

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

CR No.8171 of 2017

Date of Decision: January 23, 2018

Jaswant Singh and others

..... Petitioners

Versus

Major Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C. M. Munjal, Advocate
for the petitioners.

Mr. Prashant Bansal, Advocate
for the respondent.

AMIT RAWAL J. (ORAL)

The petitioners-judgment debtor is in revision against the order dated 07.10.2017 passed by the Executing Court in pursuance to the application moved by the decree holder seeking recovery of amount of Rs.11,680/- as excess amount deposited and Rs.26,901/- as cost of the suit including the counsel fee as per the decree sheet dated 08.08.2012.

Mr. C. M. Munjal, learned counsel appearing on behalf of the petitioners submitted that the respondent-plaintiff instituted the suit for specific performance of agreement to sell dated 04.11.2004 in respect of land measuring 28 kanal 2 marla which was agreed to be sold at the rate of Rs.4,08,000/- against the payment of Rs.3 lacs as earnest money. The aforementioned suit was decreed vide judgment and decree dated 08.08.2012. An appeal preferred against the same was also dismissed vide judgment and decree dated 24.04.2013. RSA bearing No.4466 of 2013 is pending adjudication and the next date is 15.02.2018.

Learned counsel for the petitioner submits that there was a mis-calculation of the amount to be recovered by the decree holder as the sale deed executed in pursuance to the judgment and decree dated 24.04.2013 was only in respect of land measuring 14 kanal 9 marlas. The Executing Court has not gone through the orders passed by this Court (Annexure P-7) in CR No.1679 of 2017 whereby it was noticed that the decree holder deposited excess amount of Rs.11,680/-. The order of attachment of one third share of khasra No.21/4/12 (1-8) was absolutely thus against the relief claimed and granted by the trial Court. There was already a direction by this Court to Executing Court to decide application afresh.

But again, the Executing Court without considering the above said facts and circumstances, illegally and arbitrarily passed the orders holding that the decree holder is entitled to recover the amount of Rs.11,682/- i.e. the excess amount deposited by him in the bank and Rs.26,901/- as costs from the estate of the judgment debtor.

Per contra learned counsel appearing on behalf of the decree holder submitted that the sale deed of land measuring 14 kanal 9 marla was executed for a sum of Rs.7,37,970/-. A sum of Rs.3 lacs had already been paid in advance as earnest money and the balance amount i.e. Rs.4,49,650/- was also been paid and therefore there was payment of excess amount of Rs.11,680/-. The aforementioned amount was paid to the bank for getting the property redeemed in order to have a clear title.

In defence, the judgment debtor created all possible hurdles in the execution of the decree. There is no interim stay in the regular second

appeal. The cost of Rs.26,901/- i.e. towards the court fee and advocate fee has also been paid.

In rebuttal, learned counsel for the respondent as submitted that he sought excess amount from the Bank and but not from the judgment debtors.

Mr. C. M. Munjal, Advocate has also drawn the attention of this Court to para No.4 of the application, whereby the plaintiff has already deducted an amount of Rs.26,901/-, therefore there was no question of seeking recovery of the amount.

Para No.4 of the application of the execution reads as under:-

“That according to calculations and the rate fixed between the decree holder and JDs, the price of land at present is Rs.7,80,300/- in respect of land measuring 15 Kanals 6 Marlas and plaintiff also has deducted from this amount of Rs.26,901-25p (26902) and in this way the following amount is to be deposited in government treasury as and when the Hon'ble Court directs to deposit the same:-

Rs.7,80,300/- less Rs.3,00,000/- already paid as advance money to JDs, Rs.26,901-25p (26,902) as costs of suit, so the remaining amount after deducting advance money and costs of suit remains only Rs.4,53,398/-.”

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

On going through the impugned order, I am of the view that the trial Court has not taken into consideration the aforementioned assertions of the decree holder, thus there is error in the calculation viz-a-viz the pleadings of the decree holder qua the excess amount. In my view, the trial Court ought to have called upon the calculation from both the

parties for ascertaining the outstanding amount.

Resultantly, the impugned order dated 07.10.2017 is set aside and the matter is remitted to the trial Court with a direction to both the parties to submit calculation with regard to the amount alleged to have been deposited by the decree holder with regard to the land measuring 15 kanals 6 marlas viz-a-viz the sale deed of land measuring 14 kanals 9 marlas. Accordingly, the amount paid by the decree holder to the bank for obtaining redemption and certificate from the bank, to ascertain as to how much excess amount has been received, after going to calculation, the trial Court shall pass the final order within two months from the date of receipt of certified copy of this order.

The parties through their counsel are directed to appear before the trial Court on 28.02.2018.

The present petition stands disposed of.

(AMIT RAWAL)
JUDGE

January 23, 2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No