

113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7297 of 2019

Date of Decision:25.11.2019

HARBHAGAT SINGH AND OTHERS

...Petitioners

Versus

HARSHDEEP SINGH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. P.K. Bansal, Advocate
for the petitioners.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 05.11.2019 passed by the Additional Civil Judge (Senior Division), Ferozepur (for short the Executing Court) dismissing objections filed by the petitioners to the execution proceedings launched by the respondents seeking therein execution of judgment and decree dated 17.03.2017 passed by the District Judge, Ferozepur (for short-the Appellate Court) .

The facts, in brief, which are required to be noticed for adjudicating upon the present petition, are that respondent No.1 filed a suit seeking therein specific performance of agreement to sell dated 21.11.2006 allegedly executed between him and the petitioners qua land measuring 21 kanals 6 marlas detailed and described in the headnote of the plaint (for short-the suit property). Through judgment and decree dated 10.02.2015, Additional Civil Judge, (Senior Division) Ferozepur (for short-the Trial

Court) decreed respondent No.1's suit to the extent of his share in the suit land. While decreeing respondent No.1's suit, the Trial Court directed Avtar Kaur, Harbhagat Singh, Jasbir Singh and Jagjit Singh to get the sale deed executed and registered in favour of respondent No.1 with regard to his share in the suit land. Respondent No.1's suit qua respondent No.2- Harbinder Kaur was dismissed. Respondent No.1 as well as the petitioners challenged the aforesaid judgment and decree of the Trial Court by way of cross appeals both of which were dismissed by the Appellate Court on 17.03.2017. As per the decree drawn by the Appellate Court upholding the aforesaid order of the Trial Court, the petitioners were directed to get the sale deed executed and registered in favour of respondent No.1 with regard to his share in the suit property within a period of two months from the date of the order of the Appellate Court failing which respondent No.1 was held entitled to get the sale deed executed and registered through the Court after getting the balance sale consideration deposited within one month, after the expiry of the aforesaid period of two months.

The petitioners challenged the judgment and decree of the Appellate Court before this Court through RSA No.74 of 2018, "Harbhagat Singh and others V/S Harshdeep Singh and another," in which till date no notice has been issued.

In the meanwhile, respondent No.1 through an application dated 16.06.2017, which came up for hearing before the Civil Judge (Senior Division), Ferozepur on 22.06.2017, sought permission of the Court for depositing the balance sale consideration and then getting the sale deed executed in his favour. Since there were summer vacations in the Trial

Court, on 22.06.2017, respondents No.1's aforesaid application was directed to be listed by the vacation bench before the regular bench on 01.07.2017 i.e. the first day after re-opening of the Trial Court after summer vacations.

Respondent No.1's application was taken up before the Trial Court on 01.07.2017 on which date after considering the entire matter in detail the Court permitted respondent No.1 to deposit the balance sale consideration by 04.07.2017 on which date admittedly respondent No.1 did the needful. Even thereafter when the petitioners failed to get sale executed, respondent No.1 filed an application before the Executing Court seeking its intervention for getting the sale deed registered in his favour and in such application respondent No.1 has specifically mentioned that he had deposited the balance sale consideration. The petitioners were put to notice of respondent No.1's execution application to which they filed their objections which were only to the effect that they had filed a second appeal before this Court and during the pendency thereof the Executing Court should stay its hands. However, since in the second appeal preferred by the petitioners before this Court even notice had not been issued, the Executing Court rejected the petitioners objections. Thereafter the draft sale deed was made which led to the filing of the another set of objections with regard to the faults in the draft sale deed as also late deposit of balance sale consideration by respondent No.1. The Executing Court rejected both the objections raised by the petitioners through the order under challenge in the present proceedings.

Learned counsel for the petitioners submitted that as per the order of the Appellate Court dated 17.03.2017 respondent No.1 could have

deposited the balance sale consideration by 16.06.2017 but without any extension granted by the Court, respondent No.1 deposited the same on 04.07.2017. Therefore, such deposit could not be considered as a valid deposit. It is further submitted that respondent No.1 had not approached the Executing Court with clean hands as only the date mentioned in the application was 16.06.2017 whereas the same had been filed much later.

A perusal of judgment and decree dated 17.03.2017, passed by the Appellate Court, reveals that respondent No.1 was granted three months time to deposit the balance sale consideration. Thus, such deposit could be made by 16.06.2017.

As per the record an application dated 16.06.2017 was filed by respondent No.1 seeking permission of the Trial Court to deposit the balance sale consideration. Since there were summer vacations in the Trial Court, such application filed by respondent No. 1 came up for hearing before the Trial Court on 22.06.2017 on which date the vacation Judge adjourned the same to the first day after the vacations i.e. 01.07.2017 so that the matter can be put up before the regular Court. On 01.07.2017, the Trial Court considered respondent No.1's application and permitted him to deposit the balance sale consideration by 04.07.2017 on which date admittedly such deposit was made by him.

At the time of consideration of respondent No. 1's application on 22.06.2017, the Trial Court, while adjourning the matter to 01.07.2017, duly considered the fact that through his application respondent No.1 has sought permission of the Trial Court to deposit the balance sale consideration. The order dated 22.06.2017 passed by the Trial Court reads

as under:-

“Papers put up before me being Vacation Judge as the learned Presiding Officer is availing summer vacation. An application has also been filed for entertaining the matter during summer vacation being of urgent nature. Heard. The applicant by way of the present application is seeking permission to deposit the balance sale price of Rs.27,34,000/-in the terms of judgment and decree dated 10.02.2015. Perusal of file reveals that vide judgment and decree dated 10.02.2015, Ms. Monika Lamba, the then Learned Addl. Civil Judge (Sr. Division), Ferozepur decreed the suit of the plaintiff/applicant Harshdeep Singh wherein he was directed to deposit the balance sale consideration within one month after the expiry of the period of two months i.e. the period given to the defendants for getting the sale deed registered. Thereafter, both the plaintiff and defendants filed separate appeals against the said judgment and decree which were dismissed by the learned District Judge, Ferozepur vide judgment and decree dated 17.03.2017 and the order of the trial Court was upheld. As such, considering the matter urgent in nature, the same is entertained during summer vacation. Let the papers be put up before the successor court of the court of Ms. Monika Lamba, the then Learned Addl. Civil Judge (Sr. Division), Ferozepur on 01.07.2017 for further proceedings.”

The order of the Trial Court dated 01.07.2017 through which respondent No.1 was permitted by the Trial Court to deposit the balance sale consideration is also relevant. The operative part of the same reads as under:-

“ However, the applicant/plaintiff has failed to disclose

the issuance of any notice or non execution of sale deed by the respondents during the immediate preceding period before moving the application as well as regarding the redemption of the suit land. Keeping in view the judgment and decree passed in aforesaid civil appeal decided on 17.03.2017 whereby the respondents were given two months time to get the sale deed executed, thereafter on failure to get the sale deed executed by respondent, the applicant/plaintiff was given the liberty within a period of one month to get the sale deed executed and registered through the Court of law, time for depositing sale consideration is happened to be on or before 16.06.2017, and application is found to be filed within time and same stands allowed. The challan forms duly filled by the applicant to deposit Rs. 27,34,000/- are signed and handed over to learned counsel for the applicant today. However, the applicant/plaintiff Harshdeep Singh is directed to deposit the balance sale consideration amounting to Rs.27,34,000/- on or before 04.07.2017 and further directed to place on record treasury/bank receipt of deposited sale price of Rs.27,34,000/- on 04.07.2017 and for further proceedings.”

A perusal of the afore-quoted orders passed by the Trial Court clearly reveals that before granting permission to respondent No.1 to deposit the balance sale consideration the Trial Court considered all relevant aspects including the time given by the Appellate Court to respondent No.1 to deposit the balance sale consideration as also the *bona fides* on the part of respondent No.1 in making the application seeking permission to deposit the balance sale consideration.

The afore-quoted orders were not challenged by the petitioners

in spite of the fact that in his execution application respondent No.1 had specifically mentioned that he had deposited the balance sale consideration.

Once, even after the passage of about 2½ years, the afore-quoted orders dated 22.06.2017 and 01.07.2017, through which the Trial Court granted permission to respondent No.1 to deposit the balance sale consideration and in terms whereof on 04.07.2017 such deposit was made by respondent No.1, have not been challenged by the petitioners, pleas to the contrary have rightly not been allowed to be raised on their behalf by the Executing Court.

Even otherwise, through an application, respondent No.1 had sought permission of the Trial Court to deposit the balance sale consideration. Such deposit was required to be made by 16.06.2017 but after considering all relevant aspects the Trial Court while allowing respondent no.1's application permitted him to deposit the balance sale consideration by 04.07.2017 which he did. In the facts of the present case, such permission by the Trial Court would constitute enlargement of time by it.

Dismissed.

November 25, 2019

Jyoti-IV

**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned Yes/No Whether Reportable Yes/No