

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3347 of 2018(O&M)
Date of Order: 23rd May, 2018

R.P.Malhotra (since deceased) through LR.

...Petitioners

Versus

Subhash Chander Sabharwal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Hemant Bassi, Advocate,
for the petitioner.

ANIL KSHETARPAL, J.

Judgment Debtor-petitioner-defendant are in the revision petition against orders passed by the learned Executing Court dated 03.02.2018 and 01.03.2018 affirmed in appeal by the learned Additional District Judge, Chandigarh, vide order dated 16.04.2018.

A decree for specific performance of the agreement to sell was passed against the petitioner and in favour of the respondent on 30.03.2013. Decree holder was required to deposit the amount of balance sale consideration within three months. Judgment Debtor-petitioner-defendant filed an appeal against the judgment and decree passed by the trial court, which was dismissed on 27.04.2015. The execution petition was filed on 28.05.2015 within 30 days from the date of judgment passed by the learned first appellate court. Along with the execution petition, application for permission to deposit the amount was also filed, supported by an affidavit.

In the meantime, Judgment Debtor-petitioner-defendant in the suit, filed a regular second appeal in this court.

Regular second appeal came to be dismissed vide order dated 06.09.2017, however, the decree passed by the trial court was modified and decree holder was directed to deposit the balance sale consideration payable to the petitioner along with interest. A copy of the judgment passed by this Court was tendered in the Executing Court on 11.10.2017 and on the same day, decree holder also tendered the amount to be paid as per the modified decree passed by this court through 4 cheques drawn on the bank. The learned executing court has permitted deposit of the aforesaid amount. The appeal filed by the petitioner has been dismissed.

Learned counsel for the petitioner has submitted that since the decree passed by the trial court has not been complied with within the time laid down in the judgment of the trial court, hence, execution petition ought to have been dismissed. He submitted that no doubt the petitioner-defendant had filed first appeal, however, no interim order was granted, hence, he submitted that execution petition filed is not maintainable. He has further submitted that copy of the amended decree passed by this court has not been filed. The execution petition is not of the amended decree. He has further submitted that the tender of the amount through cheque is not a proper tender.

This court has considered the submissions. However, do not find any substance therein.

It is not in dispute that decree passed by the trial court stood merged with the decree passed by this Court while deciding regular second appeal, so effective decree passed in favour of the decree holder is dated

06.09.2017 and the decree holder deposited the amount before the Executing Court on 11.10.2017. Therefore, there is no delay in deposit of the amount as directed under the decree.

Next argument of learned counsel is that the amended decree has not been filed.

Decree is only a summary of what is ultimately decided by the court. It is not in dispute that the judgment passed by this court has been filed before the Executing Court. In such circumstances, the decree holder cannot be deprived of benefit of the decree passed in his favour on technical ground.

Next argument of learned counsel is that the payment has been tendered through cheques which cannot be considered as valid tender.

The argument is just to be noticed and rejected as the amount is to be paid by the decree holder. If the decree holder has tendered the cheques and the same are dishonoured, there would not be any valid payment of the amount. However, this is not the case of the petitioner. It is also admitted by learned counsel for the petitioner that he refused to accept the payment. In such circumstances the amount deposited with the Executing Court through cheques is valid.

Last argument of learned counsel is that fresh execution petition has not been filed after the decree was modified by this court.

The execution of the decree has already been applied for. During the pendency of the execution petition, the judgment passed by this court which results in small modification of the judgment of the trial court has been filed. In such circumstances filing of the fresh petition was not required.

In view of the aforesaid, there is no ground to interfere.

The revision petition is dismissed.

23rd May, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No