204 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1536 of 2018
Date of Decision: 21.01.2020

Roshan .... Petitioner

Versus

Lal Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Jindal, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for the respondent.

***

ANIL KSHETARPAL, J. (ORAL)

The judgment debtor has filed present revision petition against order passed by Learned Executing Court permitting deposit of the balance sale consideration while dismissing an application for rescinding the contract/ agreement to sell under Section 28 of the Specific Relief Act, 1963 filed by the judgment debtor.

On 30.10.2014, a suit filed by the plaintiff for possession by way of specific performance of the agreement to sell dated 26.10.2009 was decreed. The operative part of the decree is extracted as under:-

> **"It is ordered that the suit of plaintiff is hereby decreed with costs. Defendant is directed to execute the sale deed in favour of the plaintiff within two months failing which the plaintiff will be entitled to take legal action for execution of the decree after payment of remaining sale consideration."**

The defendant filed an appeal which was dismissed as the judgment debtor failed to deposit the requisite Court fee on 07.04.2016. The land agreed to be sold was under a mortgage. The decree holder deposited a sum of Rs. 8,00,000/- in the mortgagee bank in the Lok Adalat held on

09.12.2017 to get clear title. It would be significant to note that decree holder deposited a sum of Rs. 8,00,000/- which is alleged to be in excess of the balance amount payable to the judgment debtor.

The decree holder filed application for execution of the decree on 14.01.2015. Keeping in view the aforesaid facts, learned Court held that since no time was fixed for the plaintiff to deposit balance amount, hence, the deposit made by the decree holder is within time.

Learned counsel for the petitioner-judgment debtor has submitted that the decree of the Court is in two separate parts. He submitted that first part relates to direction to the judgment debtor to execute the sale deed in favour of the plaintiff within two months. He submits that such direction would obviously mean reciprocal direction to the plaintiff to deposit the balance amount within the aforesaid period. He, hence, submitted that the deposit of the amount was not within time and hence, Executing Court has erred.

On the other hand, learned counsel for the decree holder has pointed out that as per the decree, balance consideration payable was Rs. 6,00,000/- whereas decree holder has already deposited Rs. 8,00,000/- with mortgagee bank i.e. Oriental Bank of Commerce. He further pointed out that another amount of Rs. 50,135/- has been deposited on 18.02.2018 as directed by the Court.

This Court has considered the submission. The judgment debtor is calling upon this Court to nullify the effect of a decree passed by the Court on the ground that the plaintiff has committed default. On careful reading of the decree, it is apparent that the defendant did not come forward to execute the sale deed in favour of the plaintiff within two months. The plaintiff was entitled to deduct the bank loan amount and deposit the balance consideration in the Court after adjusting the cost.

Such direction can not be read in the manner as suggested by the learned counsel for the judgment debtor. May be, there is defect in the decree so passed, however, the plaintiff can not be punished for the same. Still further, in the facts of the case, particularly when the land agreed to be sold was under mortgage and the judgment debtor did not get the land redeemed forcing the decree holder to deposit the amount for redemption of the mortgaged land, this Court does not find any ground to interfere.

Dismissed.

(ANIL KSHETARPAL)
JUDGE

21.01.2020
Maninder

Whether speaking/reasoned : Yes
Whether reportable : No