whereby his objections filed in execution filed by respondent-plaintiff have been dismissed.
2. A few facts necessary to notice for disposal of this revision petition are respondent-plaintiff filed a civil suit in the Court of Civil Judge (Sr. Division), Panchkula seeking specific performance of agreement dated 8.12.2003 executed by petitioner-defendant Sohan Lal in his favour for sale of land measuring 12 kanals 9 marlas situated in village Billa, Tehsil and

District Panchkula averring therein that the petitioner-defendant had agreed to sell the said property for consideration of ₹8,35,000/- after accepting earnest amount of ₹2,00,000/- and that the last date for execution of the sale deed was fixed as 10th March, 2004. It is further the case of the plaintiff-respondent that another amount of ₹50,000/- was paid to the petitioner on 5.3.2004 and subsequently the time for execution of sale-deed was extended upto 8.5.2004 after another amount of ₹3,35,000/- was paid by the plaintiff to the defendant on 9.3.2004. Thus, an amount of ₹5,85,000/- stood paid to the defendant as on 9.3.2004.

3. It may here also be mentioned that defendant No.1 subsequently sold some part of the suit property in favour of defendant No.6 regarding which a declaration was also sought in the suit to the effect that the said sale deed is not binding on the rights of the plaintiff.
4. The said suit was contested by the defendant but was decreed in favour of the plaintiff-respondent vide judgment and decree dated 20.3.2012. The suit was partly decreed to the extent of the remaining land i.e. the land other than the one which already stood sold vide sale deed dated 24.4.2006. The operative portion of the judgment reads as follows:

“32. Resultantly, a decree for possession by way of specific performance of the agreement to sell Ex.P1 dated 8.12.2003 is passed in favour of the plaintiff in respect of the remaining suit land, i.e., except the land of 2 kanals mentioned in sale deed Ex.D3, on making balance sale consideration amount to the L.Rs of defendant No.1, after deducting the consideration of aforesaid 2 kanals land. The L.Rs of the defendant No.1 are directed to execute the sale deed in respect of the remaining suit land within a period of two months

from today on receipt of remaining balance sale consideration after deduction of consideration of 2 kanals land and in case of failure of the L.Rs of defendant No.1 to do so, the plaintiff is entitled to get the sale deed executed and registered qua the aforesaid land through the Court agency.”

5. The aforesaid judgment and decree dated 20.3.2012 was challenged by the defendant by way of filing an appeal in the Court of Additional District Judge, Panchkula and also by the plaintiff who was aggrieved on account of his suit not having been decreed in toto. Both the said appeals were ultimately dismissed by the learned Additional District Judge, Panchkula vide judgment and decree dated 17.1.2015.
6. The plaintiff had filed an execution application (Annexure P-9) in the Court of learned Civil Judge (Sr. Division), Panchkula on 23.7.2012. An amount of ₹1,15,864/- was deposited in the Treasury through E-Challan on 19.2.2015 as would be evident from a copy of the challan annexed as Annexure R-10. The petitioner submitted objections (Annexure P-2) before the executing Court on 19.5.2014 wherein it was *inter alia* stated that the judgment debtor has already filed an appeal for setting aside judgment dated 20.3.2012. During the course of hearing of the objections it was argued that since the decree holder has not deposited the balance sale consideration within a period of two months from the date of decree that is from 20.3.2012 as was specifically stipulated in the said decree, therefore, the decree had become unexecutable as per provisions of Section 28 of the Specific Relief Act, 1963. The learned executing Court while considering the submissions raised before it held that since no time frame had been prescribed by the Court for deposit of the sale consideration to get the decree executed, therefore, provision of Section 28 of

the Specific Relief Act would not be attracted. It was further observed therein that since appeals filed by both the parties were also pending, therefore, the decree holder was not supposed to deposit the sale consideration. Consequently, the objections were rejected vide impugned order dated 23.2.2015 which has been challenged by the judgment debtor by way of filing the present revision petition.

7. The learned counsel for the petitioner while assailing the impugned order has submitted that the learned lower Court fell in error in holding that no time frame has been fixed by the learned lower Court for deposit of the balance sale consideration. It has further been submitted that learned lower Court also erred in observing that decree holder was not expected to deposit the balance sale consideration on account of pendency of the appeals as the decree had not attained finality.
8. As against the aforesaid submissions, the learned counsel for the respondent-plaintiff has submitted that since the decree in question, the execution of which was being sought by the plaintiff, had not attained finality and appeals were pending, therefore, the plaintiff had not deposited the balance sale consideration and that the bonafides or readiness and willingness of the plaintiff cannot be doubted on this score, as a substantial amount, out of the total sale consideration already stood paid, inasmuch as ₹5,85,000/- out of the total sale consideration of ₹8,35,000/-, as originally fixed already stood paid in the year 2004 and in fact the balance amount consequent upon partial decretal of the suit was merely ₹1,15,864/- which the plaintiff deposited on 19.2.2015 i.e. immediately after dismissal of the appeals on 17.1.2015 by the Court of Additional District Judge, Panchkula.
9. I have considered rival submissions addressed before this Court and have also

perused record of the case. A perusal of the operative portion of the decree under execution shows that though the lower Court has not specifically fixed any time for deposit of the amount of balance sale consideration but it has been provided in unambiguous terms that the sale deed is to be executed within two months from the date of judgment upon deposit of balance sale consideration. In these circumstances, it is implicit that the balance sale consideration is required to be deposited within the said time frame of two months. It would only be pursuant to deposit of the said balance sale consideration that the defendant could be asked to execute the sale deed. It would be beneficial to refer to a judgment of Hon'ble Supreme Court rendered in Chanda Vs. Rattni and another (2007) 14 SCC 26, wherein also, in a case of execution of decree of specific performance, similar directions had been issued and it was observed that the time frame in such like cases is implicit. The relevant extracts noticing the facts, contention and decision taken therein are reproduced below for the sake of ready reference:

“2. The suit was decreed ex parte on 1.5.1992 and it is common case of the parties that the decree has become final between them. Para 6 of the judgment of the trial Court decreeing the suit reads as under:-

"For the reasons discussed above, the suit succeeds. A decree for possession of the suit land by way of specific performance is hereby passed in favour of the plaintiff and against the defendants with costs. Defendants are directed to execute the proposed sale deed on payment of the balance sale price of Rs.1,39,000/- and get it registered within a period of two months from the date of this decree failing which the

plaintiff shall be at liberty to get the sale deed executed and registered under Order 21 Rule 12 Code. Decree be drawn up accordingly and file be consigned to the record room."

3. The plaintiff did not deposit the balance sale price within two months from the date of the decree, and the defendants did not execute the sale deed. Plaintiff then moved an application on 10.10.1992 for the execution of the decree pleading therein that since the judgment debtors-respondents had failed to execute the sale deed the same was to be executed through court and that he (plaintiff) be allowed to deposit the balance sale price in court..... The execution application filed by the plaintiff-appellant was consequently dismissed. The said order was assailed in the revision petition filed before the High Court.
4. Before the High Court the stand of the appellant was that the order of the Trial Court was not sustainable as the court while decreeing the suit for specific performance had directed the defendants-respondents to execute the sale deed within two months from the date of decree and since they failed to do so the plaintiff was entitled to have the sale deed executed through the court. According to him, there was no specific direction given to the plaintiff to deposit the balance share consideration within stipulated period and, therefore, the Trial Court was not justified in rescinding the contract on account of non-deposit of the balance sale price by the plaintiff. It was also contended that several imposters were set up which disentitled the applicant from any relief. The High Court found that para 6 of the judgment of the Trial Court as quoted above, clearly indicated that the defendants had been directed to execute the sale deed

within two months from the date of the decree on payment of the balance sale price of Rs. 1,30,000/-. The same was, therefore, a condition precedent for execution of the sale deed. It was implicit in the direction that the plaintiff was required to deposit the balance consideration within a period in the first instance and it was only then defendants were required to execute the sale deed. Since the plaintiff did not deposit the balance amount, the order of court below was perfectly in order. Revision petition was accordingly dismissed.

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10. The only stand taken was that there was no direction to pay within a particular time. This plea is clearly unsustainable and untenable and has been rightly rejected.”

10. In view of the ratio of the above referred judgment the operative portion of the judgment in question cannot be interpreted in any other manner except that the time frame for deposit of the balance sale consideration was implicit when the trial Court ordered that the sale deed is to be executed within two months from the date of judgment, upon deposit of the balance sale consideration.

11. The next question before this Court in the present case is as to what would be the effect of pendency of appeal against the decree sought to be executed. In the present case the decree was passed on 20.3.2012 granting two months’

time for execution of the same whereas the balance sale consideration was deposited after about three years from decree dated 20.3.2012. Though, the learned counsel for the respondent tried to justify the delay in deposit of the balance sale consideration by submitting that the decree sought to be executed had not attained finality and appeals were pending which were dismissed on 17.1.2015 but the said contention would not carry any weight as the operation of decree dated 20.3.2012 had not ever been stayed by the Appellate Court or any other Court. Merely filing of an appeal against the decree in question would not have the effect of stay of the impugned decree. Order 41 Rule 5 which deals with stay of proceedings and of execution reads as follows:

“5. Stay by Appellate Court. – (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.”

12. A perusal of the aforesaid provision clearly shows that unless and until the decree in question is specifically stayed, the mere factum of filing of appeal would not have an effect of stay of execution proceedings.
13. It is apposite to refer to the provisions of Section 28 of the Specific Relief Act which read as under:

“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.”

14. A perusal of Section 28 of the Specific Relief Act shows that in case of specific performance of a contract for sale of immovable property, the purchaser does not deposit the sale consideration within the prescribed time pursuant to a decree, the vendor may apply to the Court for having the contract rescinded unless the Court extends the time.
15. Section 148 of CPC which provides for enlargement of time reads as follows:

“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.”

16. A perusal of the provision of Section 148 CPC shows that the Court is competent to enlarge time prescribed for doing an act from time to time, subject to the condition that the same cannot exceed 30 days.
17. It is noteworthy that in the present case no such application for enlargement of time was ever filed by the plaintiff. In view of the discussion made above, wherein I find that neither the operation of the decree sought to be executed had ever been stayed nor any application for enlargement of time for deposit

of the balance sale consideration had been filed and the balance sale consideration was not deposited within the time frame of two months, as stipulated in the decree in question and was rather deposited after about three years, the plaintiff cannot be permitted to seek execution of the decree in question on account of lapse of time stipulated in the decree for its execution. Consequently, the impugned order dated 23.2.2015 cannot sustain.

18. The revision petition merits acceptance and is hereby accepted. The impugned order dated 23.2.2015 is set aside and while accepting the objections made on behalf of the judgment debtor, the execution application is dismissed. The amount received by the petitioner-defendant beyond the earnest money of ₹2,00,000/- shall be refunded back to the plaintiff.

June 1, 2018
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No