

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

CR No.7338 of 2018

Date of Decision : 13.03.2019

Manoj Kumar Khurana

.....Petitioner

Versus

Arvind Atri and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Kanwaljit Singh, Senior Advocate assisted by
Mr. Nirav Sharma, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

Ld. Counsel for the petitioner submits that notice in terms of the earlier Order dated 4th February, 2019 was served upon Ld. Counsel for the respondent-Judgment Debtor in the Ld. Court below as can be seen from the notings in the Order dated 13th February, 2019 passed by the Ld. ACJM, Karnal.

2. From the Office Report, it is seen that notice in the main Revision Petition was also served upon respondent No.1 through his wife.

3. The grievance of the petitioner is that his prayer for temporary/conditional refund of the consideration amount deposited by him in the Ld. Court below was rejected by the Ld. Civil Judge (Senior

Division), Karnal vide the impugned Order dated 15th October, 2018 (Annexure P-4).

4. His contention before the Ld. Court below was that he had deposited the relevant amount/balance sale consideration in terms of the Decree passed in his favour but in the meantime the respondent-Judgment Debtor has preferred an appeal against the Judgment and Decree dated 30th March, 2018, claiming himself to be a Pauper, on account of which delay more than the usual in ordinary appeal cases is liable to be occasioned. The petitioner had further expressed his willingness to deposit the said balance sale consideration immediately on disposal of the appeal, if the situation so warranted but the Ld. Court below rejected his prayer by observing thus:-

“The absence of DH to show his readiness and willingness to perform his part of contract, even after passing of decree may result into rescission of contract as per Section 28 of Specific Relief Act. In these circumstances, the amount deposited by the DH cannot be returned to him.”

5. In the opinion of this Court the approach adopted by the Ld. Court below cannot be described as being altogether balanced considering that the huge amount of money deposited by the petitioner would remain stuck up idle, even though he could have in the meantime utilized it for more gainful ends.

6. The Revision Petition is therefore allowed by setting aside

the impugned order. The Ld. Court below is directed to release the amount deposited by the petitioner subject to the condition that he would be required to redeposit the same before the Ld. Court in the event of the appeal/proceedings preferred on behalf of the Judgment Debtor going in favour of the petitioner, within three days from the date of pronouncement of final order in such proceedings.

March 13, 2019**Dpr****(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No