

CR No.2473 of 2019

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

CR No.2473 of 2019

Date of decision:11.04.2019

Lakhbir Singh

... Petitioner

Vs.

Bhupinder Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Akhilesh Vyas, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 06.02.2019 whereby an application for extension of time in depositing the amount in terms of ex parte judgment and decree dated 28.07.2015, has been dismissed.

Mr. Akhilesh Vyas, learned counsel appearing on behalf of the petitioner submitted that petitioner-plaintiff instituted the suit for specific performance of the agreement to sell dated 08.06.2011 in respect of land measuring 10 kanals 1 marla by fixing the stipulated date but the defendants did not come forward for execution and registration of the sale deed. In such circumstances, the suit was filed on 04.07.2013 and the defendants proceeded ex parte resulting into an ex parte judgment and decree dated 28.07.2015 wherein three months time was granted to the plaintiff to deposit the balance sale consideration as per the law and also relief of injunction qua alienation of the suit property. Three months expired on 27.10.2015 and the application as indicated was submitted on 30.08.2016 giving reasoning

that petitioner-plaintiff was suffering from various ailments. The Court below has erroneously dismissed the application by ignoring the provisions of Section 148 of CPC which empower the Court to enlarge the time in case extension is sought on reasonable and just ground. There was no contingency of rendering the decree un-equitable.

In support of the aforementioned contention, relied upon the following case laws:-

1. Gayatri Devi and another Vs.Darshan Ram and another 2017(2) PLR 429;
2. Nanha Vs.Risala and another 2007(5) RCR (Civil) 655;
3. Sucha Singh Vs. Nand Lal 2015 (31) RCR (Civil) 452.

It was further contended that no harm and prejudice would be caused to the respondents if the impugned order is set aside as it was an ex parte judgment and decree.

I have heard the learned counsel for the petitioner, appraised the paper book and case laws cited at bar and of the view that there is no force and merit in the submissions of Mr. Vyas.

The provisions of Section 28 of Specific Relief Act, 1963 itself is a code which envisage the situation of rendering the decree un-equitable, much less opportunity to the defendants for moving an application seeking recession of the contract in case of non-compliance of the decree. The documents regarding ailment are only from January 2016 as no documentary evidence with regard to the period commencing from the date of decree till expiry of three months has been placed on record. This Court

while dealing with such issue in CR No.6196 of 2016 vide order dated 23.2.2018 negated the request of such decree-holder by relying upon the various case laws. The relevant findings read as under:-

“I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the provisions of Section 28 of the Specific Relief Act, 1963 and Section 148 of the Code of Civil Procedure, which reads thus:-

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and (b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be

claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.

Section 148 of the Code of Civil Procedure

148. Enlargement of time.- *Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.”*

On conjoint reading of the aforementioned provisions, it is evident that once there is a specific clause in Section 28(1) of the 1963 Act of rescission of the contract on account of failure of the decree holder not depositing the money, in other words, it would put a fetter upon the decree holder in seeking the execution of the decree for specific performance on deposit of the balance amount of consideration, during the prescribed time. The provisions of Section 148 CPC only deal with the procedure lapses. There is a stark difference between the statutory provisions and the procedure.

This Court in CR No.300 of 2015 titled as “Ashwani Kumar and another V/s Jagdish Mittal” decided on 30.08.2016 while relying upon the ratio decidendi culled out by the Hon'ble

Supreme Court in “P.R.Yelumalai V/s N.M. Ravi” 2015 (2) RCR (Civil) 585, had already held that extension of time under Section 148 CPC cannot be granted. This view of mine is supported by paragraph Nos.10 to 14 of the judgment rendered by the Hon'ble Supreme Court in Prem Jeevan's case (supra), which reads thus:-

“(10) In absence of the said time being extended, the decree-holder could execute the decree only by making the payment of the decretal amount to the judgment-debtor or making the deposit in the court in term of the said decree. In the present case, neither the said deposit was made within the stipulated time nor extension of time was sought or granted and also no explanation has been furnished for the delay in the making of the deposit. No doubt, as contended by the learned counsel for the decree-holders, relying on judgment of this Court in Ramankutty Guptan v.Avara– (1994) 2 SCC 642, in an appropriate case the Court which passed the decree could extend the time as envisaged in the Specific Relief, 1963. In the present case no such steps have been taken by the decree holders. (11) In above circumstances, the contention, advanced on behalf of the decree-holders, respondents herein, that unless the judgment-debtor seeks rescission of the contract in terms of Section 28 of the Specific Relief Act, the decree remains executable in spite of expiry of period for deposit, with the only

obligation on the part of the decree holders to pay interest, cannot be accepted.

(12) Section 28 of the Specific Relief Act is as follows:

which reads thus:-

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from

the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.

(13) There is no doubt that the above provision permits the judgment-debtor to seek rescission of a contract and also permits extension of time by the Court but merely because

rescission of contract is not sought by the judgment-debtor, does not automatically result in extension of time.

(14) In view of the above, we allow these appeals, set aside the order passed by the High Court and restore the order of the Executing Court. No costs. ”

*On perusal of the aforementioned observations, it has already been noticed that one judgment of the Single Bench of this Court in **Mohinder Singh's case** (supra) by relying upon the judgment of the Hon'ble Supreme Court in **Sardar Mohar Singh's case** (supra), had held that time can be extended, but with all humility, the Hon'ble Supreme Court was not apprised of the provisions of sub-Section 1 of Section 28 of the 1963 Act.”*

In the absence of the compliance of decree, the decree-holder cannot seek extension of time while seeking leave of the Court.

In view of the aforementioned, the impugned order cannot be said to be suffering from illegality and perversity.

Resultantly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

April 11, 2019
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No