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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Civil Revision No.4021 of 2017
Date of Decision:06.03.2019

Harmal ......Petitioner
vs
Sunderpal ....Respondent

2. Civil Revision No.6194 of 2017

Harmal ......Petitioner
vs
Sunderpal ....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. A.K. Goel, Advocate
for the petitioner.

Mr. Vijay Kumar Sheoran, Advocate
for the respondent.

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RAJ MOHAN SINGH, J.

[1]. Vide this common order CR Nos.4021 and 6194 of 2017 are being disposed of. Since common controversy is involved in both the petitions, therefore, for brevity facts are being culled out from CR No.4021 of 2017.

[2]. Petitioner has challenged the order dated 17.05.2017 passed by the Addl. Civil Judge (Sr. Divn.) Loharu whereby the objection petition filed by the petitioner for rescission of contract dated 11.12.2012 was dismissed.

[3]. Plaintiff/respondent filed a suit for possession and permanent injunction on the basis of agreement to sell dated 11.12.2012 executed by defendant/petitioner in favour of the plaintiff/respondent. The suit was decreed vide judgment and decree dated 20.05.2015. The operative part of the judgment reads as under:-

> *"29. As a sequel to my findings on issues no.1 and 2, the suit of the plaintiff is hereby decreed as prayed with costs. The plaintiff is entitled for specific performance of the agreement to sell dated 11.12.2012. The defendant is directed to execute the sale deed and registered it in favour of the plaintiff before the Sub-Registrar, Loharu within two months from the date of this judgment after payment of balance consideration failing which the plaintiff will be entitled to get it executed and registered with the assistance of the Court after payment of balance consideration. Decree-sheet be prepared and file be consigned to the record room after due compliance."*

[4]. Perusal of the decree drawn by the trial Court would show that the defendant was directed to execute and register the sale deed in favour of the plaintiff within two months from the date of judgment after payment of balance consideration, failing which the plaintiff was held entitled to get it executed and registered with the process of the Court after payment of balance sale consideration. The decree drawn by the trial Court is suggestive of the fact that the suit was decreed with costs. As

per memo of costs prepared, the trial Court assessed an amount of Rs.1,86,800/- towards stamp for plaint and after adding other misc. expenses the total costs of Rs.1,86,862/- was assessed.

[5]. Perusal of the record would further show that after passing of the judgment and decree dated 20.05.2015 the judgment-debtor/petitioner has filed an appeal which is statedly pending and no stay was granted in the said appeal.

[6]. On 08.06.2015, the decree holder issued a legal notice to the petitioner/judgment-debtor calling upon him to execute and register the sale deed on 18.06.2015 in compliance of the decree. In the event of non-compliance by the judgment-debtor, the plaintiff would be free to proceed further in the competent Court. The said legal notice was served upon the judgment-debtor, but the judgment-debtor did not appear before the Sub-Registrar on the date fixed i.e. 18.06.2015. The decree-holder/respondent appeared before the Sub-Registrar and got his presence marked by way of getting the affidavit attested by the Executive Magistrate, Loharu. Thereafter, the decree-holder/respondent filed execution of judgment and decree dated 20.05.2015 by calculating an amount of Rs.9,43,138/- after deducting the costs of Rs.1,86,862/-.

[7]. Vide order dated 17.05.2017, the executing Court had directed the plaintiff/decree holder to deposit the balance sale consideration after deducting costs of Rs.1,86,862/- within a period of 14 days. In compliance of that order, the plaintiff/decree-holder deposited an amount of Rs.9,43,138/- after deducting the costs of Rs.1,86,862/- and it was so recorded by the executing Court in the order dated 31.05.2017 and the case was adjourned for filing draft sale deed.

[8]. Against the impugned order dated 17.05.2017 passed by the executing Court, connected CR No.6194 of 2017 has been filed by the petitioner/judgment-debtor, which was ordered to be heard along with the present revision petition i.e. CR No.4021 of 2017.

[9]. Learned counsel for the petitioner vehemently submitted that as per direction contained in judgment and decree dated 20.05.2017, the decree holder has not deposited the balance sale consideration within the time stipulated and therefore, the application under Section 28 of the Specific Relief Act for rescission of agreement to sell dated 11.12.2012 has to be accepted.

[10]. Learned counsel by placing reliance upon ***Chanda (dead) Through LRs vs. Rattni & Anr., 2007(2) R.C.R. (Civil)***

534; ***Bhupinder Kumar vs. Angrej Singh, (2009) 8 Supreme Court Cases 766*** and ***Prem Jeevan vs. K.S. Venkata Raman and another, 2017 AIR (SC) 623*** contended that the Court must ensure strict compliance of conditions stipulated in the decree which has effect of nullifying the decree.

[11]. I have considered the submissions made by learned counsel for the parties.

[12]. The ratio of ***Prem Jeevan's*** case (supra) was in respect of a case where a decree for specific performance was granted in favour of the plaintiff on 25.09.2008 directing defendant No.1 to execute and register the sale deed in favour of the plaintiff in respect of suit land within 2 months from the date of passing of the decree on receipt of balance sale consideration. It was also ordered that in case defendant refuse to receive the balance sale consideration with interest, the plaintiff would be at liberty to deposit the amount in Court and obtain the sale deed through the process of the Court. The plaintiff thereafter claimed to have issued a cheque on 04.12.2008 for the amount in question, but the same was returned as not accepted by the judgment-debtor and thereafter decree-holder applied for execution. After about 2 years of non-acceptance of the cheque, the judgment-debtor filed an application before the executing Court on the ground that since

the amount was not deposited by the decree-holder within the stipulated time, the decree has become inexecutable. Keeping in view the period of two years in filing the execution for return of the cheque, the Hon'ble Apex Court found that there was no document to show that any extension of time granted by the Court for paying the sale consideration and in view of facts and circumstances of the case, the judgment was passed.

[13]. In the aforecited case, readiness and willingness on the part of the judgment-debtor was not commented upon in so many words, nor any such proceedings were undertaken before the executing Court. In the present case, within one month from the date of passing of the decree, the decree-holder has issued legal notice on 08.06.2015 calling upon the judgment-debtor to execute and register the sale deed on 18.06.2015. Judgment-debtor did not appear before the Sub-Registrar. Decree-holder got his presence marked by way of affidavit dated 18.06.2015. Thereafter execution was filed and in due course the executing Court directed the decree holder to deposit the amount and consequently the amount was deposited. The execution itself was filed on 05.08.2015 in which objections were filed by the judgment-debtor under Section 28 of the Specific Relief Act. The very filing of execution on 05.08.2015 is suggestive of the fact that the ratio of ***Prem Jeevan's*** case (supra) is somewhat

different than the present case. Even on the aforesaid premise, the ratio of ***Chanda (dead) Through LRs*** and ***Bhupinder Kumar***' cases (supra) can be distinguished.

[14]. In the context of present case the ratio as laid down in ***Tara Singh (since deceased) through his LR's vs. Sandeep Kumar and others, 2016(1) PLR 408*** can be referred to wherein it was held that decree lawfully passed should not be allowed to be nullified very easily. Even in case of ***Prem Jeevan's*** case (supra), the Hon'ble Apex Court has observed that when two views are possible on the facts of the case, the view favouring sustainability of the decree must be adopted. The Court does not cease to have power to extend the time and the provision in terms of Section 28 of the Specific Relief Act is discretionary in nature. There was no rider in the decree that in the event of failure on the part of the decree holder to deposit the amount, the decree shall have to be rendered as a nullity. Even in appropriate cases as per ratio laid down in ***Amar Nath Jain vs. Ram Parkash Dhir, 1987(1) PLR 490***, the Court can extend the time even in the absence of any application filed by the decree holder.

[15]. In the present case, a legal notice was issued to the judgment-debtor, who did not turn up before the Sub-Registrar

on the date fixed i.e. 18.06.2015 for execution and registration of the sale deed. The execution was filed on 05.08.2015. There was no such delay in moving the Court for execution of decree as per condition formulated in the decree itself. In view of such circumstances, there was no necessity to file any application for extension of time. The amount was deposited under the order of the executing Court. In view of aforesaid legal position, the grounds on which reliance has been placed by learned counsel for the petitioner are totally unfounded.

[16]. In view of law laid down in ***Gurdip Singh vs. Jagjit Singh, 1987(1) PLR 129***; ***Smt. Sarupi and others vs. Har Gian and others, AIR 1975, Punjab and Haryana 231***; ***Kedar Nath Dhingra and another vs. Kanwal Bhatia, AIR 1998, Punjab and Haryana 86***; ***Chintambaran vs. Viswambaran, 2001 AIR (Kerala) 205;*** ***Sham Kaur vs. Malagar Singh and another, 2004(1) PLR 814***; ***Mohinder Singh vs. Gurdial Singh, 1997(1) PLR 73***; ***Nanha vs. Risala and another, 2007(5) RCR (Civil) 655*** and ***Sucha Singh vs. Nand Lal, (2015-3) PLR 272***, it can be visualized that in the absence of any condition stipulated in the decree, incorporating consequences of non-deposit of balance sale consideration, the powers of the Court to extend the time for payment of balance sale consideration are to be perceived in discretionary ambit of

the Court and such discretion has to be exercised in view of the facts and circumstances of the case. The decree itself did not show any contingency on happening of a particular event. Therefore, the suit was not to be dismissed automatically in the absence of such rider clause in the decree and therefore, the power of the Court to enlarge the time would be in consonance with the provisions of the Civil Procedure Code as well as Specific Relief Act and would fall in the discretionary ambit of the Court for extending the time.

[17]. For the reasons recorded hereinabove, I deem it appropriate to dismiss both the revision petitions. Normal consequences to follow.

March 06, 2019 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No