

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 106

CR-6184-2018

Date of decision : 05.10.2018

Veer Singh

..... Petitioner

VERSUS

Kamal Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. K. B. Raheja, Advocate, for the petitioner.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 26.07.2018, passed by the Additional Civil Judge (Senior Division), Ferozepur (for short, the Executing Court), through which the application filed by the petitioner seeking therein a declaration for declaring sale deed dated 26.10.2016 to be null and void, has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that way back in the year 2003 the respondent filed a suit seeking therein specific performance of agreement to sell dated 29.06.2002 with regard to land measuring 52 kanals and 17 marlas detailed and described in the plaint (for short, the suit property). The suit was decreed on 13.10.2009 as per which the respondent was directed to deposit the balance sale consideration within one month from the date of the decree with a further direction to the petitioner to execute the sale deed in favour of the respondent within a period of two months, failing which the respondent was held entitled to get the sale deed executed through the Court.

The petitioner challenged the aforesaid judgment and decree dated

13.10.2009 through an appeal filed before the District Judge, Ferozepur (for short, the Appellate Court) in which proceedings, through judgment and decree dated 29.01.2011, the aforesaid judgment and decree of the Trial Court dated 13.10.2009 was modified to the extent that the respondent's suit was decreed only qua the alternate relief for recovery of ₹7 lakhs alongwith interest @ 12% per annum from the date of agreement to sell dated 29.06.2002 till the date of decree. Future interest @ 6% per annum till the realization of the decretal amount was also granted.

Both parties being aggrieved by the aforesaid judgment and decree of the Appellate Court knocked the doors of this Court through separate second appeals being RSA-2287-2011 "*Kamal Kumar vs. Veer Singh*" and RSA-3211-2011 "*Veer Singh vs. Kamal Kumar*". Both the second appeals were disposed of by this Court through a common judgment dated 16.01.2015, the concluding portion of which reads as under: -

"Appeal filed by plaintiff-Kamal Kumar is thus, allowed and the judgment and decree of lower Appellate Court with regard to refusal of relief of specific performance of the agreement to sell is set aside and judgment of the trial Court to that extent is upheld. The defendant is directed to execute the sale deed within a period of three months from the date of passing of this order, failing which plaintiff will seek execution of the agreement through process of law. The appeal of defendant is dismissed. Decree sheet be prepared."

As per the afore quoted portion of the judgment of this Court, the petitioner's second appeal was dismissed whereas the respondent's appeal was allowed after holding the respondent entitled to the relief of specific performance of agreement to sell dated 29.06.2002 with a further direction to the petitioner to execute the sale deed within a period of three months from the date of passing of the afore quoted order failing which the respondent was held entitled to get the agreement executed through the process of law.

The petitioner challenged the aforesaid judgment of this Court before the Hon'ble Apex Court through Special Leave to Appeal (C) No. 18229 of 2015 "*Veer Singh vs. Kamal Kumar*" which was disposed of on 01.12.2017 through the following order: -

“Heard learned counsel for the parties.

The respondent will pay a sum of Rs.5,00,000/- (Rs. Five lakhs) more to the petitioner within a period of three months from today. In case the amount is not paid, the same will carry interest at the rate of 12% p. a. after three months.

The amount deposited by the petitioner may be refunded to him with the accrued interest.

On payment of Rs.5,00,000/- (Rs. Five lakhs), the respondent-plaintiff will be entitled to take possession.

The special leave petition is, accordingly, disposed of.

Pending application(s), if any, shall also stand disposed of.”

(emphasis supplied)

As per the afore quoted order, after hearing learned counsel for the parties, the Hon'ble Apex Court directed the respondent to pay the petitioner, over and above the agreed amount between the parties, a further sum of ₹5 lakhs within a period of three months. It was further directed that in case the amount was not paid within three months the same shall carry interest @ 12% per annum. The Hon'ble Apex Court further held that on payment of the aforesaid amount of ₹5 lakhs the respondent shall be entitled to take possession of the suit property.

During the period when the matter was pending before the Hon'ble Apex Court, in the execution proceedings sale deed dated 26.10.2016 was got executed between the parties leading to the filing of an application by the petitioner before the Executing Court seeking such sale deed to be declared null and void only on the ground that the respondent had failed to deposit the balance sale consideration within one month from the date of passing of the decree passed by the Trial Court. However, before the Executing Court

could opine on the petitioner's application, the Hon'ble Apex Court disposed of the petitioner's aforesaid Special Leave to Appeal on 01.12.2017 through the order reproduced above and thereafter in the light of the observations made by the Hon'ble Apex Court, the petitioner's application was dismissed by the Executing Court through the order which is the subject matter of challenge in the present proceedings.

Learned counsel for the petitioner submits that the sale deed dated 26.10.2016 executed between the parties is liable to be declared null and void for the sole reason that on 13.10.2009 when the judgment and decree was passed by the Trial Court, the respondent was granted one month's time to deposit the balance sale consideration and once it is the admitted case between the parties that without any further extension so granted by any Court the deposit was made by the respondent well beyond the period of one month, the decree passed by the Trial Court became inexecutable.

The afore submissions made by learned counsel for the petitioner deserve outright rejection.

The final order in the litigation between the parties pertaining to the suit filed by the respondent for specific performance of agreement to sell dated 29.06.2002 was the order dated 01.12.2017, passed by the Hon'ble Apex Court through which, after hearing learned counsel for the parties, the Hon'ble Apex Court directed the respondent to pay to the petitioner, within three months of the date of passing of the order, an additional sum of ₹5 lakhs which was over and above the amount agreed between them. It was further directed that if the payment of ₹5 lakhs was not made within the aforesaid period of three months, the same shall carry interest @ 12% per annum and on such deposit the respondent was held entitled to take

possession of the suit property.

Since on 01.12.2017 the Hon'ble Apex Court directed only payment of the additional amount of ₹5 lakhs, it is not difficult to presume that it was aware that the agreed amount had already been deposited by the respondent on 14.12.2009. Nonetheless through its order dated 01.12.2017, on payment of ₹5 lakhs by the respondent to the petitioner, which payment has admittedly been made by him, the Hon'ble Apex Court held him entitled to take possession of the suit property. Thus, after the deposit of ₹5 lakhs there can be no impediment whatsoever for the respondent to take possession of the suit property and the Executing Court has rightly demolished all such hurdles sought to be created by the petitioner.

In view of the above facts, the filing of the present petition can be termed as nothing but frivolous and therefore, the same is dismissed with costs which are quantified at ₹25,000/-.

05.10.2018
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No