

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.R.No.5202 of 2014

Amritpal Singh Mehta

...Petitioner

Versus

Arvinder Mahajan

....Respondents

Date of Order: 07.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. B.R. Mahajan, Sr. Advocate with
Ms. Manpreet Ghuman, Advocate for respondent.

AMIT RAWAL, J (ORAL)

Petitioner has impugned the order dated 05.5.2014 passed by learned Addl. District Judge, Amritsar whereby the application of the respondent/decreed holder for extension of time to deposit amount of balance sale consideration has been allowed.

Learned counsel for the petitioner submitted that the impugned order is without jurisdiction and liable to be set aside. In pursuance to the dispute arisen with regard to the alleged agreement to sell dated 17.4.2002, a decree dated 01.4.2011 granting discretionary relief in favour of the respondent-plaintiff in respect of the land measuring 1 kanal 1 marla came to be passed whereby the decreed holder was granted two months' time to pay the balance sale consideration. Aforesaid decree was assailed before the lower Appellate Court, which allowed the appeal vide judgment dated 15.10.2013 holding the plaintiff entitled to get relief of specific performance

of the agreement to sell regarding land measuring 18 marlas comprised in Khasra No.2477. Against the findings of Appellate Court, regular second appeal was filed on 29.11.2013, which was pending adjudication. However, the respondent/decreed holder moved an application on 10.4.2014 and the trial Court vide the impugned order without issuing notice granted 15 days time to the decree holder to deposit the balance sale consideration. In support of his contentions, he relies on judgments of Hon'ble Supreme Court in **P.R Yelumalai Vs. N.M Ravi 2015 (2) RCR Civil 585** and **Prem Jeevan Vs. K.S Venkata Raman 2017 AIR SC 623**.

On the other hand, learned counsel for the respondent submitted that the judgment of Hon'ble Supreme Court referred to in **P.R Yelumalai** was a case where the decree holder after extension of time did not deposit the amount and the Court found that the decree was inexecutable whereas the another judgment in **Prem Jeevan's case (supra)** also pertains to different facts and would not be applicable. He thus urged for dismissal of the petition.

After hearing learned counsel for the parties and appraising the paper book, I find force in the submissions made by learned counsel for the petitioner, for, the impugned order had been passed at the back of the petitioner without notice. The lower Appellate Court before deciding the application ought to have issued notice to the petitioner and an opportunity should have been afforded to oppose the application.

The impugned order having been passed at the back of the petitioner cannot be said to be justified and legal.

Without commenting upon any merit of the case lest it may prejudice the case of the parties to the lis, present petition is accepted.

Impugned order dated 05.5.2014 is set aside and the matter is remitted back to the lower Appellate Court to decide the application dated 10.4.2014 afresh after affording an opportunity to the petitioner/judgment debtor of being heard.

May 07, 2018
manoj

^(AMIT RAWAL)
JUDGE

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