

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR no.4576 of 2018

Date of Decision: 02.04.2019

Inderjit

...Petitioner

Vs.

Tarlochan Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Rittam Aggarwal, Advocate, for the petitioner.
Mr. B.S. Khehar, Advocate, for respondent no.1.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order passed by the executing court dated January 30, 2017 (Annexure P-6), by which objections filed by the petitioner and his co-defendant, i.e. the judgment debtors, against the execution of the decree issued in favour of the respondent-plaintiff on 23.08.2017, in the civil suit instituted by him on May 08, 1996, have been dismissed.

Ms. Rittam Aggarwal, learned counsel for the petitioner, submits that the execution court has wholly misappreciated the fact that vide the aforesaid decree (Annexure P-1), the suit of the plaintiff-respondent seeking specific performance of an agreement of sale dated 29.09.1995, executed by the present petitioner through his attorney (with a general power bestowed upon him), who was defendant no.1 in the suit, was decreed in his favour directing the respondent-decree holder, i.e. the plaintiff, to deposit the remaining amount as remained to be paid (along

with expenses for the registration of the sale-deed), within two months from the date of the passing of the decree, i.e. 23.08.2007. Thereafter the petitioner herein, i.e. defendant no.2 judgment debtor, was to get the sale deed registered *qua* the suit property within two months of the sale consideration being made, failing which (the execution of the sale deed), the plaintiff would be entitled to his recourse under law.

That judgment and decree was challenged by the petitioner and his co-defendant (who was his attorney, Rakesh Kumar), by way of a first appeal on September 26, 2007, on which date while admitting the appeal for final hearing, the operation of the “entire judgment and decree” passed by the trial court was stayed.

That appeal was dismissed on October 08, 2010, after which the petitioner and his co-defendant- judgment debtor instituted RSA no.185 of 2011 on October 14, 2011, in which, learned counsel for the petitioner submits, no interim order staying operation of the decree was passed, with the said second appeal first dismissed in default by this Court on 11.12.2012. Upon an application for restoration having been filed, the following order had been passed on 15.12.2014 by this Court:-

“With the intervention of learned counsel this dispute has been resolved. Learned counsel for the applicant-appellants, on instructions from the applicant-appellant, has stated that she will pay an amount of Rs.45.5 lacs to the respondents on or before 30.04.2015 and the respondent would also be entitled to seek refund of the amount of Rs.3.5 lacs which was deposited by him. It has further been agreed that in case the payment is not made as per the undertaking given today the applications will be liable for dismissal on this score alone.

Adjourned to 30.04.2015.”

The aforesaid order not having been complied with, inasmuch as the total amount to the tune of Rs.50 lacs directed to be paid not having been paid, the application for restoration was dismissed on 21.08.2015 (vide the order Annexure P-3, reproducing therein the order passed on 15.12.2014).

Thereafter, on October 01, 2016, the petitioner and his co-defendant (judgment debtor, Rakesh Kumar through his LRs) presented objections to the execution proceedings initiated by the respondent-decree holder, with those objections dismissed vide the impugned order dated January 30, 2017.

The contention of Ms. Aggarwal therefore is that the execution court has wholly missed the point that with no application for enlargement of time having been filed, to deposit the remaining sale consideration as had been directed by the trial court in the judgment and decree issued on August 23, 2007, the decree became inexecutable, because even after the first appeal filed by the petitioner and his co-defendant had been dismissed on October 08, 2010, the remaining sale consideration was not deposited within two months, such deposit having been made on December 03, 2010, and there was therefore a delay of 31 to 34 days in making it.

She submits that the suit having been decreed on 23.07.2007 and the first appeal having been filed by the petitioner and her co-defendant on 26.09.2007, that period of one month and 03 days, when no stay was operating on operation of the decree, has to be included in the time granted by the trial Court to the respondent herein (decree-holder) to deposit the

remaining sale consideration, and though thereafter operation of the decree remained stayed during the pendency of the first appeal till its dismissal on 08.10.2010, the money should have been actually deposited by 31.10.2010, two months time running out on that date.

In support of her aforesaid contention, she relies upon a judgment of the Supreme Court in **P.R. Yelumalai v. N.M. Ravi**, 2015(2) RCR (Civil) 585, to submit that in a similar situation, where payment of balance consideration was a condition precedent to the decree being executed, and such balance consideration had not been paid, it was held that the decree became inexecutable and as such the suit filed by the decree holder would be treated to be dismissed.

In support of the same argument, she relies upon another judgment of the Supreme Court in **Sunder Dass v. Ram Parkash**, AIR 1977 (SC) 1201 and judgments of coordinate Benches of this Court in **Parmeshri v. Naurata**, ILR (1985) 1 (P&H) 153, **Resham Singh and others v. Manmohan Singh Kent and others**, 1985 (1) PLR 278 and **M/s Dashmesh Rice Mills and others v. M/s Govind Ram Anil Kumar**, 2003 (3) RCR (Civil) 734.

Mr. Khehar appearing for the 1st respondent, first submits that though in the present petition it has not been disclosed to that effect, the LR's of the co-judgment debtor of the petitioner, i.e. LR's of defendant no.1, Rakesh Kumar, filed CR no.1328 of 2017 before this Court, impugning the same order as is impugned in the present petition, with the following order having been passed by this Court, dismissing that petition on November 01,

2017:-

“Petitioners are in revision petition against order passed by learned Executing Court dated 30.01.2017, dismissing the objections.

It is not in dispute that a suit for possession by way of specific performance of agreement to sell dated 29.09.1995 was decreed in favour of the decree holder on 23.08.2007.

First appeal was also dismissed. In the second appeal, this Court while adjudicating upon application for restoration of the appeal, taking into consideration the facts involved in the case, ordered that the defendants-appellants shall pay a sum of Rs.50 lacs up till 30.04.2015. However, payment was not made as directed and ultimately the application for restoration of the regular second appeal was dismissed on 25.08.2015.

Still the decree was not complied with. Hence, decree holders filed execution petition.

In the execution petition, legal representatives of General Power of Attorney of the owner filed objections. It is not in dispute that the aforesaid General Power of Attorney holder has died. Original Judgment Debtor is alive. There are no objections on behalf of the original Judgment Debtor. Still further learned Executing Court has dismissed the objections after considering all aspects of the case.

Learned counsel for the petitioners has submitted that petitioners are widow and children of Rakesh Kumar, who was the power of attorney holder of original owner Inderjit Singh. He has not filed any objection.

In any case, once the decree has been passed and has become final, there is no reason why the Executing Court should delay the execution of the decree.

For the reasons recorded above, this Court does not find any good ground to interfere with the impugned order passed by the learned Executing Court. The revision petition is dismissed.”

That having happened, this petition has been filed on 18.07.2018 by defendant no.2, i.e. the second judgment debtor, who is also pointed out by Mr. Khehar, to be actually a signatory to the objections filed

before the execution court on October 01, 2016 (as per his signatures present on the photocopy of the said objections, Annexure P-5).

He therefore submits that, firstly, the impugned order having already been considered by this Court (coordinate Bench) and the revision filed against that order by the co-defendant of the petitioner, having been rejected, a second petition challenging the same order, especially without disclosing that the order had been challenged by way of a revision petition earlier, would not be maintainable.

He next submits that even in that petition, i.e. CR no.1328 of 2017, the present petitioner, Inderjit Singh, had been impleaded as respondent no.2 and stood duly served of the notice issued, but chose not to appear and consequently, he is estopped on that count also from filing the present petition.

Towards that contention, he points to the report of the Registry dated 01.05.2017, submitted for the next date of hearing in that petition (on 04.05.2017).

A perusal of that file, which had already been ordered to be put up along with the present petition vide an order of this Court dated 15.03.2019, passed in this petition, bears out the contention.

On the argument of Ms. Aggarwal, learned counsel for the petitioner, as regards the decree not being executable on account of balance consideration not having been paid within the time granted by the trial court, he points to the objections dated 01.10.2016 filed by the petitioner and his co-judgment debtor before the executing court (copy Annexure P-5

herewith), to submit that with that contention not having been raised before that court, it is actually not a ground that can now be taken to assail the impugned order before this Court.

He next submits that the balance sale consideration was actually paid by the respondent in the treasury as per the receipt issued on 03.12.2010, a copy of which is Annexure R-5 with the application bearing CM no.21210-CII of 2018 filed by the respondents on 18.09.2018. (A perusal of that document shows that Rs.1,50,000/- was paid on that date as per the photocopy of the “receipt *challan*” issued by the 'Departmental Officer' of the District Treasury Office/Treasury Office).

Further in reply to that contention of the learned counsel for the petitioner, learned counsel for respondent no.1 submits that with that plea also not having been taken in the second appeal filed by the petitioner and his co-judgment debtor, to the effect that the money not having been deposited within 2 months as directed by the trial court, the decree could not be executed and the appeal should be allowed on that ground, in this revision petition that plea could not have been taken, (with him further reiterating that in any case it not having been taken in the objections filed by the petitioner before executing court).

He next submits that this would be especially so in the context of the second appeal, i.e. RSA no.185 of 2011, which was initially dismissed in default on 11.12.2012 and even the restoration application was dismissed on 06.08.2013, after which an application seeking restoration of the first application was filed, which was dismissed on 13.08.2013, with

still thereafter another application seeking restoration of the appeal having been filed, in which the orders already referred to herein above were passed, first making the restoration subject to deposit of Rs.50 lacs, but with that amount not having been deposited, the application for restoration of the second appeal having been dismissed on 21.08.2015 (Annexure P-3).

In rebuttal, learned counsel for the petitioner first points to paragraph 4 of this petition, to submit that the petitioner, Inderjit Singh, (defendant no.2 in the suit instituted by the respondent-decree holder) was not even a signatory to the applications filed for restoration of the appeal, (RSA no.185 of 2011), all of which were dismissed, including the one which was dismissed on August 21, 2015 on account of non-payment of Rs.50 lacs as had been directed by this Court vide an order passed on December 15, 2014.

She next submits that the revision petition (CR no.1328 of 2017) earlier filed against the impugned order dated January 30, 2017, not being one filed by the present petitioner (defendant no.2, Inderjit Singh) but by the legal representatives of defendant no.1, Rakesh Kumar, dismissal of that petition would not affect the merits of the case of the present petitioner.

Ms. Aggarwal next points to the application filed by the respondent-plaintiff before the executing court, dated 02.12.2010 (Annexure R-4 with CM no.21210-11-CII of 2018 in this petition).

A perusal of the said application shows that it was one seeking permission to deposit the remaining sale consideration in terms of the decree passed on 23.08.2007. She submits that even in the said application,

though the time period of 2 months for such deposit had been duly mentioned, it was not disclosed that after dismissal of the first appeal filed by the present petitioner and his co-defendant on 08.10.2010, a period of one month and three days had already expired before operation of the decree was stayed in the first appeal filed by the judgment debtors (including the present petitioner), taking into consideration the fact that the decree was passed on 23.08.2007, and consequently, the deposit was to be made within 27/28 days of 08.10.2010, i.e. by 31.10.2010.

Having considered the matter, though otherwise in my opinion, learned counsel for the petitioner on the absolute merits of what she is contending is not wrong, to the extent that the sale consideration should actually have been paid within 27/28 days of 08.10.2010, considering the time that had elapsed between the date of issuance of the judgment and decree by the trial court on 23.08.2017, and the date that the said judgment and decree was stayed on 26.09.2017, yet, I cannot agree with her arguments in this revision for two reasons.

Firstly, the present petitioner, Inderjit Singh, never bothered to even pursue the second appeal instituted by him along with his co-defendant-judgment debtor, Rakesh Kumar, i.e. RSA no.185 of 2011, with it having been argued even today that after that appeal was dismissed in default, it was only the co-defendant-judgment debtor, Rakesh Kumar, (through his legal representatives) who had filed any application for restoration thereof, which application eventually was also dismissed, as already noticed, not just once but thrice, and the last time on account of the

fact that the order passed by this court for depositing Rs.50 lacs by the appellants in that appeal, i.e. the present petitioner and Rakesh Kumar/his LRs, was not complied with. Obviously, that order was applicable in respect of both the appellants in the RSA, the present petitioner being one of them; because though he was not an applicant in the “restoration application”, he was very much an appellant in the appeal that was sought to be restored and was also liable to pay the amount ordered by this court, as a condition to the appeal being restored.

Thereafter, despite the petitioner having filed objections along with his co-judgment debtor before the executing court, non-enlargement of time for deposit of the balance consideration, was not taken as a ground for dismissal of the application seeking execution of the decree.

Be that as it may, even if that ground is to be now considered by this Court, because a statutory provision cannot be overlooked (Section 148 of the Code of Civil Procedure), the fact remains that the petitioner chose not to file a revision petition earlier against the very same order as has been impugned in the present petition, with the legal representatives of his co-judgment debtor alone having filed Civil Revision No.1328 of 2017, and with that having been dismissed, now at this stage the petitioner having chosen to come and challenge the same order by way of a second revision, without even in fact disclosing that the first petition had been filed by his co-judgment debtors and had been dismissed, I would not be able to go beyond the order passed by a coordinate Bench, that Bench having considered the same order as has been impugned in the present petition.

This would be especially so because it is seen from the case file of CR no.1328 of 2017, that the petitioner was also impleaded as a proforma respondent in that petition. And though he was only a proforma respondent as has been correctly pointed out by learned counsel appearing for him, a perusal of the report of the Registry from that case file, shows that even on 01.05.2017, he, as respondent no.2, stood served of the notice issued in that petition.

Also, as already said, the petitioner did not even pursue the Regular Second Appeal filed by him before this Court, for the restoration of which a condition had been put by the Court to deposit a particular amount. Hence, in my opinion, he is estopped on that ground too, from filing this petition.

In view of the above, with a coordinate Bench already having taken a view by dismissing the revision filed by the co-judgment debtor of the petitioner/his legal representatives, and he having chosen to have come only after that revision was also dismissed, I find no ground to entertain this petition.

Consequently, it is dismissed.

April 02, 2019
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes