

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-3088-2017

Date of decision : 08.10.2018

Gurmail Singh

... Petitioner

Versus

Jaswinder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rahul Bhargava, Advocate with
Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Sandeep Jain, Advocate
for the respondent.

AMOL RATTAN SINGH, J.(ORAL)

By this petition, the petitioner challenges the order of the execution Court dated April 15, 2017, by which the objections filed by the petitioner – judgment debtor were dismissed, further observing that as per the report of the Reader of the Court, the draft sale deed was in consonance with the decree issued by the trial Court on April 30, 2016 (copy Annexure P-1).

Learned counsel for the petitioner points to the aforesaid decree held by the respondent herein, i.e. the plaintiff, showing to the following effect:-

“Plaintiff is directed to deposit the balance sale consideration within one month from today in the Court, failing which the suit of the plaintiff shall be deemed to have been dismissed automatically. Defendant is directed to execute and get the sale deed registered in favour of the plaintiff within two months and for the

purpose of calculating two months time, it is ordered that on receipt of certified copies of the judgment and the decree, the plaintiff shall send copies of the same by way of registered post acknowledgment due to the defendant calling upon him to execute and get the sale deed registered in favour of the plaintiff within two months.”

(Emphasis applied by this Court)

He therefore submits that the balance consideration having actually been deposited by the respondent only on 25.08.2011 as per the “receipt *challan*” (copy Annexure P-5), one month had already expired on 24.08.2011, the decree being dated 25.07.2011. Hence the money having been deposited one day after the stipulated period, the decree becomes inexecutable.

He relies upon a judgment of the Supreme Court in ***Prem Jeevan vs. K.S. Venkata Raman and another, 2017(1) Scale 666*** in support of his contention.

He also refers to the judgment in ***P.R. Yelumalai vs. N.M. Ravi, 2015(2) RCR (Civil) 585***, specifically pointing to para 12 of the said judgment, which reads as follows:-

“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.”

Per contra, Mr. Sandeep Jain, learned counsel for the respondent, submits that even the receipt *challan* is actually shown to be dated 24.08.2011, i.e. within one month of 25.07.2011, though the deposit was actually made on 25.08.2011, because it was accepted only on that date by the Departmental Officer' of the DTO.

However, learned counsel for the petitioner specifically points to the reply filed by the decree holder, to the objections raised by the petitioner (a copy of the reply being Annexure P-7), wherein in paragraph 2 it is stated that “balance sale consideration was deposited on 25/08/2011 i.e. well within the period specified by the Hon'ble Court”.

Thus very obviously though the *challan* form was filled in on 24.08.2011 but the actual deposit was made on 25.08.2011.

Even keeping that in view, though technically of course learned counsel for the petitioner is correct that the period of one month would expire on the midnight of 24.08.2011, in my opinion that cannot be stretched to state that where the deposit has actually been made on 25.08.2011, with the decree stating a period of one month, that it was not made within time.

In fact while dismissing the objections vide the order dated

15.04.2017 (copy Annexure P-8), it has been stated by the execution Court that the *challan* form was filled on 24.08.2011, with the balance sale consideration deposited on 25.08.2011.

That being so, I find no reason to interfere in the impugned order, for the reasons already stated, that the *challan* having been filled in on 24.08.2011, obviously the intention was to pay the consideration within one month, with the money also actually having been deposited on 25.08.2011. Consequently, this petition is dismissed.

(AMOL RATTAN SINGH)
JUDGE

October 08, 2018.

D.K.

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No