

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5828 of 2014 (O&M)
Date of decision : May 17, 2018

Kuldip Singh and another

..... Petitioners

Versus

Gurjit Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. A.K. Chopra, Senior Advocate with
Mr. Ankit Midha, Advocate for the petitioners.

Mr. Paramjit Batta, Advocate for the respondent.

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

KULDIP SINGH J.

Impugned in the present revision petition under Article 227 of the Constitution of India is the order dated 25.07.2014 (Annexure P-8) passed by learned Civil Judge (Sr. Divn.), Gurdaspur, vide which an application filed under Section 28 of the Specific Relief Act, 1963, for the rescission of agreement of sale deed dated 03.04.2003 and the decree dated 12.09.2005 (wrongly mentioned in the application as 14.06.2005) on the basis of said agreement, was dismissed and the decree holder was given extension of time and was directed to deposit the entire balance sale consideration along with costs of stamp papers, expenses of registration and other incidental charges for the execution and registration of the sale deed in

his favour, positively by 11.08.2014. The J.Ds. Were directed to execute and get registered the sale deed of the suit property in terms of the agreement of sale dated 03.04.2003 and decree dated 12.09.2005 in favour of D.H. within one month of the deposit of aforesaid amount by D.H., failing which D.H. can apply to the Court to seek indulgence of the Court in executing the sale deed in his favour. It was further directed that in case the D.H. fails to deposit the aforesaid amount by 11.08.2014, as directed the present application shall stand allowed as being prayed for.

It is necessary to trace out the history of the case. Plaintiff Gurjit Singh filed a civil suit for possession by way of specific performance of the agreement to sell dated 03.04.2003 regarding the land measuring 13 kanals, out of the land measuring 17 kanals 6 marlas, as fully detailed in the plaint, situated in the revenue estate of Gurdaspur, on payment of proportionate balance sale price of ₹48,812.50/- or as determined by the Court. He also sought permanent injunction restraining the defendants from alienating the suit land in any manner.

At the stage of evidence of the plaintiff, the parties made statements and the learned Addl. Civil Judge (Sr. Divn.), Gurdaspur, vide order dated 12.09.2005 passed the following decree:

“In view of the statements made by the defendants, suit of the plaintiff stands decreed. Defendants are directed to execute the sale deed regarding land in question as per terms and conditions of the agreement dated 3-4-2003 on or before 13.10.2005. If plaintiff fails to get the sale deed executed from the defendants as per the agreement executed between the parties and the

statements made in the court today, his earnest money shall be forfeited. If the defendants failed to get the sale deed executed in favour of plaintiff, as per the agreement and as per statements made in the court, plaintiff shall be at liberty to get the sale deed executed through the process of the court. Parties are left to bear their own cost. Decree-sheet be prepared accordingly.”

The sale deed was to be executed on or before 13.10.2005. However, on 14.10.2005, the plaintiff-D.H. filed an application under Sections 151, 152 and 153 CPC, 1908, for passing of appropriate order for adjustment of the amount of stamp papers valued at ₹1,31,060/- of four scribed sale deed and one blank stamp paper and also for execution of decree dated 12.09.2005. It was prayed in the said application that J.Ds. had not executed the sale deeds and they be directed to execute the sale deed in favour of the plaintiff-D.H. and appropriate order for adjustment of stamp paper amount of ₹1,31,060/- may be passed and the decree dated 12.09.2005 may, accordingly, be rectified with costs.

When the said application was continuing, the J.Ds. also moved and application on 10.05.2006 for rescission of the agreement of sale dated 03.04.2003 and decree dated 14.06.2005 i.e. after about seven months of the filing of the application by the plaintiff-D.H.

It was stated in the application while reproducing the history of the proceedings in the civil suit that the decree holder has been filing frivolous applications time and again. Even now, he has failed to get the sale deed executed.

The decree holder on the other hand took the stand that the J.Ds. refused to execute the sale deed on the date fixed. The J.Ds. had also executed two sale deeds dated 19.10.2005 in favour of his family members regarding valuable portion of the property on the front road to defeat the claim of D.H. without getting the rescission of agreement of sale dated 03.04.2003 and decree dated 12.09.2005. The decree holder took the stand that he is ready and willing to get the sale deed executed.

While referring to the proceedings in the civil suit, reference was made to bringing money in the Court and purchase of stamp papers and scribing of four sale deeds and it was stated that J.Ds. had refused to sign the sale deed. It was claimed that stamp papers were purchased in the name of J.D. Kuldeep Singh for ₹54,440/- and the payment was made by the D.H. J.D. Kuldeep Singh himself purchased the stamp papers from Mehnga Singh and Bodh Raj, stamp vendors, Tehsil Compound, Gurdaspur and an other stamp paper valued at ₹76,620/- was purchased by Gurjinder Singh, J.D. No.2 from the Treasury office, Gurdaspur. The amount was paid by D.H. However, J.Ds. refused to execute the sale deed.

It was stated that J.Ds. did not turn up on 10.10.2005, 11.10.2005, 13.10.2005 and also not on 14.10.2005, whereas decree holder remained present in the Court. Hence, the decree holder filed an application on 14.10.2005 under Sections 151, 152 and 153 CPC, 1908 for reevaluating the stamp papers purchased by him.

It was further stated that to defeat the claim of D.H., J.Ds. tried to dispossess the D.H. illegally and forcibly by demolishing the boundary wall and road constructed by him. The decree holder was constrained to file

the suit for injunction in the Court of Shri Charanjit Arora, Civil Judge (Jr. Divn.), Gurdaspur, in which the stay order was granted in favour of D.H., but the learned District Judge, Gurdaspur, dismissed the application of D.H. However, this Court passed the stay order in favour of D.H. Balance sale consideration is deposited on 11.08.2014 in pursuance to the impugned decree.

From the pleadings, following issues were framed:

- “1. Whether the agreement of sale dated 03.04.2003 and decree dated 14.06.2005 are liable to be set aside? OPA*
- 2. Whether the applicants are entitled for restitution of the possession of the suit land? OPA*
- 3. Whether the application is not maintainable in the present form?*
- 4. Relief.”*

After recording the findings and examining the evidence, the trial Court took the view that the agreement is not liable to be rescinded and therefore extended the time.

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

First of all, it is to be noted that agreement of sale is dated 03.04.2003. The civil suit was filed on 11.11.2004, in which the defendants-J.Ds. on appearance made statements that they are ready and willing to execute the sale deed on 21.04.2005. The plaintiff-D.H. came along with the cash amount of ₹42,000/- and bank draft of ₹4,00,000/-. The parties were directed to go to the Tehsil Compound for execution of sale deed but the sale deed could not be executed for which, the J.Ds. state that D.H. did not

have the full amount and the money for stamp papers and that he wanted the sale deed to be executed in parts, whereas D.H. blamed the J.Ds. Then on the statements of the parties, the decree was passed on 12.09.2005.

The history of the case prior to the decree needs not to be examined for the purpose of decision of the present revision.

Now, it is to be seen that as per judgment and decree dated 12.09.2005, the defendants-J.Ds. were directed to execute the sale deed on or before 13.10.2005. The Court further directed that if the plaintiff-D.H. failed to get sale deed executed from the defendants-J.D.s, as per agreement between the parties and the statements made in the Court, his earnest money shall be forfeited. It was further stipulated that if the defendants-J.Ds. failed to execute the sale deed in favour of the plaintiff-D.H., as per agreement and as per statements made in the Court, the plaintiff-D.H. shall be at liberty to get the sale deed executed through the process of Court.

The plaintiff-D.H. claimed that the defendants-J.Ds. did not execute the sale deed till 13.10.2005. Therefore, as per stipulation in the decree dated 12.09.2005, the plaintiff-D.H. Could get the sale deed executed through the process of Court.

Now, this Court is to examine whether the plaintiff-D.H. took necessary steps to get the sale deed executed?

His application dated 14.10.2005 filed under Sections 151, 152 and 153 CPC, 1908, merely shows that he did not pray for deposit of sale consideration in the Court and rather prayed to the Court for correction of the decree dated 12.09.2005, so as to adjust the amount of stamp papers valued at Rs.1,31,060/-. He also prayed for execution of sale deed.

However, nowhere in the application, the prayer was made that the plaintiff-D.H. is ready to deposit the balance sale consideration and necessary orders in this regard may be passed. Even assuming that the said application dated 14.10.2005 is for execution of the decree on the failure of the J.Ds. to execute the sale deed till 13.10.2005, the D.H. was required to deposit the entire balance sale consideration in the Court and pray for execution of sale deed. The prayer in the application was for directing the defendants-J.Ds. to execute the sale deed and adjustment of stamp papers valued at ₹1,31,060/-.

I am of the view that if the stamp papers are wrongly purchased, the same could be returned and refund claimed but this was not a ground for not depositing the balance sale consideration before the Court. In fact, in the said application, no prayer has been made for allowing them to deposit the balance sale consideration in the Court and asking the Court to get the sale deed executed through its process. No prayer was made in the said application for extension of time to deposit the sale consideration. It was during the pendency of the said application that on 10.05.2006 i.e. about after seven months of the filing of the application by the plaintiff-D.H. that the defendants-J.Ds. filed an application under Section 28 of the Specific Relief Act, 1963 for rescission of the agreement of sale deed dated 03.04.2003.

I am of the view that assuming that the J.Ds. were not ready to execute the sale deed, in term of the decree, the remedy available to the D.H. was to deposit the balance sale consideration in the Court within reasonable time after 13.10.2005 and pray to the Court to get the sale deed executed through the process of the Court. From 14.10.2005 till 10.05.2006

or even thereafter till the decision of the said application on 25.07.2014 i.e. about more than eight years, the D.H. never requested the Court that he may be allowed to deposit the balance sale consideration. In this way, after the last date fixed for the execution of sale deed i.e. 13.10.2005, the balance sale consideration was never offered to be deposited for little less than nine years.

Unluckily, the Court in place of summarily deciding the application under Section 28 of the Specific Relief Act, 1963, decided to frame the issues and record of the evidence and took about 8 years to decide the said application.

I am of the view that even assuming whatever the D.H. says is correct that J.Ds. were not willing to execute the sale deed on or before the date fixed i.e. 13.10.2005, they should have moved the Court to deposit the balance sale consideration and should have requested the Court to execute the sale deed through its process and only when the Court appoints the Local Commissioner to execute the sale deed, the question of purchasing of stamp papers would have arisen.

The fact that the balance sale consideration was not deposited in the Court for complete nine years after the date fixed for execution of sale deed in terms of the decree dated 12.09.2005, goes to show that the D.H. failed to comply with the decree. He even did not request the Court for extension of time. Therefore, the trial Court of its own motion, erred in extending the time to deposit the amount of balance sale consideration and virtually passed a fresh decree fixing the date on which the sale deed is to be executed.

Learned counsel for the respondent has relied upon the authorities of this Court delivered in cases of “***Sucha Singh vs Nand Lal***”, ***2015(31) R.C.R. (Civil) 452***, and “***Sudesh Rani vs Sandeep Bansal and another***”, ***2017(2) PLR 731***.

In none of the abovenoted cases, the sale consideration was not deposited for full nine years.

In the present case, no request was made for extension of time and allowing the D.H. to deposit the balance sale consideration. Therefore, the said authorities are distinguishable.

Learned counsel for the petitioners, on the other hand, relied upon the authorities of Hon’ble the Supreme Court of India, delivered in case of “***Bhupinder Kumar vs Angrej Singh***”, ***2009(4) R.C.R.(Civil) 249***, wherein the following observations were made:

“12. If we apply the above principles to the facts of the present case, the order of the Executing Court and the High Court cannot be faulted with. The suit for specific performance is in the nature of discretionary remedy and on equity, the appellant was not entitled to get the decree executed since he failed to place relevant materials about his inability to tender or deposit the decreed amount. It is relevant to mention that the sale agreement was executed on 20.11.1990, the suit for specific performance was filed on 13.12.1991 and suit was decreed on 13.10.1998 stipulating that the balance sale consideration was to be paid by 13.01.1999. In fact, only after the judgment debtor filed an application for rescission of agreement on 28.05.2001, the

application for extension of time was moved on 13.08.2001, the application for extension of time was moved on 13.08.2001. As discussed earlier, though the Court has power and discretion to extend the time for fulfillment of the contract, in the case on hand, there is neither any material to show that the appellant was having the required money nor had he tendered or deposited the same as per the terms of the decree. Both the Executing Court and the High Court found that there was no just and reasonable cause to extend the time for depositing the balance consideration.”

The Apex Court held that in the given circumstances, there was no just and reasonable cause to extend the time for deposit the balance sale consideration.

Further reliance has been placed upon the authority Hon’ble the Supreme Court delivered in case of **“Prem Jeevan vs K.S. Venkata Raman and Another”, 2017 AIR (SC) 623.**

After considering the facts and circumstances of the present case, I am of the view that the D.H. was not ready to deposit the balance sale consideration in the Court. Therefore, even after the passing of the last date i.e. 13.10.2005, he never offered to deposit the balance sale consideration nor sought any extension of time to deposit the same, therefore, the trial Court erred in holding that that there was a fault on the part of the J.Ds. and therefore, suo moto extended the time. As such, the findings on all the issues are reversed and the impugned order dated 25.07.2014 stands set aside and the agreement dated 03.04.2003 stands rescinded. Money deposited by the D.H. in pursuance to the impugned order

be returned to him.

As such, the present revision is allowed.

(KULDIP SINGH)
JUDGE

May 17, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes