

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

CR No.5569 of 2018 (O&M)
Date of Decision : 28.03.2019

Amolak Singh

...Petitioner

Versus

Ralla Singh @ Amandeep Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Sunny Singla, Advocate for the petitioner.

Respondent Nos.1 and 3 ex parte vide order dated 16.10.2018.

Mr. A.K. Ahuja, Advocate for respondent No.2.

B.S.WALIA, J. (Oral)

CM No.7305-CII of 2019

Dismissed as not pressed with liberty to move appropriate application before the learned Executing Court.

CR No.5569 of 2018

1. Revision petition has been filed under Article 227 of the Constitution of India, challenging order dated 21.07.2018 (Annexure P-3), passed by the learned Civil Judge (Junior Division), Malerkotla, dismissing the application filed by the petitioner-plaintiff for extension of time for depositing the balance sale consideration as directed vide judgment and decree dated 11.08.2017.

2. Brief facts of the case leading to the filing of the revision petition are that petitioner had filed a suit for specific performance of agreement to sell dated 22.08.2012 and writing dated 22.02.2013 (extending the target date) executed between respondent/defendant No.1 and the petitioner. The aforesaid civil suit was decreed by the learned Civil Judge (Junior Division), Malerkotla, vide judgment and decree dated 11.08.2017 and two months time was granted to the petitioner to deposit the balance sale consideration for the purpose of execution and registration of the sale deed. However, the petitioner failed to deposit the balance sale consideration within the time allowed vide judgment and decree dated 11.08.2017. On an application filed by the petitioner seeking extension of time to deposit balance consideration, the learned Executing Court vide order dated 13.03.2018, granted ten days time to the petitioner to deposit remaining sale consideration. Petitioner failed to deposit the same within the extended time and thereafter, petitioner filed another application on 22.03.2018 seeking extension of time to deposit the sale consideration. However, the aforementioned application was dismissed on the ground that not only had the petitioner failed to comply with the judgment and decree dated 11.08.2017 but had also failed to deposit the balance sale consideration within extended period of time.

3. Learned counsel for the petitioner contended that as against total sale consideration of ₹72 Lakh, the petitioner had paid a sum of ₹53 Lakh to respondent/defendant No.1 by way of earnest money i.e. ₹43 Lakh at the time of execution of agreement to sell dated 22.08.2012 and ₹10 Lakh at the time of executing writing dated 22.02.2013, extending the

target date and that in the circumstances only ₹19 Lakh remained to be paid and if time was not extended, grave and irreparable loss would be caused to the petitioner.

4. Despite notice having been served, none put in appearance on behalf of respondent Nos.1 and 3 and accordingly they were proceeded ex parte, vide order dated 16.10.2018.

5. Learned counsel for the parties have brought it to the notice of the Court that during the pendency of the revision petition, the petitioner and respondent No.2 have entered into a compromise, whereby respondent No.2/bank has agreed to accept a sum of ₹18 Lakh from the petitioner for redemption of the mortgage with right to take out proceedings to recover the balance amount from respondent No.1 and his guarantors in accordance with law.

6. Learned counsel for respondent No.2/bank states that in the circumstances respondent No.2/bank has no objection if the impugned order is set aside, time extended as deemed appropriate by this Court for depositing the balance sale consideration before the learned Executing Court with directions to the learned Executing Court to take steps to get the sale deed executed and registered in favour of the petitioner in accordance with law while granting liberty to respondent No.2/bank to take out proceedings against respondent No.1 and his guarantor to recover the balance amount owed by respondent No.1.

7. A perusal of judgment and decree dated 11.08.2017, reveals that while decreeing the suit with costs, respondent/defendant No.1 was

directed to execute and register the sale deed in respect of the property which is the subject matter of agreement to sell dated 22.08.2012 in favour of the petitioner after receiving balance sale consideration within a period of two months, failing which, the petitioner was held entitled to get the sale deed executed and registered in his favour through Court with respondent/defendant No.2 to have first charge over the suit property and the petitioner being entitled to relief only after clearance of dues of respondent No.2 bank.

8. Taking into account the fact that as against total sale consideration of ₹72 Lakh, the petitioner had already paid ₹53 Lakh, besides respondent No.1 had not got the property redeemed in order to get executed the sale deed in favour of the petitioner and the civil suit filed by the petitioner was decreed vide judgment and decree dated 11.08.2017 by directing him to make payment of balance sale consideration within two months and thereafter as extended by subsequent order dated 13.03.2018 which the petitioner could not comply due to unavoidable circumstances, I am of the considered view that time for making payment of the balance sale consideration be extended though subject to terms and conditions.

9. Accordingly, the impugned order is set aside and petitioner is granted ten days time from today to deposit the balance sale consideration of ₹19 Lakh as per judgment and decree dated 11.08.2017. However, aforesaid amount shall be deposited along with interest @ 11.90% per annum with half yearly rests w.e.f. 10.10.2017 till date of deposit in order to do complete justice between the parties because on account of failure of the petitioner to make payment of balance sale consideration to respondent

No.1 within the time granted by the learned trial Court, respondent No.1 has not been able to make payment of the said amount to respondent No.2/bank which is charging interest on the amount borrowed by respondent No.1 @ 11.90% per annum with half yearly rests. Subject to deposit of balance sale consideration in the manner aforesaid, it would be open to the petitioner and respondent No.2 to move appropriate application before the learned Executing Court to seek compliance of judgment and decree dated 11.08.2017, in accordance with law.

10. Revision petition disposed of in the aforementioned terms.

(B.S.WALIA)
JUDGE

28.03.2019
rajesh.k.khurana

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No