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

CR-3677-2017 (O&M)
Date of decision : 16.05.2019

Parkashwinder Singh

... Petitioner

Versus

Jaswant Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Puja Chopra, Advocate
for the petitioner.

Mr. Sanjiv Pandit, Advocate
for the respondent.

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AMIT RAWAL, J.

The present revision petition is directed against the impugned order dated 30.09.2016, whereby the application for restoration of the application for extension of time, dismissed in default on 12.10.2012 and execution application dated 11.08.2012 seeking execution of the decree dated 10.02.2012, have been dismissed.

The question involved in the present revision petition is whether the petitioner-decree holder had been ready and willing to perform the part of the agreement to sell in not depositing the balance amount within a period of two months from the date of judgment and decree dated 10.02.2012, in a suit for specific performance.

Ms. Puja Chopra, learned counsel appearing on behalf of the petitioner submitted that the two months' time expired on 10.04.2012, however, an application dated 07.04.2012 (Annexure P-2), seeking indulgence of the Court, for depositing the balance consideration, was submitted, as the health of the wife of petitioner was not good. The respondent filed the reply dated 18.05.2012. However, on 24.07.2012, two more applications were filed, one for execution and another for allowing the petitioner to deposit the balance consideration. The zimini orders reveal that both the applications dated 24.07.2012, were kept pending, however, application dated 07.04.2012 under Section 148 of CPC, was dismissed in default on 12.10.2012. An application for restoration dated 17.05.2016 (Annexure P-6), was filed, which has been dismissed. There was no willful default on behalf of the petitioner. The reasons were beyond control. In fact, the petitioner was following the case in diligent manner and represented by the counsel, but could not come to know about the dismissal in default of the application seeking extension of time. After engagement of new counsel, he was under impression that the execution application and application for extension of time were pending together. Judgment debtor suffered a statement qua withdrawal of the transfer application pending before the District Judge. An application for extension of time was *bona fide* intention to deposit the balance sale consideration. The petitioner had been acting as per the advice of the counsel and is under impression that all the applications were pending. The 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.

She 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.

Per contra,Mr. Sanjiv Pandit, learned counsel appearing on behalf of the respondent submitted that the provisions of Section 148 of CPC, in view of the sperate procedure prescribed under Section 28 of the Specific Relief Act, is a complete code which would prevail. There is no provisions for extension of time. The law with regard to the readiness and willingness from the date of agreement to sell, till its pendency, during the filing of the suit and its pendency, till passing of the decree and thereafter. 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***. The readiness and willingness on behalf of the petitioner-decree holder was conspicuously absent. If at all, there was some *bona fides,* application for extension of time would have been accompanied by a draft. Restoration application was moved after four years and that too, without any draft. The third application for depositing the amount was also not accompanied by any draft. It appears that the petitioner was not having sufficient funds to perform the part of the agreement to sell as sale consideration approximately was ₹8 Lacs (an odd amount).

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Ms. Puja Chopra.

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.*
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> *(2) Where a contract is rescinded under sub-section (1), the court—*
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> *(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***, 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.*
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> *(12) Section 28 of the Specific Relief Act is as follows:*
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> *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. "

I cannot remain unmindful of the fact that the restoration application was also filed after 4 years and without accompanying by any draft and it itself reflects the non-exercise of Due Diligence.

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 Ms. Chopra, had there been an interim stay for that period preventing from depositing the money.

There is no dispute to the ratio decidendi culled out in ***Sardar Mohar Singh's case (supra)*** and ***Mohinder Singh's case (supra)***, but the facts and circumstances of each case have to be seen and noticed above.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the impugned order, under challenge. No ground is made out to interfere in the impugned order. The same cannot be said to have been passed without jurisdiction.

The revision petition is accordingly dismissed

(AMIT RAWAL)
JUDGE

16.05.2019
Yogesh Sharma

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**