IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No.3260 of 2018 (O&M)
Date of Decision: May 16, 2018

Milwant Singh & another

...Petitioners

Versus

Surinder Kaur & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Vaibhav Sehgal, Advocate,
for the petitioners.

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AMIT RAWAL, J.

The present revision is directed against the impugned order dated 26.3.2018 (Annexure P-16), whereby the trial Court had accepted the draft sale deed by declining permission to the petitioner-judgment debtors for filing the objections to the draft sale deed.

Mr.Vaibhav Sehgal, learned counsel appearing on behalf of the petitioner-judgment debtors submitted that the respondent-plaintiffs instituted Civil Suit No.70 dated 18.2.2009 seeking specific performance of the agreement to sell dated 23.6.2008 in respect of the suit property measuring 505 sq.yards, bearing Municipal Corporation No.B-XX111-2817/2-B/1, situated in the revenue estate of Village Sherpur Kalan, Tehsil and District Ludhiana, now popularly known as "Transport Nagar, Ludhiana". The aforementioned suit was decreed vide judgment and decree dated 4.5.2011 (Ex.P1). Appeal laid before the Lower Appellate Court was dismissed vide judgment and decree dated 21.1.2013.

He also submitted that the petitioners moved an application under Section 28 of the Specific Relief Act, 1963 (for short "1963 Act"), for, the judgment and decree had become unexecutable and the same was noticed by the trial Court vide order dated 27.3.2018 (Annexure P-10 colly) by issuing notice to the decree-holders for 6.4.2018. On 6.4.2018, respondents appeared in person and sought adjournment for filing reply and power of attorney and the matter was adjourned to 30.4.2018. On 30.4.2018, the matter was adjourned to 31.5.2018, on which date copy of the sale deed was not produced by the decree holder and he was directed to file copy of the sale deed to be executed on 17.4.2018 and the fees of the Local Commissioner for execution of the sale deed was assessed at ₹1,000/- and the warrants of possession were ordered to be issued for 10.5.2018. However, on 8.5.2018, an application was filed by the petitioners, but they withdrew the same. On 10.5.2018, warrants of possession came back unexecuted with the report that there was apprehension of violation of law and order as judgment debtors were not given possession of the suit property. Statement of the decree holder was recorded and the matter was adjourned to 15.5.2018 for further proceedings.

On 15.3.2018, during the pendency of the execution application, report of the Reader was received, who found that the draft sale deed was not correct and decree-holder was directed to file the correct draft on 17.3.2018. On 17.3.2018, amended draft sale deed was filed and the report of the Reader was sought for. The Reader reported that the sale deed was not correct as per the decree sheet and the matter was adjourned to 23.3.2018 calling upon the decree holder to file fresh draft sale deed. On 23.3.2018, amended draft sale deed was filed and the report of the Reader was sought, who reported the same to be correct one. On 28.3.2018, the Court passed the following order:-

> "*Report of Local Commissioner Birbal seen in which he stated that sale deed was not got executed because Decree-holder was not present for executing the same. So, Decree-holder is hereby again directed to remain present in the office of Sub-Registrar after completion of all the formalities for the execution of sale deed in his favour. Local Commissioner Birbal is also directed to remain present in office of Sub-Registrar, so, that sale deed can be got executed on or before 3.4.2018.*
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> *The short adjournment is given as, as per the order of the Hon'ble High Court dated 19.1.2018 "the present execution is to be decided upto 19.4.2018".*

On 26.3.2018, the impugned order has been passed.

It was contended that the draft sale deed is not in consonance with the site plan annexed with the plaint (Ex.P-1) vis-a-vis the agreement to sell and plaint, for, the respondent-plaintiffs had given the dimensions of the property which are not in consonance with the averments in the plaint and agreement to sell. The trial Court committed illegality and perversity in not complying with the provisions of Order 21 Rule 34 CPC by giving opportunity to the decree holder to file the objections. Had the opportunity been given, the petitioners would have availed the remedy as per the provisions of Order 43 Rule 1(i) CPC, for, adjudication of the objections under Order 21 Rule 34 CPC is appealable. In support of his contention, relied upon the judgment rendered by the Hon'ble Supreme Court in **Pratibha Singh & Anr. Versus Shanti Devi Prasad & Anr., 2003 AIR (SC) 643** that where there is a dispute with regard to the identification of the property, decree holder is required to give draft of the document and submit for approval of the Executing Court with a notice to the judgment debtor, who can raise objection to it, if any, for determination by the Court and if no draft is submitted or put to judgment debtor, there cannot be any determination by the Executing Court, it empowers the Court to ascertain the fact as a question relating to execution, i.e., discharge or satisfaction of the decree as per provisions of Section 47 CPC. Reliance was laid to the ratio decidendi culled out in **P.Venkanna Chetti and another Versus B.Apparao Naidu, AIR 1959 Andhra Pradesh 666.** Para 3 of the same reads thus:-

> *"3. It is seen from Order XXI, Rule 34 (3) that where the judgment-debtor objects to the draft and his objections are reduced to writing, the Court, has to make an order approving or altering the draft, as it thinks fit. This implies the consideration of the objections filed by the judgment-debtor. An order which does not take into account the objections raised on behalf of the judgment-debtor cannot be deemed to be a legal or valid one. The provisions requiring the Court to make an order approving or altering the draft --which by necessary implication involves the consideration of the objections -- being a mandatory one, non-compliance with the provision vitiates the order.*
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> *Hence the order should be set aside and the trial Court directed to consider the objections. As it was the conduct of the appellant that was responsible for the order of the Court, this is a fit case in which he should be directed to bear the costs of this application in the trial Court. In this Court the parties will bear their own costs."*

Reference was also made to **Sukhdev Soni (died) per L.Rs. Versus Ramesh Chandra Sarda, 2007 (5) RCR (Civil) 256.** By summing up his arguments, submitted that draft sale deed Annexure P-13 is not in consonance with the revenue record, i.e., jamabandi Annexure P-17 as the description of khata has been given as 1424 and 1480 and not of other khewat No.1425 and 1481. As per the site plan, on the southern side shown to be property of the neighbour, whereas in the agreement to sell, on the southern side road of 115 ft. has been shown, therefore, the trial Court committed illegality and perversity in not affording an opportunity to the petitioner-judgment debtors to file the objections to the draft sale deed. The aforementioned order would also take away valuable right vis-a-vis adjudication of the application submitted under the provisions of Section 28 of the Act.

I have heard the learned counsel for the petitioners, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioners and the revision petition is liable to be dismissed on the following points:-

1) Petitioner-judgment debtors have adopted all possible delaying tactics in adjudication of the decree, for, the identity and the description of the property is not in dispute;

2) The revision petition was listed yesterday for preliminary hearing and was adjourned for today, whereby the counsel for the petitioners was directed to show the copy of the plaint and written statement. The description of the property given in Para 1 of the plaint has not been denied in Para 1 of the written statement. For the sake of brevity, Para 1 of the plaint and that of the written statement are extracted herein below:-

Para 1 of the plaint

That the defendants being the owner in possession of the property measuring 505 sq.yds.bearing Municipal Corporation

No.B.XX111-2817/2-B/1 as shown red in the site plan attached and bounded as under:-

East: *Road*

West: *Property of Neighbour*

North: *Property of Zora Singh*

South: *Road*

comprised in Khasra No.11//3/2, Khata No.1411/1471 and Khasra No.17//4, Khata No.1412/1472 as per jamabandi for the year 2003/04, situated in the revenue estate of village Sherpur Kalan, Tehsil and District Ludhiana now known as Transport Nagar, Ludhiana consisting of show room and vacant place along with electricity connection of 13 KV already installed in the said property and right to passage etc.vide two different ale deeds bearing Wasika No.25621 dated 11.2.2000 and Wasika No.22192 dated 21.12.1999 registered in the office of Sub Registrar, Ludhiana, entered into an agreement to sell dated 23.6.2008 with the plaintiffs for total sale consideration of Rs.1,00,00,000/- and the defendants have received a sum of Rs.40,00,000/- in cash as earnest money from plaintiffs in the presence of marginal witnesses and agreed to receive the balance sale consideration amount at the time of registration of the sale deed and the possession of the property in question will be transferred at the time of registration of the sale deed. The time for execution and registration of sale deed was fixed as 25.9.2008. The defendants agreed to bring documents i.e., original jamabandi and T.S.I.etc., at the time of execution and registration of sale deed in favour of the plaintiffs. It is pertinent to mention here that there is no property in Khasra No.11//3/2 in Khasra No.1411/1471 and infact the property is comprised in Khasra No.17//3/2 in Khata No.1411/1471."

Para 1 of the written statement

"Para 1 of the plaint is admitted to the extent that the defendants are owners in possession of the property measuring 505 sq.yds.at village Sherpur Kalan. The boundaries of the

property in dispute have not been depicted in the plaint and hence denied. It is correct that in the aforesaid property a showroom is lying constructed and rest of the part is lying vacant. It is correct that the aforesaid property was purchased by the defendants through two registered sale deeds. It is admitted that on 23.6.2008 an agreement to sell was executed for a total sale consideration of Rs.1 crore. It is admitted that the defendants have received Rs.40 lakhs in cash as earnest money, but it is incorrect that the same amount has been received in presence of marginal witnesses. The earnest money paid by the plaintiffs already stands forfeited as the plaintiffs have failed to perform their part of the contract. It is incorrect that the balance amount is to be paid at the time of execution and registration of the sale deed and that the possession shall be delivered at the time of sale deed. It is admitted hat the sale deed is to be executed on 25.9.2008. It is incorrect that the defendant is to bring documents as referred in this para."

3) On going through the contents of Para 1 of the written statement, it is evident that the petitioners had clarified the existence of construction in the plot and admitted the agreement to sell, much less ₹40,00,000/- in cash as earnest money against the total sale consideration of ₹1,00,00,000/-;

4) In view of such position, there was no occasion for the trial Court to grant time to file objections vis-a-vis the draft sale deed as the same is in consonance with the suit property described in the plaint;

5) An attempt has been made to confuse this Court by relying upon the agreement to sell Annexure P-12, which had already been upheld by the judgment and decree as noticed above, for, the petitioner-defendants had acquired the title of

plot by two sale deeds, i.e., 205 sq.yards and 300 sq.yards and obviously the description of 205 sq.yards would be different than that of 300 sq.yards;

6) By taking the advantage of the same, the petitioners had agreed to sell the entire 505 sq.yards to the respondent-plaintiffs and admitted the agreement to sell. It is too late in a day to put the clock back by permitting the petitioner-judgment debtors to raise the objection vis-a-vis the draft sale deed, for, it appears to be an attempt of delaying tactics for not bringing the execution to its logical end;

7) The report of the Bailiff, as noticed by the trial Court in the zimni orders, is the testimony of aforementioned malafide intention of the judgment debtors;

8) There is no dispute to the ratio decidendi culled out in the judgments referred above, for, in the first judgment rendered by the Hon'ble Supreme Court, the Courts clarified that once there was no dispute with regard to the description vis-a-vis the property, the Court can proceed ahead. The expression, "if any", used in sub-rule (2) of Rule 34 of Order 21 CPC does not envisage that the Executing Court is mandatorily required to give opportunity to the judgment debtors to file objections. For the sake of brevity, Order 21 Rule 34 CPC is extracted herein below:-

"34. Decree for execution of document, or endorsement of negotiable instrument.- *(1) Where a decree is for the execution of a document or for the endorsement of a negotiable* *instrument and the judgment debtor neglects or refuses to obey the decree, the decree holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the court.*

(2) The court shall thereupon cause the draft to be served on the judgment debtor together with a notice requiring his objections (if any) to be made within such time as the court fixes in this behalf.

(3) Where the judgment debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree holder shall deliver to the court a copy of the draft with such alterations (if any) as the court may have directed upon the proper stamp paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:—

"C.D., Judge of the court of

(or as the case may be), for A.B., in suit by E,F. against A.B., and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6)(a) Where the registration of the document is required under any law for the time being in force, the court, or such officer of the court as may be authorised in this behalf by the court, shall cause the document to be registered in accordance with such law.

(b) Where the registration of the document is not so required, but the decree holder desires it to be registered, the court may make such order as it thinks fit.

(c) Where the court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration."

8) It is a common practice amongst the judgment debtors to adopt all possible tactics to thwart the execution of the decree. The judgment debtors create all possible impediments introducing third party also. Be that as it may, in the instant case, the respondents have been constrained to approach this Court vide CR No.360 of 2018 for appropriate directions to the Executing Court for decision of the execution application as it was pending for more than four years. This Court vide order dated 19.1.2018 disposed of the same in the following manner:-

"Decree-holders are in the revision petition praying for issuance of direction to the learned Executing Court to finally decide the execution petition, which is pending for the last more than 4 years.

As per the case of the petitioners, a decree for possession by way of specific performance of agreement to sell was passed in their favour. Appeal and second appeal filed by the judgment-debtors was dismissed. Decree-holders filed execution in the year 2013 and deposited balance sale consideration as directed in the decree. However, the execution remained pending for more than 4 years. Neither the sale deed has been executed nor the possession has been delivered.

Learned counsel for the petitioners has drawn attention of the Court to the various zimini orders passed by the Court from 19.09.2014 onwards.

Every Court is entitled to regulate its daily cause list. However, in certain extra ordinary situations, this Court is compelled to request the learned Executing Court to finally adjudicate the dispute within the time frame. Here is a case, which falls in that category. Once the decree for possession by way of *specific performance has become final as asserted by the petitioners and the execution is pending for the last more than 4 years, this Court is of the considered opinion that the learned Executing Court must make sincere endeavour to expeditiously decide the execution petition preferably within a period of 2 months from the date of receipt of certified copy of the order. Hence, the revision petition is disposed of."*

9) Non-disclosure of the order dated 19.1.2018 and non-attaching of the copy of plaint and written statement, in the considered opinion of this Court, is an attempt to mislead the court by relying upon the judgments and the provisions of Civil Procedure Code;

As an upshot of the aforementioned observations, I am of the view that the impugned order cannot be said to be suffering from illegality or perversity or passed without jurisdiction. The revision petition is liable to be dismissed with costs, which is quantified as 25,000/-, to be paid to the respondent-plaintiffs. In case the costs is not paid within one month from today or affidavit in this regard is not filed, Registry is directed to list the matter for compliance of the order.

Revision petition stands dismissed.

May 16, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**