

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR No.7072 of 2018

Date of Decision:22.11.2018

R.P. Malhotra (since deceased) through Legal Representatives

...Petitioners

versus

Subhash Chander

...Respondent

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present:- Mr. Hemant Bassi, Advocate  
for the applicants-petitioners.

**Amol Rattan Singh, J.**

By this petition, the petitioners (legal representatives of the judgment debtor in a decree passed in favour of the respondent herein), challenge the order of the execution Court dated 06.10.2018, allowing the prayer of the decree holder seeking delivery of possession of the suit property. The challenge has arisen out of the fact that though the decree issued by the trial court, holding the plaintiff entitled to execution of the sale deed in his favour, on the basis of an agreement of sale dated 26.12.2002, was a decree that became final upto this Court with the dismissal of the second appeal filed by the petitioners/their predecessor-in-interest (judgment debtor), the decree itself omitted to specifically state that after the execution of the sale deed, possession of the suit property would also be delivered to the decree holder.

However, the contention of the petitioners that therefore possession could not be sought by the decree holder, was rejected vide the impugned order. The learned execution Court referred to Section 28 of the Specific Relief Act 1963 (hereinafter to be referred to as the Act), to hold that

sub-section (3) thereof conferred upon the Court the jurisdiction to grant further relief to the decree holder as he may be entitled to, including delivery of possession of the suit property.

While doing so, that Court referred to a judgment of the Supreme Court in **Babu Lal v. M/s Hazari Lal Kishori Lal** AIR 1982 SC 818, as also judgments of this Court and of the High Court of Telangana and Andhra Pradesh, (as were cited before it on behalf of the decree holder). The judgments cited on behalf of the judgment debtor in **State of Punjab v. Som Nath** 1992 (2) PLR 654 and **Amar Singh v. State of Punjab** 2012 (3) PLR 731, were held inapplicable in the circumstances of the case.

2. Before this Court, Mr. Hemant Bassi, learned counsel for the petitioner, had argued on the first date that the case came up for hearing, that the judgments relied upon by the trial Court were in fact wholly distinguishable on facts, whereas those cited before that Court on behalf of judgment debtor were applicable, and further, in terms of the judgment of the Supreme Court in **State Bank of India v. Ram Chandra Dubey** AIR 2000 SC 3734, and of the Delhi High Court **Dalip Kumar v. UOI and other** (WP (C) 916/2012 decided on 06.05.2013), that Court could not pass an order in execution proceedings beyond the decree issued in favour of the decree holder.

Though this Court had at that time also, *prima facie*, expressed its opinion that even the wording of 28 (3) of the Act would seem to postulate that further relief may be granted as the decree holder may be entitled to, however, for further consideration, the matter was adjourned to 17.10.2018, on which date Mr. Bassi relied upon a judgment of a co-ordinate Bench of the Andhra Pradesh High Court in **Balasa Sarada v. Talluri Anasuyamma**

(deceased by LRs) and ors. 2007 SCC Online AP 69, wherein it was held as follows:-

“9. It appears by relying on the language in the above section, the decree holder made application in the same suit seeking to execute the decree under Section 28 (3) of the Specific Relief Act. The words “same suit” included in the section, enable the party to obtain incidental reliefs in the suit, but not relating to execution of the decree. Therefore, I am of the considered view that the words “same suit” mentioned in Section 28(3) of the Specific Relief Act, do not relate to execution. In the instant case, the trial Court already passed a decree in favour of the petitioner. It is not the case of the petitioner that he is seeking further reliefs under the present I.A. The relief sought in the present I.A., is execution of proper document in favour of the plaintiff. Therefore, Section 28(3) of the Specific Relief Act does not empower the Court to execute the decree. The decree holder has to approach the appropriate Court by filing a separate application to execute the decree as indicated by the trial Court.”

3. His contention therefore was as he had submitted on the previous date, with him further citing from the judgment in *Som Nath's* case, pointing to the following paragraphs therefrom:-

“9. The decree which was passed by the trial judge did not contain any direction to pay interest. In the execution proceedings, the decree holder claimed interest on the ground that the amount claimed by him was withheld by the petitioners and the decree-holder was entitle to claim interest. The plea of the petitioner that the executing Court could not go beyond the decree was not examined by the executing Court and the executing Court allowed the claim of the decree-holder for payment of interest. Aggrieved against this direction, the petitioners have come up in revision petition.

10. The view taken by the executing Court cannot be sustained. Indisputably, the executing Court cannot go beyond the decree. It

has to execute the decree as formulated by the Court passing it. A relief which is not granted by the Court deciding the suit will be deemed to have been declined. The executing Court cannot assume jurisdiction to grant interest by resorting to the provisions of Section 34 of the Code of Civil Procedure. It does not empower the executing Court to grant interest in execution proceedings which has not been granted by the Court deciding the suit. The matter has now been authoritatively settled by the apex Court in **Civil Appeal arising out of S.L.P.(C) No.3116 of 1990 (State of Punjab and others v. Krishan Dayal Sharma), decided on August 27, 1990**. In that case, the plaintiff, after his retirement from the Police Department sought a declaration from the Civil Court that he was entitled to promotion as Deputy Superintendent of Police with effect from September 9, 1964. The trial Court dismissed the suit, but, on appeal, the first appellate Court decreed the plaintiff's suit holding he was entitled for promotion as Deputy Superintendent of Police with effect from September 9, 1964 and was also entitled to all benefits. Rights and privileges which he would have drawn had he been promoted on September 9, 1964. The decree attained finality. In execution proceedings, the plaintiff claimed arrears of salary with effect from September 9, 1964 till his date of retirement, arrears of pension and other amounts. In addition, he claimed compound interest @ 12% per annum on the amount found due to him. The State of Punjab objected to the claim of the decree-holder for interest on the ground that the decree which was sought to be executed did not contain any direction for awarding interest to the decree holder. The objection was repelled by the executing Court and the order was upheld in revision petition by this Court. In appeal before the apex Court, the apex Court held that in the absence of any direction in the judgment or decree which was under execution, it was not open to the executing Court to award interest. At this stage, it will be useful to reproduce the following observations of the apex Court:

“The Executing Court is bound by the terms of the decree,

it cannot add or alter the decree on its notion of fairness or justice. The right of the decree-holder to obtain relief is determined in accordance with the terms of the decree. The Execution Court has referred to a number of decisions where interest had been granted on the arrears of salary and pension. The Execution Court failed to appreciate that in those decisions directions for payment of interest had been issued by the Court while granting relief for reinstatement or payment of arrears of salary or pension. None of those decisions relate to the grant of interest by the execution Court. No doubt the Courts have power to award interest on the arrears of salary or pension or other amount to which a Government servant is found entitled having regard to the facts and circumstances of the case but that power cannot be exercised by the Execution Court in the absence of any direction in the decree. In view of the executing Court in the instant case acted in excess of its jurisdiction in awarding interest to the respondent judgment debtor.”

In the light of this authoritative pronouncement, there is no escape from the conclusion that the decision rendered in **State of Punjab v. Radha Ram and another, 1989 (2) R.S.J. 595**, cannot be sustained and the same is overruled. The view taken in **Civil Revision No.558 of 1989 (State of Punjab v. Kartar Singh) decided on April 5, 1989** and **Civil Revision No.944 of 1987 (Dr.K.G. Chowdhri v. The State of Haryana) decided on July 25, 1988** is affirmed.

For the reasons recorded above, the revision petition succeeds, the order of the executing Court to the extent that the respondent is entitled to interest @ 12% per annum on the withheld payment of salary is quashed, but there will be no order as to costs.”

4. This Court had thereafter (as recorded in the order dated 17.10.2018), referred to the judgment in *Babu Lals'* case (supra), where their

Lordships of the Supreme Court had first referred to the judgment of the Allahabad High Court **Balmukand v. Veer Chand** AIR 1954 Allahabad 643, in which case though a decree of specific performance of the contract was silent as to the relief of delivery of possession, even though such relief had been claimed in the suit, the High Court had held that Section 28(3) clearly contemplated that if the purchaser or lessee paid the purchase money or other sum as he had been ordered to pay under the decree, the Court on an application made in the same suit, may award the purchaser further relief as he was entitled to, (i.e. almost exactly the wording contained in sub-section (3) of Section 28).

Further in *Babu Lals'* case, the Apex Court had cited the following from an earlier judgment in **Hungerford Investment Trust Ltd. v. Haridas Mundhra and ors.** AIR 1972 SC 1826:-

“The Specific Relief Act, 1963, is not an exhaustive enactment and under the law relating to specific relief a Court which passes a decree for specific performance retains control over the decree even after the decree had been passed. Therefore, the Court, in the present case, retained control over the matter despite the decree and it was open to the Court, when it was alleged that the party moved against had positively refused to complete the contract, to entertain the application and order rescission of the decree if the allegation was proved.”

5. Mr. Bassi had however still further submitted before this court that the term “same suit”, as used in Section 28(3) of the Act, had not been held to extend to execution proceedings and therefore, if at all the relief of possession of the suit property is to be granted, that should have been done by the trial Court/appellate Court during the pendency of the *lis* prior to execution proceedings.

Lastly, he had submitted that whether or not the same Court, i.e. the trial court or even the appellate Court, upon an application made to it, even now granted a decree of specific performance, was something which such Court would see if such application were to be made before it, but the executing Court would be debarred from entertaining such application, as it sought relief beyond that granted by the decree that was sought to be executed.

6. Having considered the matter, first, the necessary statutory provisions in the Act, i.e. Sections 22 and 28, need to be looked at and are reproduced hereinafter:-

**“22. Power to grant relief for possession, partition, refund of earnest money, etc.-** (1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 1[made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

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**“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.”

7. Though, after a perusal of Section 28 of the Act, in the opinion of this Court, even the term “same suit”, as occurs in sub-section (3) thereof, would include execution proceedings, it would be necessary to look at the judgments cited by learned counsel for the petitioner.

8. The first judgment is in *Amar Singhs'* case (supra), which was a regular second appeal decided by this Court, thereby upholding the dismissal of the suit of the plaintiff, by which he had sought recovery of Rs.8,66,425/-.

The background of the case was that the appellant-plaintiff had in fact earlier filed CWP no.16691 of 2003, which was disposed of by this Court by directing the respondent State of Punjab to pay him his dues, on account of the work of construction contracted with him. While making the payment however, the State had deducted Rs.2,55,668/- on account of sales tax, with the petitioner in the writ petition having stated that there was no such condition in the contract.

Hence, he had instituted the suit seeking recovery of the aforesaid amount, alongwith interest thereupon.

That suit had been dismissed by both the Courts below and while dismissing even a second appeal, it was observed by this Court as follows:-

“10. A bare perusal of the above order would show that the plaintiff had claimed payment as well as interest at the rate of 18% per annum. A perusal of the order further shows that while

disposing of the writ petition a special order was passed and nowhere it was directed that amount due should be paid along with interest at the rate of 18% per annum as claimed by the plaintiff now. Under the law, a relief which is claimed and not specifically allowed by the court is deemed to be declined. If the said relief was not given by this court in the Ex.P-5, the same is bound to be deemed to have been declined. That being so, this court has no hesitation in holding that both the courts below have rightly dismissed the suit of the plaintiff. If any grievance was there with the plaintiff qua the order passed by this court, the same should have been challenged by him through proper legal channel by availing the proper legal remedy. As far as the argument regarding deduction of sale tax is concerned the same is devoid of merit as the learned lower Appellate Court has observed that as per condition no.12 of the notice inviting tenders, sales tax at the rate of 2% was to be deducted from the bills. No counter to the same was pointed out by the learned counsel for the appellant.”

Hence, the inference drawn by Mr. Bassi, learned counsel for the petitioner, while relying on the aforesaid observation, is obvious, i.e. a relief claimed in the suit, not specifically allowed, would be deemed to have been declined and consequently the execution proceedings cannot go beyond the decree issued.

9. To the same effect, learned counsel relied upon a judgment of a Division Bench in *Som Nath's* case (supra), which was a civil revision arising again out of execution proceedings in which the decree holder (the petitioner before the Division Bench), was issued a decree by which a show cause notice issued to him, proposing a punishment of dismissal, by dispensing with a departmental enquiry, was declared to be illegal, unconstitutional and void, and any action taken pursuant to that show cause notice was also deemed to

be so, with the plaintiff held to be in service of the police department, entitled to all benefits and privileges attached to his post, as had become due to him till the date of the passing of the decree.

An application for execution of the decree having been filed by the decree holder in that case, the decree was dismissed as partly satisfied upon a certain amount of money having been received by the decree holder, who thereafter filed a second execution application by which he also claimed Rs.24,034.44 paise by way of interest.

The claim for interest was objected to by the State (judgment debtor), on the ground that the decree in the holders' favour did not direct payment of any such interest on the dues otherwise accruing to him during the pendency of the suit, with the execution Court, however dismissing the objections, thereby allowing interest to be paid to the decree holder.

The State of Punjab having filed a revision petition against that order, a coordinate bench of this Court had referred the matter to a Division Bench in view of conflicting judgments cited before it (on whether or such interest could have been awarded beyond what was contained in the decree).

10. The Division Bench referred to a judgment of the Supreme Court in **State of Punjab and others v. Krishan Dayal Sharma (SLP © No.3116 of 1990, decided on August 27, 1990)**, citing the following passage contained in that judgment:-

“The Executing Court is bound by the terms of the decree, it cannot add or alter the decree on its notion of fairness or justice. The right of the decree-holder to obtain relief is determined in accordance with the terms of the decree. The Execution Court has referred to a number of decisions where interest had been granted on the arrears of salary and pension. The Execution Court failed to appreciate that in those decisions directions for

payment of interest had been issued by the Court while granting relief for reinstatement or payment of arrears of salary or pension. None of those decisions relate to the grant of interest by the execution Court. No doubt the Courts have power to award interest on the arrears of salary or pension or other amount to which a Government servant is found entitled having regard to the facts and circumstances of the case but that power cannot be exercised by the Execution Court in the absence of any direction in the decree. In this view the executing Court in the instant case acted in excess of its jurisdiction in awarding interest to the respondent judgment debtor.”

Hence, on the basis of the ratio of the judgment in *Sharmas'* case, the Division Bench held that the Executing Court could not have granted interest to the decree holder, such interest not having been awarded in the decree.

11. Having considered the ratio of the law laid down in the aforesaid judgments, what is stated by the Supreme Court in *Babu Lals'* case (supra), also naturally needs to be looked at carefully.

That was a case arising out of a suit instituted seeking specific performance of a contract of a sale, which was decreed in favour of the plaintiff on first appeal, the trial Court having dismissed the suit.

In second appeal, the Allahabad High Court while confirming the judgment and decree of the appellate Court, modified the decree to the extent that the judgment debtors were directed to execute a sale deed in favour of the decree holders, “to bring it in line with the decision of the Supreme Court in Lala Durga Prasad v. Lala Deep Chand 1954 SCR 360, with the Supreme Court quoting from that judgment (in *Babu Lals'* case) as follows:-

“In a suit instituted by a purchaser against the vendor and a subsequent purchaser for specific performance of the contract of

sale. If the plaintiff succeeds, the proper form of the decree to be passed is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff.”

(Reference paragraph 2 of the judgment of the Supreme Court, Law finder DocID # 103513)

The judgment debtor still not having handed over possession to the decree holder, and in fact having filed an objection under Section 47 of the Code of Civil Procedure, the said objection was allowed, with the execution Court refusing to grant the relief of possession on the ground that the remedy of the decree holders for possession by means of separate suit, and not in execution proceedings.

That order of the execution Court was confirmed in appeal, with however, the appeal of the decree holders allowed by the High Court, holding that they would be entitled to possession of the suit property also.

That order came to be challenged before the Supreme Court by the judgment debtor. Their Lordships after referring to Section 22 of the Act also referred to the judgment of the Allahabad High Court in *Balmukands'* case (supra), wherein the executing Court was held to competent to deliver possession, even though the decree for specific performance of a contract of sale was silent on that aspect, though the said relief was claimed in the suit.

In other words, the situation in *Balmukands'* case was exactly the same as is in the present case before this Court.

Further in *Babu Lals'* case, their Lordships referred to a judgment of the Patna High Court in **Janardan Kishore v. Girdhari Lal** AIR 1957 Patna 701, wherein also it was held that the relief of possession is inherent in a relief of specific performance of a contract for lease and the Court in

execution of the decree can grant possession of the suit property.

12. Upon what is contained in Section 22, the Supreme Court, in *Babu Lals'* case, has observed as follows:-

“11. Section 22 enacts a rule of pleading. The Legislature though it will be, useful to introduce a rule that in order to avoid multiplicity of proceedings the plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking, the right to possession accrues only when suit for specific performance is decreed. The Legislature has now made a statutory provision enabling the plaintiff to ask for possession in the suit for specific performance and empowering the Court to provide in the decree itself that upon payment by the plaintiff of the consideration money within the given time, the defendant should execute the deed and put the plaintiff in possession.”

Having observed as above, it was further observed as follows:-

“14. There may be circumstances in which a relief for possession cannot be effectively granted to the decree-holder without specifically claiming relief for possession, viz., where the property agreed to be conveyed is jointly held by the defendant with other persons. In such a case the plaintiff in order to obtain complete and effective relief must claim partition of the property and possession over the share of the defendant. It is in such cases that a relief for possession must be specifically pleaded.”

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16. XXXXX XXXXX XXXXX

“The contention on behalf of the petitioner is that the relief for possession must be claimed in a suit for specific performance of a contract in all cases. This argument ignores the significance of the words 'in an appropriate case'. The expression only indicates that it is not always incumbent on the plaintiff to claim

possession or partition or separate possession in a suit for specific performance of a contract for the transfer of the immoveable property. That has to be done where the circumstances demanding the relief for specific performance of the contract of sale embraced within its ambit not only the execution of the sale deed but also possession over the property conveyed under the sale deed. It may not always be necessary for the plaintiff to specifically claim possession over the property, the relief of possession being inherent in the relief for specific performance of the contract of sale. Besides, the proviso to sub-sec (2) of Section 22 provides for amendment of the plaint on such terms as may be just for including a claim for such relief 'at any stage of the proceedings'."

13. Section 28 of the Act was also reproduced in the judgment in *Babu Lals'* case, with it being thereafter observed as follows:-

"26. Sub-section (3) of Section 28 clearly contemplates that if the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree, the Court may on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to Sub-clause (b) of sub-section (3) of Section 28 contemplates the delivery of possession or partition and separate possession of the property on the execution of such conveyance or lease. Sub-section (4) of Section 28 bars the filing of a separate suit for any relief which may be claimed under this section."

11. That being so, in my opinion this petition cannot succeed.

I do not see any merit in the contention of Mr. Bassi, learned counsel for the petitioner, to the effect that the words "on application made in the same suit" can only be in reference to an application made during the pendency of the "principal *lis*", i.e. during the trial itself or in appeal thereafter and that such an application cannot be made in execution

proceedings. Other than the fact that the execution proceedings are actually in the same suit, and are an extension of it, seeking execution of the decree issued in that suit, their Lordships in *Babu Lals'* case not having disagreed with the judgments of the Allahabad High Court and the Patna High Court in *Balmukands'* and *Janardan Kishores'* cases respectively, wherein in the latter specifically it was held that the execution Court has the jurisdiction to grant the relief of possession in a suit seeking specific performance of a contract, I find no merit in this petition whatsoever.

The case does not fall within the exception referred to in paragraph 14 of *Babu Lals'* judgment (as reproduced hereinabove), it not being the case of the petitioners that the property was jointly held in the hands of the original judgment debtor, i.e. R.P. Malhotra, the predecessor-in-interest of the present petitioners (who are his LRs, being his widow and 3 children).

Hence, in terms of the plain language contained in Section 28 (3) of the Act, as also what is seen to be contained in the ratio of the judgment in *Babu Lals'* case, I see no reason to interfere with the impugned order. Consequently, this petition is dismissed in *limine*, no notice having been issued to the respondents.

The interim order passed by this Court on October 22, 2018, upon an application (CM-23210-CII-2018) having been filed by the petitioners, stands hereby vacated.

**November 22, 2018**  
dinesh

**(AMOL RATTAN SINGH)**  
**JUDGE**

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable?        | Yes |