

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

**C.R. No.6702 of 2014 (O&M)
Date of Decision.05.02.2019**

Vakil Chand and another

...Petitioners

Vs

Jasvir Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Atul Goyal, Advocate
for the petitioners.

Mr. J.S. Brar, Advocate
for the respondent.

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AMIT RAWAL J.

The present revision petition is directed against the impugned order dated 11.07.2014 whereby the application of the respondent-judgment debtor submitted under Section 28 of the Specific Relief Act for rescission of the contract has been allowed.

Mr. Atul Goyal, learned counsel appearing on behalf of the petitioners/decreed holders submitted that petitioners filed the suit against the respondent for possession by way of specific performance of agreement to sell dated 17.09.1999 wherein the defendant had agreed to sell the land @₹2,20,000/- per killa. On failure on the part of the defendant, suit aforementioned was filed. The trial Court vide judgment and decree dated 19.07.2010 decreed the suit and directed the defendant to execute the sale deed in favour of the plaintiffs after receiving the balance sale consideration and other expenses within a period of three months from the date of decree. Against the aforementioned judgment and decree, the respondent-defendant

preferred an appeal before the lower Appellate Court. There was no stay and the same was also dismissed vide judgment and decree dated 18.11.2010. Even regular second appeal bearing No.1475 of 2011 was preferred, which was also dismissed by this Court on 20.05.2011.

In the meantime, the present petitioners preferred execution application (Annexure P-4) before the Executing Court on 21.12.2010 wherein it was categorically mentioned that the petitioner is willing to deposit the amount as directed by the Court. After filing of the application, Court issued notice to the judgment debtor for 18.01.2011 and again notice was issued for 02.04.2011 and for 14.05.2011. On said date, counsel for the judgment debtor appeared and filed memo of appearance. The matter was adjourned to 06.08.2011. Power of attorney was filed by the counsel appearing for the judgment debtor and the matter was adjourned to 17.09.2011 for filing reply. It is on 17.09.2011, decree holder was directed by the trial court to deposit the balance sale consideration on or before 08.10.2011. The balance sale consideration was ₹1,12,900/-, which was duly deposited on 07.10.2011, is evident from the application and the order passed thereon (Annexure P-5). On 08.10.2011, the matter was adjourned for 05.11.2011 and then to 22.02.2012. On said date, draft sale deed was filed and the concerned reader of the court was directed to compare the same with the decree sheet. The judgment debtor also filed application under Section 28 of the Specific Relief Act (Annexure P-6) which was duly replied by the decree holders.

He submitted that there was no fault on the part of the

petitioners-plaintiffs as their predicament was writ large and did not know about the outcome of the appeal. It is only thereafter when the defendant failed, application for execution was filed. In support of the aforementioned contention relied upon the judgment rendered by this Court in **Mangal Singh Vs. Amrik Singh 2018 (4) RCR (Civil) 98** and also relied upon following judgments:-

1. **Tara Singh (since deceased) through his LRs Vs. Sandeep Kumar and others 2016(1) PLR 408**
2. **Kumar Dhirendera Mullick Vs. Tivoli Park Apartments (P) Ltd. (2005) 9 SCC 262; 2004 (4) RCR (Civil) 763.**

Per contra, Mr. J.S. Brar, learned counsel appearing on behalf of the respondent-defendant submitted that there was no stay when the appeal was pending. No explanation has come forward in not depositing the amount. Deposit of balance sale consideration within the time frame was *sine qua non*. The application for deposit of balance sale consideration was moved after ten months from filing of execution application. The deposit of the amount on 07.10.2011 was, as per the order of the Court, at the risk of the plaintiff and therefore, no bona fide can be derived, thus, urges this Court for dismissal of the revision petition. In support of aforementioned contention, relied upon following judgments.

1. **Chanda (dead) through LRs Vs. Rattni and another 2007(2) RCR (Civil) 534.**
2. **Bhupinder Kumar Vs. Angrej Singh 2009 (4) RCR (Civil) 248.**
3. **Susheela Devi vs. Maharshi Commerce Ltd. 2011 (2) RCR (Civil) 49.**
4. **V.S. Palanichamy Chettiar Firm Vs. C.**

Alagappan 1999 (1) RCR (Civil) 634.

5. **P.R. Yelumalai Vs. N.M. Ravi 2015 (2) RCR (Civil) 585.**
6. **Laila Kasim Vs. V.K. Kunjumol 2016 (2) CCC 241.**

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Goyal. The facts aforementioned regarding filing of the suit, passing of the decree, filing of appeal and regular second appeal, much less, execution application are not in dispute.

It would be apt to reproduce operative part of judgment and decree dated 19.07.2010, prayer clause of the execution application and zimini order dated 17.09.2011, which are as under:-

“Judgment and decree dated 19.07.2010

16. In view of the discussion on foregoing issues, suit is decreed with costs and plaintiffs are held entitled to possession by way of specific performance of agreement Ex.P2. Accordingly, defendant is directed to get the sale deed executed and registered in favour of plaintiffs after receiving balance sale consideration amount and other expenses from the plaintiffs in terms of Ex.P2 within period of three months from the date of decree. In case, defendant failed to get the sale deed executed and registered in favour of plaintiffs in the aforesaid period, in that situation plaintiffs in the aforesaid period in that situation plaintiffs would be at liberty to get the sale deed executed and registered through process of court. Decree sheet be drawn. File be

consigned to the record room.

Pronounced

sd/-

19.07.2010

Additional Civil Judge (Sr. Div)

Gidderbaha 19.07.2010”

Prayer in the execution application

It is, therefore, respectfully prayed that the J.D. may kindly be summoned and directed to execute the sale deed in favour of DHs and get it registered by all means on receipt of remaining sale consideration and put the DHs in possession of the said property.

Zimni order dated 17.09.2011

Present: Counsel for DH Sh. Dinesh Arora, Adv.

Counsel for Sh. Gopal Baghla, Adv for JD.

Reply/objections not filed by JD despite availing opportunities for the same. Thus DH is directed to deposit the balance sale consideration amount on or before dated 08.10.2011.

sd/ACJSD

17.09.2011”

The intention of the petitioner in filing the application for execution reflected that he wanted to deposit the amount, which was deposited as per the order dated 17.09.2011. Learned counsel for the judgment debtor had also taken time. It is only when the order was passed, application for deposit by the decree holder as well as application for rescission by the judgment debtor were filed. In fact, the judgment debtor was aware of these facts and had been diligently noticing the order and attempted to frustrate the judgment and decree

by tiring the decree holder.

No doubt, law of rescission of the contract is no longer *res integra*, as it is settled law that provisions of Section 148 CPC, when there is specific remedy under Section 28 of the Specific Relief Act, would not apply. For the sake of brevity, Section 148 of CPC and Section 28 of the Specific Relief Act are reproduced as under:-

“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.

Section 28 of Specific Relief Act.

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 the 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 relief's, namely,-

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery or 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.

Provisions of Section 28 of the Specific Relief Act can only be pressed into service, if the plaintiff miserably failed to disclose bona fide. Bona fides in the instant case from the facts as noticed above are writ large. The Hon'ble Supreme Court in **Chanda (dead) through LRs Vs. Rattani and another** (supra) while interpreting the provisions of Section 28 in para 4 and 9 held as under:-

“4. Before the High Court the stand of the appellant was that the order of the trial court was not sustainable as the court while decreeing the suit for specific performance had directed the respondent-defendants to execute the sale deed within two months from the date of decree and since they failed to do so the plaintiff was entitled to have the sale deed executed through the

court. According to him, there was no specific direction given to the plaintiff to deposit the balance share consideration within the stipulated period and, therefore, the trial court was not justified in rescinding the contract on account of non-deposit of the balance sale price by the plaintiff. It was also contended that several imposters were set up which disentitled the applicant from any relief. The High Court found that para 6 of the judgment of the trial court as quoted above, clearly indicated that the defendants had been directed to execute the sale deed within two months from the date of the decree on payment of the balance sale price of Rs 1,30,000. The same was, therefore, a condition precedent for execution of the sale deed. It was implicit in the direction that the plaintiff was required to deposit the balance consideration within the period in the first instance and it was only then the defendants were required to execute the sale deed. Since the plaintiff did not deposit the balance amount, the order of the court below was perfectly in order. Revision petition was accordingly dismissed.

9. The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet

Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The court does not cease to have the power to extend the time even though the trial court had earlier directed in the decree that payment of balance price to be made by certain date and on failure the suit to stand dismissed. The power exercisable under this section is discretionary.”

Keeping in view of the totality of facts and circumstances, I am of the view that the Court below ought not to have accepted the application of the judgment debtor for rescinding the contract or frustrated decree, particularly, in view of the order dated 17.09.2011. It is settled law that act of the Court prejudice none. The impugned order is not sustainable in the eyes law and the same is hereby set aside. The revision petition is allowed.

(AMIT RAWAL)
JUDGE

February 05, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable Yes