

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4333 of 2017 (O&M)

Date of Decision: 25.10.2018

Naveen Sood

.....Petitioner

Vs.

Shashi Goel and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Ashok Sharma, Advocate, for the petitioner.

Mr. Amit Jain, Advocate, for the respondents.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner who is the decree-holder in a suit instituted by him against the respondents-defendants, (by which he sought specific performance of an agreement of sale dated 07.02.2013), is aggrieved of the order of the learned executing Court, by which the application filed by the respondent no. 1-judgment debtor for rescission of the contract itself, in terms of Section 28 (1) of the Specific Relief Act, 1963, was allowed; on the ground that despite more than two months having elapsed since the date of the decree, i.e. 06.12.2016, the balance sale consideration of Rs. 30,00,000/- was not paid by the decree holder.

In a nut shell, the essential facts of the case are that the petitioner had instituted a suit against the respondents seeking specific performance of an agreement of sale entered into between the parties on 07.02.2013.

That suit was decreed in favour of the petitioner by the learned trial Court vide its judgment and decree issued on 06.12.2016 (Annexure P-4), the relief granted being as follows:-

“In this case it is hereby ordered that the suit of the plaintiff is decreed with costs for specific performance of agreement of sell dated 07.02.2013 regarding the suit property and the defendants are directed to execute the sale deed in favour of the plaintiff on receipt of balance sale consideration, if any, within a period of two months from the date of order and the defendants, their agent, servants or representatives are restrained from alienating the suit property by way of sale, gift or mortgage etc. or in any other manner to any other person except for the plaintiff.”

That decree, not having been challenged, became final.

Instead, respondent no. 1-judgment debtor filed an application on 06.01.2017 before the trial Court, seeking that the balance sale consideration of Rs. 30,00,000/- be paid by the decree-holder (petitioner herein). (Thus, the application was filed at a time when one month still remained till the last date by which it had to be paid, in terms of the decree dated 06.12.2016).

The amount not having been paid till 06.02.2017, i.e. within two months of the aforesaid decree, an application was then filed by respondent no. 1-judgment-debtor on 13.02.2017 before that Court, seeking rescission of the contract itself. A copy of the said application having been annexed as Annexure R-1 with CM No. 20657-CII-2018, the last paragraph of which reads as follows:-

“That in view of the above said facts, decree holder/plaintiff has not complied the judgment and decree dated 06.12.2016, as he failed to deposit the balance sale consideration, i.e. Rs. 30,00,000/-, within 03 months from passing of the order dated 06.12.2016. As such agreement to sell in question is liable to be cancelled.”

Upon the aforesaid application filed, the impugned order has been passed, holding that even up-till the date of filing of the application on 13.02.2017,

the decree-holder had neither sought extension of time for depositing the remaining sale consideration, nor had he actually deposited it, thereby entitling the judgment-debtor to the rescission of the agreement of sale.

When this petition had come up for final arguments on 23.10.2018 (the day before yesterday), despite strenuous arguments made by learned counsel for the petitioner, this Court had not agreed to his contention that the petitioner deserves to be granted extension of time for depositing the remaining amount of Rs. 30,00,000/- (Thirty lakhs) of the total sale consideration of Rs. 60,00,000/-.

This was for the reason that even at the time when this petition was filed, the contention of learned counsel for the petitioner, as recorded in the order of this Court dated 07.07.2017, was that the petitioner was ready to deposit the entire payment in order to show his *bona fide*, but he had still not been able to deposit it.

The said order is reproduced hereinunder:-

“Learned counsel for the petitioner states that the petitioner is ready to deposit the entire payment in order to show his bona fide.

Subject to deposit of entire payment with the Registry of this Court within 15 days, notice of motion be issued for 12.09.2017.”

Thereafter, he filed an application (CM No. 15788-CII-2017), seeking permission that he be allowed to deposit only Rs. 24,00,000/-, instead of the entire amount of Rs. 30,00,000/-. Notice had been issued in that application on August 02, 2017, subject to the said amount of Rs. 24,00,000/- being deposited.

The matter having remained pending, thereafter only on 14.08.2018, an application (CM No. 17274-CII-2018) was filed by the petitioner, seeking to deposit an amount of Rs. 6,00,000/-, thereby bringing the deposit to

Rs. 30,00,000/-, which was the remaining amount of consideration to be paid for the decree dated 06.12.2016 to be executed in favour of the petitioner-decree holder.

Thus, the day before yesterday, this Court while actually pronouncing dismissal of the petition had observed that the petitioner not having been able to pay the amount of Rs. 30,00,000/- for one and half years after the time limit for depositing the same, i.e. 06.02.2017, had expired, he did not deserve the extension of time sought at this stage, with the judgment-debtor therefore entitled to the rescind the contract.

In other words, the impugned order of the learned trial Court had been ordered to be upheld by this Court.

It is to be noticed here that the impugned order is not being treated by this Court to be an order passed by an executing Court, in view of the fact that actually no application for execution of the decree was filed by the petitioner/decree-holder, with an application actually filed by respondent no. 1-judgment debtor on 06.01.2017. It is therefore being taken to be one filed before the trial Court itself, further because a subsequent application had been made on 13.02.2017 by judgment debtor, by which rescission of the contract was sought. (This is despite the fact that the prayer in the application dated 06.01.2017, was that the petitioner/decree-holder be directed to get the decree executed. Nevertheless, it was an application filed not by the decree holder for execution of the decree, but one filed by the judgment debtor).

After it had been orally stated the day before yesterday by this Court that the petition stood dismissed, thereafter, before rising of the court, Mr. Sharma, learned counsel for the petitioner had appeared again and stated that this Court had not dealt with the issue of refund of 50% of the consideration amount, (i.e.

Rs. 30,00,000/-) that were already paid by the petitioner, at the time that the agreement of sale in question had been entered into, which were accepted to have been so paid, with the decree issued in his favour also taking into consideration that amount.

That mention having been by Mr. Sharma the day before yesterday, with this Court realizing that no arguments at all had been addressed by either side on that issue, the matter was ordered to be put up for hearing today (yesterday being a holiday), with Mr. Amit Jain, learned counsel for the respondents, informed of the same, he not being present in Court when Mr. Sharma came back to mention that issue.

Consequently, the matter had been ordered to be listed for hearing today on that limited issue.

Today, though Mr. Sharma, learned counsel for the petitioner, has initially argued on that aspect, that in fact the amount of Rs. 30,00,000/- shown to have been paid as per the agreement of sale dated 07.02.2013, was admitted by respondent no. 1-judgment debtor to have been received by her, upon a perusal of her testimony as DW-1 (produced by him her in Court today), it transpires that she had not actually admitted to having received the said money.

Be that as it may, that issue it not to be gone into by this Court, the decree dated 06.12.2017 having become final without further challenge thereto; and consequently, the said amount of Rs. 30,00,000/- having been accepted as paid by the petitioner to the judgment debtor is not to be interfered with in this revision petition, which challenges an order on a wholly different issue, i.e. on rescission of the agreement of sale due to non-compliance of the essential condition set out in the decree.

Mr. Amit Jain, learned counsel for the respondents, has relied upon

various judgments, including one of the Supreme Court in Chanda (deceased) through his LRs vs. Rattni and another 2007 (2) RCR (Civil) 534, as also judgments of this Court in Sohan Lal (deceased through his LRs vs. Surinder Pal Soni 20148 (3) RCR (Civil) 367 and Satish Batra vs. Sudhir Rawal 2012 (4) RCR (Civil) 891, Ghansham Dass vs. Parkash Devi and others 2017 (1) RCR (Civil) 115 and Kulbir Singh and others vs. Ishwinder Singh (CR No. 1621 of 2013, decided on 03.07.2015), to submit that once this Court is upholding the impugned order not granting additional time to the decree-holder to deposit the remaining consideration, the consideration already paid, i.e. the earnest money would stand forfeited.

Having considered the aforesaid aspect, it is to be seen that in all the judgments cited, the amount already paid was not 50% of the consideration amount. Thus, though in the agreement of sale produced in Court today (a photocopy of in the original version in 'Gurmukhi'), the amount of Rs. 30,00,000/- stated to have been received by respondent no. 1-judgment debtor is shown to be '*Byana*', which could translate into earnest money, yet the said amount being 50% of the total consideration of Rs. 60,00,000/-, settled for purchase/sale of the suit property, in my opinion it would be highly inequitable to allow such forfeiture in favour of the judgment debtor at a stage when the decree-holder is willing to pay the entire sale consideration, which of course has not been accepted by this Court, on the ground that such payment is far too belated (one and half years after the time granted by the trial Court in the decree), with the order for rescission of the contract having therefore been upheld.

In fact, the matter could also be looked at from the point of view that if the contract itself is to be rescinded, then even the condition of forfeiture of 50% of the consideration amount, would also be deemed to have been rescinded.

However, most of the judgments cited having held that forfeiture of the earnest money would result if the entire consideration amount was not paid on time, that ratio would otherwise hold, but for the fact that in the present case the judgment debtor has received 50% of the total consideration amount. Hence, in my opinion, if the decree-holder is to be correctly denied extension of time to pay the remaining 50%, he having taken his own sweet time of one and a half years to do so, then discretion is to be exercised by this Court to balance equities with regards relief to be granted under the Act of 1963.

Consequently, while dismissing this petition thereby upholding the impugned order of the trial Court on principal and in essence, a condition is however imposed that respondent no. 1 (judgment debtor) would refund an amount of Rs. 30,00,000/- to the petitioner within a period of three months from the date of receipt of a certified copy of this order. Upon him failing to do so, thereafter, if the petitioner/decreed-holder deposits the balance amount of sale consideration with the executing Court, by way of execution of the aforesaid decree, within one week after 03 months are over, the time for such deposit would be deemed to have been extended beyond the period granted in the decree, with the impugned order set aside (in that situation).

That being so, the amount of Rs. 24,00,000/- already deposited by the petitioner, pursuant to the order of this Court dated 07.07.2017, be refunded to him immediately.

In the circumstances, no order as to costs.

October 25, 2018
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes