IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.R No. 4754 of 2015
Date of decision: 02.05.2018

Kirpal Singh (since deceased) through LRs ... Petitioner.

Vs.

Gurjant Singh & Anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

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Present: Mr. Tarnveer Vashisht, Advocate, for the appellants.

None for the respondents

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?*

KULDIP SINGH, J. (Oral)

Impugned in the present revision petition is the order dated 15.04.2015 passed by the learned Additional Civil Judge (Sr. Divn.), Dhuri, vide which while dealing with the objections of J.D No.1 to the draft sale deed and also dealing with the application of J.D No.1 filed under Section 28 of The Specific Relief Act, 1963 (for short,'the Act'), the agreement was ordered to be rescinded and accordingly the execution was dismissed.

I have heard learned counsel the petitioner and perused the record, since respondents are not present, despite notice.

It comes out that in a suit for specific performance of agreement to sell dated 31.08.2012, the then Additional Civil Judge (Sr. Divn.) passed the following decree:-

"*It is ordered that the suit of the plaintiff succeeds and a decree for specific performance agreement to sell dated 30.05.2010 Ex.P1 directing defendant no.1 to execute and* *register the sale deed in favour of the plaintiff after redeeming the property which is mortgaged with defendant No.2 is present. Defendant No.1 is directed to get the property redeemed for defendant No.2 within a period of two months from the date of passing of decree and then the plaintiff is further directed to make the payment of the balance sale consideration within a period of one month from the date of redemption of the property from defendant No.2 and then the defendant No.1 is directed to execute and register the sale deed with regard to the suit property in favour of the plaintiff within fifteen days of receiving the balance sale consideration after adjusting the amount of earnest money and defendant No.1 is also directed to deliver the possession of the suit property to the plaintiff. As the plaintiff has been found entitled to the specific performance of the agreement to sell. Ex. P.1, in case defendant No.1 succeeds in alienating the suit property to any other person, it would lead to multiplicity of litigation and accordingly, the plaintiff is also entitled to a decree of permanent injunction restraining defendant No.1 from alienating the suit property to any one except the plaintiff, it is made clear that the rights of defendant No.2 as a mortgaged should not be affected in any manner."*

It comes out from the file that J.D No.1 did not redeem the land to J.D No.2- Bank, therefore, decree-holder moved the Court for permission to deposit the redemption money which was granted vide order dated

16.04.2013 passed by Civil Judge (Sr. Division), Dhuri. Accordingly, on 20.04.2013 vide two different vouchers Annexure P/4 (colly) and P/5 a sum of Rs.21,60,000/- was deposited by the decree-holder with the bank and accordingly a clearance certificate dated 24.04.2013 was issued by the bank. Therefore, in terms of the said decree the balance sale consideration was to be deposited within one month i.e. till 23.05.2013. It comes out that decree-holder had deposited a sum of Rs.2,78,720/- on 16.12.2012, Rs.8483/- on 29.04.2013 i.e either before the redemption or within one month from the redemption. However, he deducted a sum of Rs.61,280/- on account of cost of suit which was not allowed by the trial Court and against which he had filed appeal. However, later on he moved an application on 28.02.2014 before the Executing Court for permission to deposit the said amount of Rs.61280/-. The Executing Court allowed him to deposit the said amount at his own risk and responsibility. Accordingly, the said amount was also deposited on the same date i.e. 28.05.2014. When the draft of sale deed was filed, J.D No.1 raised the objections. Later on, also filed application under Section 28 of the Act for rescinding of the agreement on the ground that the terms of decree have not been complied with. The Executing Court passed a lengthy order running into 18 pages to allow the said application filed under Section 28 of the Act and dismissed the execution. It has been held by the Executing Court that entire balance of sale consideration had not been deposited within a limited time and no application for extension in time was moved. Therefore, terms of decree had not been complied with.

I am of the view that the Executing Court has failed to appreciate the facts in the right perspective. The J.D No.1 was bound to redeem the land from the bank which he did not do. Consequently, on the orders of the Court, loan of Rs.12,60,000/- was deposited by the decree-holder on behalf of J.D No.1 in the bank on 20.04.2013 and the bank accordingly issued a clearance certificate on 24.04.2013. Even before the said date, except a sum of Rs.61280/- the entire balance sale consideration was also deposited with the Court. Sum of Rs.61280/- was deducted by the decree-holder on account of the cost of the civil suit which was not specifically allowed by the trial. Later on, realizing that the same was not allowed, he moved an application before the trial Court to deposit the said amount also and on account of permission being granted by the Court, said amount was deposited on 28.08.2013. First of all, I am of the view that when the Court allowed said amount of Rs.61280/- to be deposited, it impliedly granted the permission to the decree-holder to deposit said amount which amounts to extension of time. Assuming that no specific order of extension of time was granted, this Court is to consider the entire facts and circumstances to see whether any extension is to be granted to deposit the said amount. It appears that on account of wrong advise, the costs of suit were also been deducted by way of adjustment though there was no specific order regarding the same and the cost of the suit could not be deducted as a part of the sale consideration. It is to be noted that decree-holder had cleared the loan of J.D No.1 by depositing a sum of Rs.12,60,000/- in the bank. Rs.9 lakhs is already paid as earnest money. Therefore, a sum of Rs.21,60,000/- is already paid or deemed to be paid by J.D. No.1. The balance, except Rs.61,280/- was already deposited within the prescribed time. In my view, when the decree-holder is taking actual steps for the payment of balance sale consideration to the JD by depositing the loan amount before the J.D No.2 – Bank and paying balance in the Court therefore non-payment of a sum of Rs.61280/- on account of wrong advise cannot be made a ground to decline the decree-holder the fruits of the decree passed in his favour. Therefore, this Court specifically grant a permission to the plaintiff and extend the time to deposit the balance sale consideration, which was deposited on 29.05.2014. It being so there is no ground to rescind the contract.

Accordingly, the impugned order dated 15.04.2015 is set aside. The Executing Court is directed to further proceed with the execution and take it to logical conclusion within a period of three months from the date of receipt of certified copy of this order.

The revision is accordingly allowed.

May 02, 2018 **(KULDIP SINGH)**
tripti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No