

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

CR-6100-2017 (O&M)

Date of decision : 25.4.2018

Smt. Phula Devi

..... Petitioner

Versus

Raja Ram and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ajay Jain, Advocate for the petitioner.

Mr. J.P.Sharma, Advocate for the respondent Nos 1 and 2.

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

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 29.8.2017, (Annexure P-7) passed by learned Additional Civil Judge (Senior Division), Narnaul, vide which in the execution proceedings, an application filed by the petitioner-judgment-debtor under Section 28 of the Specific Relief Act, 1963 that the agreement stands rescinded was dismissed.

Heard.

The brief history of the case is that on 1.11.2008, while deciding the suit for specific performance of the agreement to sell following decree was passed by learned Additional Civil Judge (Senior Division), Narnaul: -

“It is ordered that suit of the plaintiffs decree with costs. A decree for specific performance of agreement to sell Ex. P1 is hereby passed in favour of the plaintiffs and against the defendant. The release deed Ex. D1 executed by the defendant No. 1 in favour of

defendant No. 2 is set aside qua the share of defendant No. 1 Smt. Phula Devi i.e. 1/6th share in the total land measuring 235 kanal 9 marla. Defendant No. 1 Smt. Phula Devi is directed to execute the sale deed in favour of the plaintiffs as per terms and conditions mentioned in the agreement to sell Ex. P1 in favour of the plaintiffs within a period of two months from today. If the defendant No. 1 failed to execute the sale deed in favour of the plaintiffs as per the terms and conditions of the agreement to sell the plaintiffs are at liberty to get execute and register the sale deed in their favour through the process of the Court as per law.”

Defendants being aggrieved against the said decree preferred an appeal on 8.12.2008 in which temporary stay was granted and ultimately appeal was dismissed on 11.4.2013. On 1.7.2013, decree holders/respondents No. 1 and 2 filed an execution before the Executing Court along with an application to deposit the balance sale consideration. The Executing Court on the same day allowed the decree holder to deposit the balance sale consideration subject to his own risk and responsibility. The objection of the present petitioner-judgment debtor No. 1 is that amount was to be deposited within two months which at the most can be taken from the decision of the appeal on 11.4.2013. Therefore, it was required to be deposited till 10.6.2013. Therefore, the agreement to sell is liable to be rescinded under Section 28 of the Specific Relief Act, 1963.

Learned counsel for the petitioner also relies upon an authority of Hon'ble Supreme Court delivered in **Prem Jeevan versus K.S. Venkata Raman & another, 2017 (2) Civil Court Cases 001 (S.C.)**. A perusal of the said authority shows that in the said case, defendants were directed to execute the sale within two months from the date of order after the receipt of balance sale consideration. It was further decreed that in case defendant

No. 1 refused to receive the balance sale consideration with interest, plaintiff is at liberty to deposit the said amount in the Court and obtain a regular sale deed through the Court. The decree was passed on 25.09.2008 and on 4.12.2008, the decree holder sent a cheque to the judgment-debtor which was not accepted by the judgment debtor. Therefore, execution was filed about 2 years i.e., later in the year 2010 and the deposit of the decretal amount was made on 7.10.2010 i.e. after about little less than 2 years of the return of the said cheque. In those circumstances, the Apex Court held that the agreement stands rescinded since the decree has not been complied with and there is no extension of time.

In the present case, the term of the decree reproduced above shows that defendant No. 1 was to execute the sale deed as per the terms and conditions mentioned in the Ex. D-1 within the period of two months from today and if defendant No. 1 failed to execute the sale deed in favour of the plaintiff, plaintiff is at liberty to get the sale deed executed and registered through the process of the Court of law. In this way, defendant No. 1 was given two months time to execute the sale deed. Defendant-judgment debtor No. 1 never claimed that within two months of the dismissal of their appeal, they gave any notice to the decree holder to come present with the sale consideration and get the sale deed executed. After the expiry of two months which expired on 10.6.2013, the decree holder filed the execution within few days i.e. on 1.7.2013 and on the date of filing of the execution, they moved separate application before the Executing Court for deposit of the amount. The same was allowed to be deposited subject to his risk and responsibility.

I am of the view that after the expiry of two months, there is no inordinate delay in filing the execution. Moreover, by allowing the decree holder to deposit the amount, may be subject to his risk and responsibility, the Executing Court implied the extended time to deposit the amount. The amount was promptly deposited on the same day. Therefore, the facts of the case are distinguishable from the present case. Moreover, it is not denied that defendant-judgment debtor No. 1 was not willing to execute the sale deed as he was not even satisfied with the decision of the lower Appellate Court and has filed regular second appeal before this Court. Therefore, it cannot be said that defendant- judgment debtor No. 1 was willing to execute the sale deed within the said period of two months and decree holder did not pay the balance sale consideration to the judgment debtor in terms of the agreement.

There is no ground to rescind the agreement to sell dated 22.9.1999 under Section 28 of the Specific Relief Act, 1963.

Accordingly, present revision petition stands dismissed.

(KULDIP SINGH)
JUDGE

25.4.2018

preeti

Whether speaking / reasoned
Whether Reportable:

Yes
Yes