112 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1586 of 2019
DECIDED ON: MARCH 07, 2019

GULZAR SINGH

.....PETITIONER

VERSUS

JASWANT SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Kehar Singh Hissowal, Advocate
for the petitioner.

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AVNEESH JHINGAN, J (ORAL)

The present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 12.12.2015 passed by the learned Civil Judge (Sr. Division), Fatehgarh Sahib (hereinafter referred to as 'Executing Court') whereby the suit of the respondent/plaintiff was allowed and order dated 21.11.2018 vide which warrant of possession was issued.

The facts in brief are that a suit for specific performance of agreement to sell dated 16.11.2009 was filed by the respondent/plaintiff in the year 2010. During the pendency of the suit, parties arrived at a compromise before the National Lok Adalat and made their statements on 11.12.2015. On the basis of the afore-said compromise the suit was decreed vide judgment and decree dated 12.12.2015. The relevant extract is quoted below:-

> "*In view of the compromise arrived at between the parties as reported by them vide their statements made on 11.12.2015, an Award for possession by way of Specific performance of the agreement to sell dated 16.11.2009 in respect of the house in question as fully detailed hereinabove, is hereby passed in favour of the plaintiff and against defendant with the stipulation that upon payment of ₹4,75,000/- by defendant to the plaintiff on or before 10.06.2016, this Award shall be deemed to be fully satisfied and in the event of any default on the part of defendant in making the said payment as per compromise, the plaintiff shall be entitled to execute the Award for possession by way of specific performance of the agreement. Since the matter has been settled in the Lok Adalat, the amount of court fee paid by the plaintiff on the plaint is ordered to be refunded to the plaintiff. File be consigned to the Record Room, Fatehgarh Sahib.*"

As per the terms and conditions of the compromise, petitioner-defendant had to pay ₹4,75,000/- to the respondent-plaintiff on or before 10.06.2016 and in the event of default it was agreed that the respondent-plaintiff shall be entitled to execute the award for possession by way of specific performance of the agreement. The said compromise was not adhered to by the petitioner-defendant. An execution application was filed by the respondent-plaintiff. In execution proceedings application under Order I Rule 10 of the Code of Civil Procedure, 1908 was filed by the wife of petitioner-defendant for impleadment stating that she had filed a suit for permanent injunction in December, 2012 which was decreed ex-parte on 16.01.2014. The Executing

Court dismissed the application for impleadment holding that the petitioner-defendant is the owner of the property and the applicant was not a necessary party in the execution proceedings. The Executing Court issued warrants of possession. Aggrieved of the issuance of warrants of possession the present revision petition has been filed.

Learned counsel for the petitioner states that the petitioner is ready and willing to pay the amount alongwith interest and the executing court erred initiating warrants of possession.

The contention raised by learned counsel for the petitioner deserves rejection.

From the decree, it is evident that as per the terms and conditions of the settlement the petitioner-defendant had to pay ₹4,75,000/- to the respondent-plaintiff on or before 10.06.2016 and in case of default, the respondent-plaintiff was entitled to execute the award for possession by way of specific performance of the agreement. Nothing has been produced on record to show that the terms and conditions of the agreement were adhered to or any payment was offered to respondent-plaintiff on or before 10.06.2016. The suit for specific performance was filed in the year 2010 and decreed in the year 2015. The petitioner-defendant has been able to deprive the respondent-plaintiff from the fruit of the said decree passed on the basis of compromise till 2019. At this belated stage it is only being stated that petitioner-defendant is willing to pay the agreed amount alongwith interest. The said offer cannot be accepted at this stage to cause prejudice to the interest of the other party.

The law is well settled that the executing Court cannot go beyond the decree. The Supreme Court in ***Rajasthan Financial Corporation v. M/s. M.I. Corpn. Ltd, AIR 2003 SC 4273***, has held as under:

> "*18. We have considered the rival submissions. There can be no dispute to the proposition that the executing Court cannot go beyond the decree. There can be no dispute that the executing Court must take the decree according to its tenor. Also as has been set out in the Greater Cochin Development Authority's case (supra) when a decree is in terms of an award/document then the terms of that document have to be looked at.*"

As per the decree in case of default of payment respondent-plaintiff is entitled to possession by way of specific peroformance. No interference is called for in the impugned order.

Dismissed.

MARCH 07, 2019 **(AVNEESH JHINGAN)**
sham **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No