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

**Civil Revision No.2373 of 2019
Date of Decision: 30.04.2019**

Malkeet Singh and others

.....Petitioners

Vs

Gian Singh and another

....Respondents

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

Present: Mr. S.S. Sarwara, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 13.03.2019 passed by the Civil Judge (Jr. Divn.) Rajpura vide which the application under Section 28 of the Specific Relief Act (hereinafter to be referred to as 'the Act') was dismissed.

[2]. A suit for possession and permanent injunction was filed by the plaintiffs. The trial Court decreed the suit of the plaintiffs vide judgment and decree dated 16.02.2017. Defendants No.1 to 4/petitioners were directed to execute the sale deed in favour of the plaintiffs as per agreement Ex.P-1 within two months after receiving the balance sale consideration

along with other costs from the plaintiffs, failing which the plaintiffs were held entitled to get the sale deed executed through the process of the Court. Petitioners were also restrained from alienating the suit land in any manner to any other person except the plaintiffs.

[3]. Against the judgment and decree dated 16.02.2017, an appeal was preferred by the defendants/petitioners and the same was dismissed by the lower Appellate Court on 12.07.2017.

[4]. The execution was filed by the plaintiffs/respondents on 18.09.2017. The application under Section 28 of the Act was filed by the defendants/petitioners on the ground that the decree holders did not comply with the decree dated 16.02.2017 by not paying the entire sale consideration to the judgment-debtors, nor deposited the same in the Court. The executing Court vide the impugned order dismissed the application by noticing some incriminating facts.

[5]. Learned counsel for the petitioners by relying upon **Prem Jeevan vs. K.S. Venkata Raman and another, 2017 AIR (SC) 623** contended that the Court must ensure strict compliance to the conditions stipulated in the decree which has the effect of nullifying the decree.

[6]. I have considered the submissions made by learned

counsel for the petitioners.

[7]. Perusal of the concluding part of the decree dated 16.02.2017 would show that there was no rider placed by the Court that in the event of default in not depositing the amount within two months by the plaintiffs, the suit was to be dismissed.

[8]. In **Prem Jeevan's** case (supra) the issue for consideration before the Hon'ble Apex Court was in respect of a case where a decree for specific performance was granted in favour of the plaintiff on 25.09.2008, directing the defendant to execute and register the sale deed in favour of the plaintiff in respect of suit land within two months from the date of passing of the decree after receipt of balance sale consideration. It was also ordered that in case defendant refused to receive the balance sale consideration with interest, the plaintiff would be at liberty to deposit the amount in Court and obtain the sale deed through process of the Court. Plaintiff claimed to have issued a cheque on 04.12.2008 for the amount in question, but the same was returned, as not accepted by the judgment debtor and thereafter, decree holder applied for execution after about two years of non-acceptance of the cheque. Judgment debtor filed an application before the Executing Court on the ground that since the amount was not deposited by the decree holder within the stipulated time, therefore, the decree has become inexecutable in the absence of extension of

time. Keeping in view the period of about 2 years in filing the execution after returned of the cheque, the Hon'ble Apex Court found that there was no document to show that there was any enlargement of time granted by the Court for paying the purchase money under Section 28(1) of the Specific Relief Act. In the absence of any application for extension of time that was computed to be about 2 years, 2 months, the Hon'ble Apex Court held that the execution for obtaining specific performance was not maintainable. However, the Hon'ble Apex Court has also observed that in case where two views are possible on the facts of the case, the one, which would sustain the decree, must prevail.

[9]. In the instant case, the judgment and decree was passed on 16.02.2017. Defendants/petitioners unsuccessfully challenged the same before the lower Appellate Court and the appeal was dismissed on 12.07.2017. After two months of the dismissal of the appeal, the execution was filed on 18.09.2017. Even if there was no stay granted by the lower Appellate Court, the conduct of the judgment-debtors can be looked into as they were not satisfied with the judgment and decree of the trial Court. They did not accept the judgment and decree of the trial Court in its right perspective and unsuccessfully assailed the same before the lower Appellate Court. The delay is not such as it

would debar the decree holders from the fruits of the decree. There was no such inordinate delay in the present case and, therefore, ratio of **Prem Jeevan's** case (supra) would not apply.

[10]. In **Tara Singh (since deceased) through his LRs. vs Sandeep Kumar and others, 2016 (1) PLR 408**, it was held that the decree lawfully passed should not be allowed to be nullified very easily. Even in the case of **Prem Jeevan's** case (supra), the Hon'ble Apex Court has observed that when two views are possible on the facts of the case, the view favouring sustainability of the decree must be adopted. The Court does not cease to have power to extend the time and the provision in terms of Section 28 of the Act is discretionary in nature. There was no rider in the decree that in the event of failure on the part of the decree holder to deposit the amount, the decree shall have to be rendered as a nullity.

[11]. In **Amar Nath Jain vs. Ram Parkash Dhir, 1987(1) PLR 490**, it was held that the time can be extended in the absence of any application filed by the decree holder. The Court can use its discretion for extending the time for depositing the amount, even if no specific order for extension of time was passed, nor such an application was moved. The Court has power to fix and extend the time for deposit of sale consideration. In the absence of condition stipulated in the

decree, the consequences of non-deposit of such amount would be of no consequence as the Court passing the decree in its discretion has power to extend the time as well.

[12]. In view of law laid down in **Gurdip Singh vs. Jagjit Singh, 1987(1) PLR 129**; **Smt. Sarupi and others vs. Har Gian and others, AIR 1975, Punjab and Haryana 231**; **Kedar Nath Dhingra and another vs. Kanwal Bhatia, AIR 1998, Punjab and Haryana 86**; **Chintambaran vs. Viswambaran, 2001 AIR (Kerala) 205**; **Sham Kaur vs. Malagar Singh and another, 2004(1) PLR 814**; **Mohinder Singh vs. Gurdial Singh, 1997(1) PLR 73**; **Nanha vs. Risala and another, 2007 (5) RCR (Civil) 655** and **Sucha Singh vs. Nand Lal, (2015-3) PLR 272**, it can be visualized that in the absence of any condition stipulated in the decree, incorporating consequences of non-deposit of balance sale consideration, the powers of the Court to extend the time for payment of balance sale consideration are to be perceived in discretionary ambit of the Court and such discretion has to be exercised in view of the facts and circumstances of the case. The decree itself did not show any contingency on happening of a particular event. Therefore, the suit was not to be dismissed automatically in the absence of such rider clause in the decree and therefore, the power of the Court to enlarge the time would be in consonance

with the provisions of the Civil Procedure Code as well as Specific Relief Act and would fall in the discretionary ambit of the Court for extending the time.

[13]. For the reasons recorded hereinabove, I find no reason to differ with the findings recorded by the executing Court vide the impugned order. This revision is found to be totally devoid of merits and dismissed as such.

April 30, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No