

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 1219 of 2019
Date of decision:25.2.2019

Rattan Lal

.. Petitioner

v.

Jitender Kumar

.. Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Manish Mehta, Advocate for the petitioner.

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AVNEESH JHINGAN, J. (Oral)

The present civil revision petition has been filed being aggrieved of the order dated 4.2.2019 passed by Additional Civil Judge (Senior Division), Narnaul (hereinafter described as 'Civil Court') issuing warrant of possession.

The facts are that a suit for specific performance of agreement to sell dated 1.10.2003 for two shops (description in the plaint) was filed by the respondent-plaintiff (hereinafter described as 'the respondent'). The suit was decreed vide judgment and decree dated 28.8.2012. Aggrieved of the judgment and decree, the petitioner-defendant (hereinafter described as 'the petitioner') filed an appeal, the same was dismissed on 20.11.2014. The matter was taken up further in Regular Second Appeal. The second appeal was also dismissed. The respondent filed an execution application. The executing court appointed a Local Commissioner for executing the sale deed and the same was executed in favour of the decree holder-respondent.

An application was moved for delivery of possession. In the said application, a statement was made by counsel for the petitioner that he does not want to file reply to the said application. The only objection raised was that no warrant of possession should be issued as possession is already with the respondent. The executing court relied upon the contents of agreement to sell dated 1.10.2003 wherein it was mentioned that possession of ownership would be handed over to the respondent on execution of the sale deed. The executing court ordered that warrant of possession be issued for 11.2.2019. Aggrieved of this order, the present civil revision petition has been filed.

Heard learned counsel for the petitioner and perused the paper book.

Learned counsel for the petitioner relying upon the contents of agreement to sell contends that possession had already been handed over to the respondent.

On a specific query being put by this Court that if possession has already been handed over by the petitioner to the respondent, what is the grievance against the impugned order. Learned counsel for the petitioner took time to have instructions in this regard and further to get instructions in whose possession the property in dispute is.

In spite of availing the opportunity, today learned counsel for the petitioner has not furnished any information. Learned counsel for the petitioner contends that the executing court is going beyond the decree.

The issue was never raised before the executing court. The only contention raised was that the possession had already been handed over to the respondent.

Section 22 of the Specific Relief Act, 1963 (for short, 'the Act')
is reproduced below:

“22. Power to grant relief for possession, partition, refund of earnest money etc.- (1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for -

- (a) possession, or partition and separate possession, of the property, in addition to such performance; or
- (b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed;

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

As per Section 22 (2) of the Act, no relief as mentioned in

clauses (a) and (b) of sub-section (1) shall be granted by the court until and unless specifically claimed. The said sub-section has a proviso to it, which empowers the court to allow amendment of the plaint on such terms as may be just and this power can be exercised at any stage of proceedings.

The conduct of the petitioner is not bonafide. The suit was filed in the year 2006 was decreed in the year 2012. The petitioner has been able to deprive the respondent from the fruit of decree for more than six years. In the execution application, no reply was filed. The only argument raised was that the possession is with the decree holder.

The petitioner has not approached this Court with clean hands. In spite of availing an opportunity, relevant facts are being withheld. The petitioner has not shown as to what is the grievance against the impugned order if possession has been handed over to the respondent.

The objection that the executing court had gone beyond the decree was not taken at an appropriate stage. There is no dispute on the proposition that a legal issue can be raised at any stage. But in the present case by not raising the issue before the executing court, the respondent has been deprived of a chance to press into service the proviso to sub-section (2) of Section 22 of the Act, if so required.

In **Babu Lal v. M/s Hazari Lal Kishori Lal and others**, AIR 1982 SC 818, the Supreme Court, after noticing the contention of learned senior counsel for the petitioner, held as under:

“3. Only one contention has been raised on behalf of the petitioner by Mr. Shanti Bhushan, senior counsel, that the High Court could not grant relief in execution application in excess of and out side the framework of the prayer by

the plaintiffs in the original main suit. As a second limb to this argument it was further contended that the High Court has acted in flagrant violation of the provisions of Section 22 of the Specific Relief Act in granting the relief of possession.

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5. The contention at the first flush appears to be alluring and plausible but on a closer scrutiny it cannot be accepted.

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11. Section 22 enacts a rule of pleading. The Legislature thought it will be useful to introduce a rule that in order to avoid multiplicity of proceedings the plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking, the right to possession accrues only when suit for specific performance is decreed. The Legislature has now made a statutory provision enabling the plaintiff to ask for possession in the suit for specific performance and empowering the court to provide in the decree itself that upon payment by the plaintiff of the consideration money within the given time, the defendant should execute the deed and put the plaintiff in possession.

12. The section enacts that a person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate reliefs, namely, he may

ask for possession, or for partition, or for separate possession including the relief for specific performance. These reliefs he can claim, notwithstanding anything contained in the Code of Civil Procedure, 1908, to the contrary, Sub-section (2) of this section, however, specifically provides that these reliefs cannot be granted by the Court, unless they have been expressly claimed by the plaintiff in the suit. Sub-section (2) of the section recognised in clear terms the well- established rule of procedure that the court should not entertain a claim of the plaintiff unless it has been specifically pleaded by the plaintiff and proved by him to be legally entitled to. The proviso to this sub-section (2), however, says that where the plaintiff has not specifically claimed these reliefs in his plaint, in the initial stage of the suit, the court shall permit the plaintiff at any stage of the proceedings, to include one or more of the reliefs, mentioned above by means of an amendment of the plaint on such terms as it may deem proper. The only purpose of this newly enacted provision is to avoid multiplicity of suits and that the plaintiff may get appropriate relief without being hampered by procedural complications.”

The Supreme Court considering the proviso to Section 22(2) of the Act has held that the proviso was added to avoid multiplicity of suits so that plaintiff may get appropriate relief without being hampered by

procedural complications.

In view of the decision of the Supreme Court and the facts of the present case, no interference is called for in the impugned order.

The petition is dismissed with cost of ₹10,000/-.

(AVNEESH JHINGAN)
JUDGE

25.2.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No