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

**Civil Revision No.709 of 2018 (O&M)
Date of Decision: 20.08.2019**

Shree Chand Through LRs

.....Petitioners

Vs

Jabal Singh @ Jawahar Singh

....Respondent

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

Present: Mr. J.S. Rozera, Advocate
for the petitioners.

Mr. R.S. Hooda, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. In pursuance of order dated 19.07.2019, learned counsel for the petitioners has deposited an amount of Rs.3,000/- in High Court Lawyers Welfare Fund towards costs of adjournment. A receipt has been placed on record, the same is taken on record. Registry is directed to tag the same at an appropriate place.

[2]. Petitioners have preferred this revision petition against the order dated 22.08.2017 passed by the Addl. Civil Judge (Sr. Divn.) Hodal vide which the application for condonation of delay

and for granting permission to deposit the balance sale consideration of Rs.54,000/- was allowed.

[3]. Brief facts are that the respondent-plaintiff filed a suit for possession by way of specific performance of contract/agreement dated 09.02.2004. After due context the suit was decreed vide judgment and decree dated 05.02.2016. A decree for possession by way of specific performance was passed in favour of the plaintiff/respondent. Defendant through his legal representatives was directed to execute the sale deed of the suit property in favour of the plaintiff/respondent within a period of 30 days. The balance sale consideration was to be paid by the plaintiff to the legal representatives of the defendant at the time of execution of sale deed. It was also directed that if the sale deed is not executed within a period of 30 days, then the plaintiff shall deposit the balance sale consideration in further period of 30 days, failing which the suit shall stand dismissed and the earnest money would be forfeited. The defendants were restrained from alienating the suit property to any other person except the plaintiff. For ready reference the concluding part of the decree reads as under:-

“It is ordered that the suit of the plaintiff succeeds and the same is decreed with costs. A decree for possession by way of specific performance of contract in respect of the suit land in accordance with agreement Ex.P1 is passed in favour of the plaintiff against defendant directing Lrs of the defendant to execute the sale deed of the suit

property in favour of the plaintiff in a period of 30 days. The balance sale consideration shall be paid by the plaintiff to the Lrs of the defendant at the time of execution of sale deed and if sale deed is not executed in a period of 30 days, the plaintiff shall deposit balance sale consideration in further period of 30 days failing which the suit shall stand dismissed and earnest amount paid forfeited. Lrs of the defendant are also restrained from alienating the suit land to any other person than the plaintiff.”

[4]. Period of 30 days within which the defendant through his legal representatives was required to execute the sale deed expired on 05.03.2016. Period of 30 days within which the decree holder was required to deposit the balance sale consideration ended on 05.04.2016. As per record, the execution was filed by the decree holder/respondent on 14.03.2016 i.e. during currency of the period of 30 days within which the decree holder was required to deposit the amount in question. The plaintiff/decreed holder filed an application for condonation of delay and for granting permission to deposit the balance sale consideration of Rs.54,000/- by moving an application dated 24.05.2016. The contents of para no.3 of the application reads as under:-

“3. That after receiving the copy, the appellant handed over the copy of judgment to the previous counsel namely Jitender Kaushik on 18/02/2016. After getting the copy of judgment, the counsel did not advise the applicant to deposit the balance sale consideration of Rs.54,000/- within the time period mentioned in the judgment passed by the Hon'ble Court. The applicant was having sufficient amount in his account and was always ready to pay the

balance sale consideration as per the terms and conditions of the judgment passed by the Hon'ble Court. But due to non advise of the counsel, the applicant could not deposit the balance sale consideration of Rs.54,000/-. However an execution was filed by the applicant on 14/03/2016 through his previous counsel namely Jitender Kaushik when the Lrs of J.D. Denied to receive the balance sale consideration and refused to execute the sale deed in favour of the applicant. Now the said execution pending in this court and is fixed for 27/07/2016 for the notice to the Lrs of J.D.”

[5]. The said application was contested by the legal representatives of the defendant. Corresponding para no.3 of the reply reads as under:-

“3. *That para no.3 of the application is a matter of record regarding receiving of the copy by the applicant and delivery of the same to his counsel. The excuse of not advising the applicant to deposit the balance sale consideration is a concocted story. It is submitted that the plaintiff is a English knowing person and signs in the English language also and can read and write English, hence the excuse that his counsel did not advise the applicant to deposit the balance sale consideration is totally bundle of lies. It is also pertinent to mention here that the applicant previously at the time of restoration of the suit also stated the same excuse regarding not restoration of the suit within time and the present application is also imposing his own liability on his counsel, whereas the applicant was well aware of the conditional decree passed by the Hon'ble court on 5-2-2016. As per applicant/plaintiff he obtained copy on 18-2-2016 and delivered the same to his counsel, hence it can not be presumed that the contents of the Judgment and Decree were not explained to the applicant/plaintiff. It is also pertinent to mention here that as per plaintiff he has filed execution on 14-3-2016 and there is specific column in the*

performa of the execution with regard to the payment of adjustment if any and hence it was the duty of the plaintiff to deposit the amount before filing the execution petition. The plaintiff/D.H. was bound to deposit the amount upto 4-4-2016 but he kept mum with regard to the deposition of balance sale consideration and now on account of non-deposit of balance sale consideration within stipulated period, the defendant has accrued a valuable right on the basis of decree & Judgment dated 5-2-2016 that the plaintiff is not entitled to debar the defendant from his valuable right which has accrued on the lapse of plaintiff. Moreover it has been a long period of more than one month and 20 days since the application has been filed and such a long period without any reasonable cause could not be allowed to a person for his own wrong. The contents of para no.3 are absolutely a concocted story, hence absolutely denied.”

[6]. Perusal of the reply would show that the specific averment made by the plaintiff/decreed holder in the context of denial to receive the balance sale consideration on 14.03.2016 has not been specifically denied in the reply to the application.

[7]. The executing Court has accepted the application after adverting to the readiness and willingness of the plaintiff/decreed holder with reference to bank statements showing that an amount of Rs.54,000/- was available with the decreed holder during the relevant period. The *bona fide* of the plaintiff/decreed holder was writ large on record. The indulgence was granted by the executing Court and the plaintiff/decreed holder was allowed to deposit the balance sale consideration vide the impugned order.

[8]. Learned counsel for the petitioners vehemently submitted that the terms of decree stood violated and that would entail in forfeiture of the earnest money besides dismissal of the suit. Learned counsel relied upon the decision rendered in **CR No.300 of 2015** titled '**Ashwani Kumar and others vs. Jagdish Mittal**' decided on **30.08.2016** and **CR No.4817 of 2015** titled '**Jagmal Singh vs. Jai Kumar**' decided on **24.02.2016**.

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

[10]. It is true that in view of **Bhupinder Kumar vs. Angrej Singh. 2009(4) R.C.R. (Civil) 249**, the Court has power to extend the time for making payment of balance sale consideration, but the same cannot be ordered in the absence of justifiable reasons. Where the Court will refuse to extend the time for depositing the balance sale consideration, inordinate delay is one of the factor for such refusal.

[11]. In **Tara Singh (since deceased) through his LRs vs. Sandeep Kumar and others, 2016(1) PLR 408**, it was held that when the decree is passed lawfully, the same cannot be allowed to be nullified very easily. When two views are possible on the facts, then the view favouring the sustainability of the decree must be adopted. The Court does not cease to have powers to

extend the time. The provisions in terms of Section 28 of the Specific Relief Act is discretionary in nature. As per the condition of the decree, firstly the judgment debtor was required to execute the sale deed within 30 days. In the event of failure on the part of the judgment debtor, the plaintiff was to deposit the balance sale consideration in a further period of 30 days. As per the contents of para no.3 of the application, the judgment debtor has refused to accept the amount and thereafter execution was filed on 14.03.2016 i.e. during currency of period of 30 days within which the plaintiff/decreed holder was to deposit the balance sale consideration.

[12]. The aforesaid fact itself shows that the plaintiff/decreed holder was pursuing the litigation in a *bona fide* manner. The rider in the form of nullifying the effect of decree cannot be attracted because the execution itself was filed well within time during the period of 30 days on refusal by the judgment debtors to receive the balance sale consideration. If the judgment debtors were ready to accept the balance sale consideration, there was no occasion for the plaintiff/decreed holder to file execution on 14.03.2016. Even the judgment debtors have not shown anything on record as to whether they have issued any notice to the plaintiff decreed holder showing their readiness and willingness to comply with the decree by executing the sale

deed within first 30 days for which they were directed to execute the sale deed by the decree of the trial Court.

[13]. 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 holder. In the instant case, the application was filed on 24.05.2016 and prior thereto even execution was filed on 14.03.2016. There was no such inordinate delay in view of filing of execution on 14.03.2016 itself. In such eventuality, the Court can use its discretion to extend the time for depositing the amount even if no specific order for extension of time was passed, nor any such application was moved. The Court has power to fix and extend the time for depositing the sale consideration. The Court passing the decree in its discretion has power to extend the time as well. In view of condition of decree, the *bona fide* of the plaintiff/petitioner is writ large on the record and the decree lawfully passed cannot be nullified just on the asking of the judgment debtor, who did not execute the decree within first 30 days of time as per the decree passed by the trial Court. No notice was ever issued by the judgment debtor in compliance of the decree passed by the trial Court. Reference can be made to **Smt. Raj Dulari and others vs. Ram Sarup and another, 2017(2) PLR 164** and **CR No.6217 of 2017** titled '**Bhupinder**

Singh vs. Chamkaur Singh & Ors., decided **on 18.01.2019.**

[14]. In view of aforesaid, I find no justification to interfere in the impugned order. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

August 20, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No