

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3528 of 2017 (O/M)
Date of decision : 1.3.2018

Rajiv Tangri and another Petitioners
Versus

Brig Pooran Chand Uppal and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Atul Lakhanpal, Senior Advocate, with
Mr. Arjun Lakhanpal, Advocate, for petitioners and
Mr. H.P.S. Rahi, Legal Aid Counsel, for petitioners.

Mr. Hemant Bassi and Mr. Ashwani Jain, Advocates,
for respondents No. 1 and 2.

Mr. Sorabh Sharma and Mr. Rajat Nakra, Advocates,
for respondent No. 3-Citi Bank.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH J.

Impugned in present revision is order dated 28.4.2017 (Annexure-P-7), passed by the learned Civil Judge (Senior Division), Gurugram, vide which objections filed by JDs No. 1 and 2 to the execution were dismissed. Also impugned is the order dated 1.5.2017 (Annexure-P-8), passed by the learned Civil Judge (Senior Division), Gurugram, vide which proposed sale deed alongwith demand draft of balance sale consideration amounting to Rs. 31,50,000/- was allowed to be deposited in the Court and the case was adjourned to 3.5.2017 for filing the objections to the draft of the proposed sale deed.

I have heard the learned counsels for the parties and have also carefully gone through the file.

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The brief background of the case is that plaintiffs-decreeholders filed a suit for possession by way of specific performance of sale agreement dated 24.9.2009, in which it was inter alia agreed that defendants No. 1 and 2-petitioners were to get the property redeemed and get the title deeds of ownership released from defendant No. 3 bank, but they have not done so, nor they have got the original papers released from defendant No. 3 bank. They have failed to execute the sale deed within given time. The suit was decreed by the learned Civil Judge (Junior Division), Gurugram, vide judgment and decree dated 9.10.2014. Defendants were directed to perform their part of contract by executing sale deed in favour of plaintiffs as per terms of agreement of sell Ex.PW4/A within a period of two months. It was further directed that if defendants fail to perform their part of contract within prescribed time, then plaintiffs can get the contract specifically enforced by way of agency of the Court. However, in particular circumstances of the case, there was no need to pass any order directing defendant No. 3 bank to deliver the original conveyance deed or title deed to the plaintiffs.

Defendants No. 1 and 2 preferred an appeal before the learned Additional District, Gurugram, which was dismissed on 15.7.2015 and following order was passed :-

' As a sequel to above mentioned findings, the present appeal fails and the same is dismissed being devoid of merit, with no order as to costs. The impugned judgment and decree dated 9.10.2014, passed by learned trial Court is affirmed vide which suit of the plaintiffs has been decreed with costs. Accordingly, the defendants No. 1 and 2 are hereby directed to

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perform their part of contract by executing sale deed in favour of the plaintiffs as per terms of agreement to sell Ex. PW4/A within a period of two months from the date of passing of this judgment. If the defendants No. 1 and 2 fail to perform their part of contract within prescribed time, then plaintiffs can get the contract specifically enforced by way of agency of court. Decree sheet be prepared accordingly. Trial court's record alongwith a copy of this judgment be sent back forthwith through Presiding Officer, for consignment and the appeal file be consigned to the record room after due compliance.'

Admittedly, Regular Second Appeal No. 4548 of 2010 was dismissed by this Court on 15.3.2016 and consequently the decree became final. When the execution was filed, the objections were raised by JDs to the execution stating that balance sale consideration of Rs. 31,50,000/- was to be deposited within two months from the date of passing of decree which has not been deposited. Therefore, decree has become null and void. The said amount was not deposited by JDs or in the Court by filing application under Section 28 of The Specific Relief Act, 1963 (in short 'the Act'). Some more averments were made. However, before this Court, petitioners have confined their prayer only to the point that since balance sale consideration was not deposited within time granted by the Court, therefore, under Section 28 of the Act, the decree has become null and void.

The decree became final only on 15.3.2016 when RSA was dismissed by this Court. The order of learned Additional District Judge, Gurugram, dated 15.7.2015 shows that from the said date of decree, further time of two months was given for deposit of the balance sale consideration.

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It comes out that on 26.7.2016, plaintiffs-decreeholders filed an application before the Executing Court for permission to deposit the balance sale consideration to the tune of Rs. 31,50,000/- under the account head of the Court. It also comes out that reply of JDs was obtained in which they objected to the deposit of amount, raising the objection that since the amount was not deposited within time granted in the decree, therefore, execution is not maintainable and is liable to be dismissed. After obtaining the reply, impugned order dated 28.4.2017 was passed. Admittedly, under Section 28 of the Act, the amount is to be deposited within time allowed by the decree or **such further period as the Court may allow.**

Section 28 of the Act is reproduced 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.'

Under Section 148 CPC, 1908, the Court has the power to extend the time for deposit of balance sale consideration.

Now, impugned order dated 28.4.2017 would show that after taking into consideration the plea of both the parties and the fact that suit property was lying mortgaged and title deeds were lying with bank which were required to be got released by JDs-defendants and that same was not done by JDs-defendants, the Executing Court observed as under :-

'31. Thus, as per the judgment and decree, the balance sale consideration of Rs. 31.5 lacs was to be paid simultaneously, at the time of execution of sale deed. Hence, the decretal Court directed the defendants to perform their part of contract by executing the sale deed and as a natural corollary to the same the balance sale consideration was to be paid at that time. Since the JDs have not been willing to execute the sale deed, till date, the DHs has no opportunity to give the balance sale consideration to the JDs. Hence, the facts of the present case are different and the case law relied upon by the JDs is not applicable to the facts of the present case.'

Consequently, the decreeholders were ordered to place on record the proposed sale deed alongwith demand draft of the balance sale consideration amounting to Rs. 31,50,000/-, to be deposited in the Court. The case was adjourned to 1.5.2017. The operative part of impugned order is reproduced as under :-

'33. Accordingly, the DHs are directed to place on record the proposed sale deed alongwith the demand draft of the balance sale consideration amounting to Rs. 31,50,000/- to be deposited in the Court Head, on the next date of hearing i.e. 1.5.2017.'

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The order dated 1.5.2017 (Annexure-P-8) shows that on 1.5.2017, the draft of sale deed alongwith balance sale consideration was deposited in the Court.

The learned counsel for objectors has vehemently argued that in *Chanda (dead) Through LRs Versus Rattni and another*, 2007 (2) RCR (Civil) 534, the Apex Court held that balance sale consideration is to be deposited within time granted though the Court has power to extend the time. In the said case, the amount was not deposited within two months granted by the Court. Consequently, it was held that the plaintiff had defaulted on the time of deposit as well as mode of payment. Consequently, appeal filed by plaintiff was dismissed. I am of the view that it depends upon facts of each case. In the present case, the decree was passed by the trial Court, the appeal was dismissed in which fresh time of two months was granted, RSA was dismissed on 15.3.2016 and thereafter, the plaintiffs filed an application to deposit the balance sale consideration which was objected to by JDs No. 1 and 2. The operative part of the order, reproduced above, goes to show that the trial Court infact directed the decreeholders to place on record the draft of sale deed alongwith balance sale consideration amounting to Rs. 31,50,000/- and deposit the same in the Court till the next date of hearing i.e. 1.5.2017. The said order amounts to extending the time for deposit of the balance sale consideration in view of peculiar circumstances of the case. The trial Court had the discretion to extend the time. I am of the view that taking into consideration the circumstances that the property was under mortgage with the Citi Bank and JDs-defendants were required to get the same redeemed before executing the sale deed which they failed to do so despite dismissal of their appeal and

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regular second appeal, the Court found it proper to extend the time. The time could also be extended under Section 28 of Specific Relief Act, 1963, and under Section 148 CPC, 1908. Therefore, I am of the view that in these circumstances, there is no ground to interfere in impugned order of the Executing Court, extending the time to deposit balance sale consideration till 1.5.2017. This Court has been informed that now the sale deed has already been executed. There is no force in the present revision. Consequently, same is dismissed.

(KULDIP SINGH)
JUDGE

1.3.2018
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes