IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

233 **CR No.6217 of 2017(O&M)**
Date of Decision: 18.1.2019

BHUPINDER SINGH
......Petitioner

Versus

CHAMKAUR SINGH & ORS
.....Respondents

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

Present: Mr.Sukhdeep Parmar , Advocate
for the petitioner.

Mr.Kulbhushan Raheja, Advocate
for respondents No.1 to 3.

Mr.A.S.Sobti, Advocate
for respondent No.4.

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RAJ MOHAN SINGH, J.(Oral)

Petitioner has assailed the order dated 5.9.2017 passed by the Additional Civil Judge (Sr.Divn.), Nabha, whereby the application filed by the petitioner and other judgment debtors under Section 28 of the Specific Relief Act (for short 'the Act') for rescinding the agreement to sell dated 13.1.2006 was dismissed.

Suit of the plaintiffs-respondents was decreed vide judgment and decree dated 13.5.2013. Defendants were directed to execute and register the sale deed in favour of the plaintiffs on delivering possession within a period of four months from the date of judgment failing which the plaintiffs were held entitled to proceed further through agency of the Court.

Feeling aggrieved against the judgment and decree dated 13.5.2018 passed by the trial Court, defendants went in appeal before the lower Appellate Court. Vide order dated 16.7.2013 passed by the lower Appellate Court, operation of the judgment and decree of the trial Court was stayed till final disposal of the appeal. The appeal was ultimately dismissed by the lower Appellate Court on 5.12.2014. Decree holders deposited the remaining sale consideration on 14.12.2015. After two months of the said deposit, an application under Section 28 of the Act was filed by the defendants on 15.2.2016 for rescinding the agreement to sell on the ground that the deposit made by the decree holders was not in accordance with the judgment and decree of the trial Court.

Learned counsel for the petitioner relied upon **Prem Jeevan vs. K.S. Venkata Raman and another 2017 AIR (SC) 623** and **RamanKutty Guptan vs. Avara, 1993 (2) LJR 256** and contended that in view of non compliance of the decree, the agreement to sell has to be rescinded and the time for deposit as per decree of the trial Court started running from the decision of the lower Appellate Court and if the period of four months is computed from the date of passing of judgment and decree by the lower Appellate Court, the same stood expired much prior to the date of deposit of the remaining sale consideration by the decree holder on 14.12.2015. The Court passing the decree can only rescind the contract.

I have considered the arguments made by learned counsel for the parties and have also perused the material on record.

In **Prem Jeevan's case (supra)**, it was held that the Court must ensure strict compliance of the conditions stipulated in the decree, which has the effect of nullifying the decree. It would be relevant to note here that the decree passed by the trial Court was to direct the defendants to execute and register the sale deed in favour of the plaintiffs and deliver possession of the land in question within a period of four months from the date of passing of the decree. In the event of failure on behalf of the defendants, plaintiffs were held entitled to take recourse to the lawful process of the Court. There was no rider contained in the decree that in the event of non compliance of the terms by the plaintiffs, the decree would have the effect of nullifying the agreement to sell.

In the aforecited case, the consideration before the Hon'ble Apex Court was in respect of a case where a decree for specific performance was granted in favour of the plaintiffss on 25.9.2008, directing the defendants to execute and register the sale deed in favour of the plaintiffs in respect of the suit land within a period of two months from the date of passing of the decree after receipt of balance sale consideration. It was also ordered that in case the defendants refused to receive the balance sale consideration with interest, the plaintiffs would be at liberty to deposit the amount in court and get the sale deed executed through process of the Court. The plaintiffs therein claimed to have issued a cheque on 4.12.2008 for the amount in question, but the same was returned and was not accepted by the judgment debtors and thereafter the decree holders applied for execution after about two years of non acceptance of the cheque. The judgment debtors then filed an application before the executing court on the ground that since the amount was not deposited by the decree holders within the time stipulated, therefore the decree had become inexecutable in the absence of any extension of time.

Keeping in view the period of about two years in filing the execution after return of cheque, the Hon'ble Apex Court found that there was no document to show any enlargement of time granted by the Court for paying the purchase money under Section 28 (1) of the Act. However, the Hon'ble Apex Court has also observed in the aforesaid judgment that in case where two views are possible on the facts of the case, the one, which would sustain the decree, must prevail.

In the instant case, the decree of the trial Court was stayed by the lower Appellate Court and it was only on 5.12.2014, the appeal was dismissed by the lower Appellate Court. The amount was ultimately deposited on 14.12.2015 and before that there was no application filed by the judgment debtors under Section 28 of the Act. The application in question was filed only after two months i.e. on 15.2.2016. The aforesaid fact would serve as differentia which would make the present case distinct from the ratio of **Prem Jeevan's case (supra)** and would also bring the case out of the purview of ratio of **RamanKutty Gptan's case (supra)**.

At this juncture, learned counsel for the petitioner also relied upon **Chanda (dead) through LRs. Vs. Rattni and another, 2007 (2) RCR (Civil) 534** and **Bhupinder Kumar vs. Angrej Singh, 2009 (4) RCR (Civil) 249** and contended that in view of non compliance of the decree, the application for rescission of agreement should have been allowed by the Executing Court. Although the Court has power to extend time for making payment of balance sale consideration, but in the absence of any justifiable reasons, the Court can refuse to extend time for depositing the balance sale consideration. The deposit after inordinate delay in the absence of any application cannot be entertained and the discretion cannot be exercised in favour of the decree holder even on equity and the extension cannot be granted to comply with the decree. On this proposition, learned counsel for the petitioner also relied upon **V.S.Palanichamy Chettiar Firm vs. C. Alagappan, 1999 (1) RCR (Civil) 634**.

I do not subscribe the arguments raised by learned counsel for the petitioner.

As already discussed, the facts and the ratio of **Prem Jeevan's case (supra)** is not applicable as the facts involved therein were not at par with the present case. In **Tara Singh (since deceased) through his LRs. vs. Sandeep Kumar and others, 2016 (1) PLR 408,** it was held by this Court that the decree which was lawfully passed should not be allowed to be nullified in a routine manner. Even in **Prem Jeevan's case (supra)**, it was held that if two views are possible on the facts of the case, then the view favouring sustainability of the decree must be adopted. The Court does not cease to have power to extend time and the provision in terms of Section 28 of the Act is discretionary in nature. There was no rider in the decree passed by the trial Court that in the event of failure on the part of the decree holders to deposit the amount, the decree shall have to be rendered as a nullity.

In **Amar Nath Jain vs. Ram Parkash Dhir, 1987 (1) PLR 490,** it was held that the time can be extended even in the absence of any application filed by the decree holders. The Court can use its discretion for extending time for depositing the amount, even if no specific order for extension of time, was passed, nor such an application was moved. This is so because in the instant case, the judgment debtors filed an appeal before the lower Appellate Court even before expiry of period of four months and got the stay. In the absence of any condition stipulated in the decree, the consequence of non deposit of such amount would be of no consequence as the Court passing the decree in its discretion has power to extend time as well.

The law laid down in ***Gurdip Singh vs. Jagjit Singh, 1987(1) PLR 129; Smt. Sarupi and others vs. Har Gianand 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 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 time.

For the reasons recorded herein above, I deem it appropriate not to interfere in the impugned order passed by the trial Court.

This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

January 18, 2019
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Whether reasoned/speaking **Yes/No**
Whether reportable **Yes/No**