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

CR-6196-2016 (O&M)

Date of decision : 23.02.2018

Gurdeep Singh (since deceased) through LRs

... Petitioner(s)

Versus

Parminder Singh (since deceased) through LRs

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. G.S. Nagra, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned order dated 20.07.2015 (Annexure P-5), whereby the Executing Court has extended the time by giving the opportunity to the plaintiff/deed-holder to deposit the amount of consideration for the purpose of execution and registration of the sale deed in pursuance to the judgment and decree dated 21.04.2009 rendered in Civil Suit No.153 of 2005 seeking specific performance of the agreement to sell dated 13.11.2003.

The respondent-plaintiff instituted the suit claiming specific performance of the aforementioned agreement to sell, in respect of a suit land measuring 3 kanals, on the premise that the petitioner-defendant had agreed to sell the aforementioned land for a total sale consideration of ₹70,000/- and against the payment of ₹60,000/- as earnest money. The

target date for the execution and registration of the aforementioned sale deed was 31.05.2004. The aforementioned suit was decreed vide judgment and decree dated 21.04.2009. The petitioner-defendant preferred an appeal against the aforesaid judgment and decree before the lower Appellate Court, but the same was also dismissed vide judgment and decree dated 02.12.2010. In the judgment and decree, the respondent-plaintiff was granted two months' time to deposit the balance sale consideration for the purpose of execution and registration of the sale deed. The operative part of the judgment reads as under-

“20. In view of my findings on issue No.1 to 4, the suit of the plaintiff is decreed with costs to the effect that he is held entitled to possession by way of specific performance of the agreement to sell dated 13.11.2003 for the land bearing Khasra No.42//8/1 min, 3 kanals, Khewat Khatauni No.14/40, as per jamabandi for they year 1999-2000 on the deposit of remaining amount of sale consideration within two months of the passing of the decree, failing which, the suit of the plaintiff would be deemed to be dismissed. Further, the defendants are directed to execute the sale deed within two months of the deposit of balance amount of sale consideration in the court, failing which, the plaintiff would be liberty to have the recourse as per law. Further, the defendants are also restrained from alienating the suit property to anyone else. Decree sheet be rpeapred. File be consigned to the record room.”

Mr. Veneet Sharma, learned counsel appearing on behalf of the petitioner-defendant submits that the respondent-plaintiff did not deposit the aforementioned amount, but filed the execution petition only on 01.07.2014, which fact is evident from the zimini order (Annexure P3). On receipt of

the notice, it came to the notice that the respondent-plaintiff had not deposited the amount. An application was moved on behalf of the respondent-plaintiff for granting extension of time, which has erroneously been granted vide impugned order, which is not permissible in law in view of the provisions of sub-Section 1 of Section 28 of the Specific Relief Act, 1963 (in short 'the 1963 Act') as the statute itself provides the caveat of rescission of contract on non-deposit of the purchase money, therefore, the provisions of Section 148 of the Code of Civil Procedure would not apply for granting the extension. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Prem Jeevan V/s K.S. Venkata Raman and another” 2017 AIR SC 623.**

On the contrary, learned counsel for the respondent-plaintiff submits that the extension can always be granted as the provisions of Section 28 of the 1963 Act enable the judgment-debtor to move an application for rescission of contract which had not been chosen. Once, the aforementioned application was not moved, time can always be extended. In support of his contentions, he relied upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Sardar Mohar Singh through Power of Attorney Holder V/s Mangilal @ Mangtya” 1997(2) RCR (Civil) 296** and as well as by this Court in **“Mohinder Singh V/s Satpal Singh” 2010(42) RCR (Civil) 867.**

He further submitted that no harm and prejudice would be caused as the substantial amount of consideration had already been received by the petitioner-judgment debtor.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the provisions of Section 28 of the Specific Relief Act, 1963 and Section 148 of the Code of Civil Procedure, which reads thus:-

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.

Section 148 of the Code of Civil Procedure

148. Enlargement of time.- *Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.”*

On conjoint reading of the aforementioned provisions, it is evident that once there is a specific clause in Section 28(1) of the 1963 Act of rescission of the contract on account of failure of the decree holder not depositing the money, in other words, it would put a fetter upon the decree-holder in seeking the execution of the decree for specific performance on deposit of the balance amount of consideration, during the prescribed time. The provisions of Section 148 CPC only deal with the procedure lapses. There is a stark difference between the statutory provisions and the procedure.

This Court in CR No.300 of 2015 titled as “Ashwani Kumar and another V/s Jagdish Mittal” decided on 30.08.2016 while relying upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in “**P.R. Yelumalai V/s N.M. Ravi**” 2015 (2) RCR (Civil) 585, had already held that

extension of time under Section 148 CPC cannot be granted. This view of mine is supported by paragraph Nos.10 to 14 of the judgment rendered by the Hon'ble Supreme Court in **Prem Jeevan's case** (supra), which reads thus:-

“(10) In absence of the said time being extended, the decreeholder could execute the decree only by making the payment of the decretal amount to the judgment-debtor or making the deposit in the court in term of the said decree. In the present case, neither the said deposit was made within the stipulated time nor extension of time was sought or granted and also no explanation has been furnished for the delay in the making of the deposit. No doubt, as contended by the learned counsel for the decree-holders, relying on judgment of this Court in Ramankutty Guptan v.Avara– (1994) 2 SCC 642, in an appropriate case the Court which passed the decree could extend the time as envisaged in the Specific Relief, 1963. In the present case no such steps have been taken by the decreeholders. (11) In above circumstances, the contention, advanced on behalf of the decree-holders, respondents herein, that unless the judgment-debtor seeks rescission of the contract in terms of Section 28 of the Specific Relief Act, the decree remains executable in spite of expiry of period for deposit, with the only obligation on the part of the decree-holders to pay interest, cannot be accepted.

*(12) Section 28 of the Specific Relief Act is as follows:
which reads thus:-*

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further

period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract,

to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.

(13) There is no doubt that the above provision permits the judgment-debtor to seek rescission of a contract and also permits extension of time by the Court but merely because rescission of contract is not sought by the judgment-debtor, does not automatically result in extension of time.

(14) In view of the above, we allow these appeals, set aside the order passed by the High Court and restore the order of the Executing Court. No costs. ”

On perusal of the aforementioned observations, it has already been noticed that one judgment of the Single Bench of this Court in **Mohinder Singh's case** (supra) by relying upon the judgment of the Hon'ble Supreme Court in **Sardar Mohar Singh's** case (supra), had held that time can be extended, but with all humility, the Hon'ble Supreme Court was not apprised of the provisions of sub-Section 1 of Section 28 of the 1963 Act.

In the absence of any explanation, much less, compliance of the decree, the decree-holder cannot at his own sweet will, seek the execution of the decree on depositing the balance amount. There would have been a force in the submissions of Mr. Nagra, had there been an interim stay for that period preventing him from depositing the money, for, he was apprehensive of success of the appeal or otherwise.

All these facts have not been noticed of by the Court below, thus, the impugned order, under challenge suffers from illegality and perversity, much less, without jurisdiction and accordingly, the same is hereby set aside.

The present revision petition stands allowed.

23.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓
Whether speaking/reasoned Yes/ No
✓
Whether Reportable Yes/ No