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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.3617 of 2018 (O&M)
Date of Decision: 17.11.2018

Vikram **......Petitioner**

Vs

Lakhwinder Singh and another
....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Ranjit Saini, Advocate and
Mr. S.S. Dinarpur, Advocate
for respondent No.1.

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RAJ MOHAN SINGH, J.

CM No.15281-CII of 2018

Notice of this application was issued to the respondents on 30.07.2018.

Learned counsel for the petitioner wishes to withdraw this application.

Dismissed as withdrawn.

Main case

[1]. In this revision petition, petitioner has challenged the order dated 26.04.2018 passed by the Addl. Civil Judge (Sr.

Divn.) Kurukshetra, whereby execution petition filed by the petitioner was dismissed.

[2]. Few facts are relevant to be quoted in order to appreciate the controversy in its right perspective.

[3]. Balbir Singh was recorded as owner in possession of land measuring 2 *Kanals* 14 *Marlas*. He entered into agreement to sell with the petitioner in respect of aforesaid land *qua* agreement to sell dated 15.03.2005. Balbir Singh, Kulwant Singh and Lakhwinder Singh are real brothers. Kulwant Singh stood as attesting witness in the aforesaid agreement to sell. Total sale consideration to the tune of Rs.1,15,00,000/- was fixed. Time was not the essence of the contract, therefore, no target date was fixed for execution of sale deed.

[4]. Balbir Singh failed to execute the sale deed in terms of agreement to sell dated 15.03.2005. Ultimately a Civil Suit No.130 dated 24.05.2011 for specific performance was filed by the decree holder. Interim injunction was granted in favour of the petitioner/plaintiff on 30.05.2011. Despite the interim order, Balbir Singh sold the suit property in favour of his brother Lakhwinder Singh on 31.05.2011. Mutation of the aforesaid sale deed was sanctioned in favour of Lakhwinder Singh. Since the suit was pending before the civil Court, therefore, an application under Order 1 Rule 10 CPC was filed by the petitioner/plaintiff

seeking to implead subsequent vendee Lakhwinder Singh and his brother Kulwant Singh in the aforesaid suit. The application was allowed. Lakhwinder Singh and Kulwant Singh were ordered to be impleaded as party defendants in the suit.

[5]. A compromise was effected between the parties on 22.07.2011. According to the aforesaid compromise, both the parties settled the controversy with their mutual consent. It was agreed that the suit property would be sold and out of sale proceeds 1/6th of the share shall be given to the plaintiff/petitioner and the remaining 5/6th share shall be given to Lakhwinder Singh etc. Both the parties agreed to withdraw the court cases. It was also decided that in case Balbir Singh would raise any kind of objection in respect of the suit land, then in such eventuality there shall be responsibility of the second party i.e. Lakhwinder Singh etc. It was also decided that the compromise was to be applicable only after withdrawal of the cases from the Courts by the petitioner. In the event of any violation in respect of terms and conditions, both the parties were held entitled to get the compromise implemented with the process of the Court. The compromise was duly signed by the petitioner as first party and Lakhwinder Singh and Kulwant Singh as second party. The compromise was duly witnessed by Amarjit Singh son of Sh. Shahjada Ram and Vishwapal Goyal

son of Sh. Ruliaram. Accordingly the matter was referred to the Permanent Lok Adalat Samjhota Sadan, Kurukshetra for settlement.

[6]. The Permanent Lok Adalat passed an award dated 10.08.2011 by recording incriminating facts to the effect that the parties have arrived at a compromise. Compromise deed Ex.PA was filed before the Court and statements of the parties were recorded on 23.07.2011. After receipt of file from the Court, statements of defendants No.2 and 3 were recorded again on 10.08.2011. Defendants No.2 and 3 reiterated their stand which was taken in the compromise. Plaintiff also endorsed the factum of compromise to the effect that he does not want to proceed with the suit and the same shall be dismissed. He also requested that the amount towards court fee be refunded to him in view of compromise Ex.PA and the statements of the parties recorded in pursuance thereof. The suit was dismissed in view of compromise Ex.PA. It was ordered that the compromise deed Ex.PA shall form part of the award. The amount of court fee was also ordered to be refunded to the plaintiff in accordance with rules. It was also further held that the award shall be treated as a decree of civil Court in terms of Section 21 of the Legal Services Authority Act and shall be executed as such.

[7]. In the joint statements of the parties, statement of

Kulwant Singh was also recorded to the effect that the compromise has been effected between the parties as per Ex.PA and the parties have signed the same after admitting the same to be correct without any pressure of any type and both the parties would remain bound by the compromise. Land in question would be sold by the parties within a period of six months. 1/6th share of the sale proceeds would be given to the plaintiff/petitioner and remaining sale proceeds of 1/6th i.e. 1/5th share would given to defendants No.2 and 3.

[8]. Subsequently, Lakhwinder Singh entered into an agreement to sell dated 01.05.2012 in respect of aforesaid property with Vikram Singh, Sohan Singh and Raj Kumar for a total sale consideration of Rs.9,25,00,000/-. An amount of Rs.50 lakhs was received as earnest money and 30.11.2012 was fixed as target date for execution of sale deed. Lakhwinder Singh did not honour the aforesaid agreement and filed a Civil Suit No.557 of 2012 for declaration against the petitioner and seeking cancellation of agreement to sell dated 01.05.2012, earlier compromise dated 22.07.2011 and award dated 10.08.2012 passed by the Permanent Lok Adalat.

[9]. In the aforesaid suit, a compromise was executed between the parties on 07.05.2013. According to this compromise, Sohan Singh and Raj Kumar shall not claim

anything in future from Lakhwinder Singh. In the previous compromise dated 22.07.2011, there was no share of Kulwant Singh, nor was considered to be owner. In case Kulwant Singh claims anything in future, the responsibility would be of Lakhwinder Singh. Remaining award dated 10.08.2011 was agreed to be kept intact in accordance with Civil Suit No.130 of 2011 titled 'Vikram Singh and Balbir Singh etc. It was also decided that it shall be the responsibility of both the parties to sell the land and out of the sale proceeds 1/6th share would go to the petitioner and 5/6th share would go to Lakhwinder Singh. There was no such clause incorporated in the compromise that in the event of failure to sell the land by the parties, any consequent proceedings would take place in terms of forfeiture of the advance money paid by the petitioner or total of the earnest money to be paid by the vendor Lakhwinder Singh. It was the responsibility of both the parties to sell the land and apportion the sale proceeds in the ratio of 1/6th **: :** 1/5th between them.

[10]. Perusal of the second agreement dated 07.05.2013 would show that the same was an act of ratification of the earlier compromise to the extent of sale proceeds in the ratio of 1/6th **: :** 1/5th by the parties except to delete the entitlements of Sohan Singh, Raj Kumar and Kulwant Singh. The aforesaid

compromise was acted upon and sale deed to the extent of 3 Marlas of land was executed in favour of Krishna Devi dated 09.05.2013, sale deed to the extent of 4 Marlas of land was executed in favour of Krishna Devi on 08.07.2013 and sale deed to the extent of 1 Marla of land in favour of Meena Devi was executed on 09.05.2013. In this way, 8 Marlas of land was sold to different vendees and the amount was apportioned to the tune of 1/6th of the sale proceeds in favour of the petitioner and the remaining 5/6th share of the sale proceeds in favour of Lakhwinder Singh. Remaining land to the tune of 2 Kanals 6 Marlas could not be sold. Lakhwinder Singh was the owner of the land, whereas the petitioner was claimed to be a property dealer. Since there was obligation on the part of the parties to sell the land, therefore, no fault can be attributed to the petitioner that he was instrumental in not selling the land, as for transferring the land, consent of the owner was required and the owner was to sign the documents.

[11]. Owing to the conduct of respondent No.1 Lakhwinder Singh, execution was filed by the petitioner for enforcement of the decree of the Permanent Lok Adalat based on compromise dated 22.07.2011 which was duly ratified by the second compromise dated 07.05.2013. The execution was dismissed by the executing Court on the premise that a time of six months

was settled between the parties to sell the land measuring 2 *Kanals 6 Marlas* and apportionment of the sale proceeds in the ratio of 1/6th **: :** 5/6th between them.

[12]. I have considered the submissions made by learned counsel for the parties.

[13]. Evidently, the compromise dated 07.05.2013 was an act of ratification of compromise dated 22.07.2011 on the basis of which award dated 10.08.2011 was passed by the lower Appellate Court. Apportionment of sale proceeds to the tune of 1/6th in favour of the petitioner and 5/6th in favour of respondent No.1 was duly endorsed in both the compromises. Terms and conditions of compromise dated 22.07.2011 were duly ratified in the compromise dated 07.05.2013. There was no default clause incorporated in any of the compromise that in the event of failure to sell the suit land for any reason between the parties, the consequences of dismissal of execution would take place or the amount of earnest money would be forfeited. Even otherwise limitation for executing the award/decree dated of the Court cannot be curtailed by any such understanding between the parties that the sale shall be effected within six months and in the event of failure on that count, the execution shall be dismissed. The statutory limitation provided for execution of the decree cannot be diluted in the manner as suggested by the

executing Court and that too on the basis of understanding between the parties to sell the land jointly within a period of six months.

[14]. There is no overt act attributed to the petitioner that he alone was instrumental in not selling the land within six months. No such findings have been recorded by the executing Court, nor any evidence has come on record to show that the petitioner was solely responsible for not getting the sale deed executed in respect of 2 Kanals 6 Marlas of land with the assistance of respondent No.1, who is the owner of the property. Without the consent and signatures of respondent No.1 the property in question cannot be sold. In view of aforesaid fact, it cannot be held that failure on account of the parties in selling the land within a period of six months would entail in dismissal of the execution by ignoring the statutory limitation provided for execution of a decree. In my considered opinion, the order of dismissal of the execution by the executing Court is not legally sustainable.

[15]. There are two options available before the executing Court. During the course of arguments, it came to fore that the remaining land measuring 2 Kanals 6 Marla has been mortgaged by defendant No.1 in favour of a Bank. The executing Court shall visualize selling of land as a joint venture of the

parties. Out of the sale proceeds, 1/6th share of sale proceeds would be credited in favour of the petitioner. Out of the remaining share of sale proceeds, the liability of the Bank can be warded off and residual thereof can be given to respondent No.1. The second way out is to fix the market value of 2 Kanals 6 Marlas of land on the basis of prevailing market rate. Out of the amount so quantified, 1/6th of the same can be credited in favour of the petitioner and the remaining amount may go to respondent No.1, leaving him to answer the claim of the Bank.

[16]. In the light of aforesaid facts, this revision petition is accepted. Impugned order dated 26.04.2018 passed by the Addl. Civil Judge (Sr. Divn.) Kurukshetra is set aside and the execution petition is ordered to be revived. The executing Court is directed to dispose of the execution with in a period of six months in view of observations made hereinabove.

November 17, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

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