

**104 IN THE High Court OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-2964-2018 (O&M)

Date of decision: 07.05.2022

Mahender Singh (since deceased) through his L.Rs and others

....Petitioners

Versus

Dharampal Singh (since deceased) through his L.R and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.K.Khubbar, Advocate for the petitioners
Mr. Abhimanyu Singh, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

While assailing the correctness of the order passed by the Executing Court on 07.04.2018, the judgment debtor has filed the present revision petition. Some facts are required to be noticed.

Defendant no.6 sold the land measuring 14 kanals 3 marlas to defendant no.1 to 5 vide sale deed dated 05.09.1994 for a total sale consideration of Rs.40,000/-. The suit filed by the decree holder on 05.09.1985 was decreed on 30.10.1987. The decree holder deposited a sum of Rs.8,000/-being 1/5th of the pre-emption money during the pendency of the suit i.e 11.10.1985. As per the decree passed by the trial court, the decree holder was directed to deposit the remaining amount by 30.11.1987. The amount of Rs.38,000/- was deposited on 12.11.1987. Defendants' appeal was partly accepted and the decree passed by the trial court was modified. The decree holder was permitted to withdraw Rs.15,000/-, which was in excess of the required amount. Still the

defendants filed Regular Second Appeal in which an interim order was granted. The plaintiff as per the order passed by the First Appellate Court withdrew Rs.15,400/-, the amount which was deposited in excess. In the second appeal, the decree holder filed an application for return of the amount without prejudice to his rights, subject to the decision of the Regular Second Appeal while undertaking to re-deposit the amount if the Regular Second Appeal is decided in his favour. On 02.02.1990 the following order was passed:-

"Learned counsel for the appellant has no objection. The amount deposited in pursuance of the decree of the pre-emption suit less 1/5th amount as pre-emption shall be refunded to the applicant without prejudice to the rights in the RSA. On the RSA being dismissed the applicant shall deposit the amount within the time given for the purpose"

Pursuant to the aforesaid order, the decree holder withdrew the amount while leaving Rs.8,000/- which was deposited on 11.10.1985 representing 1/5th of the pre-emption money. The Regular Second Appeal was dismissed on 20.8.2013. The concluding part of the judgement reads as under:-

"In this view of the situation, findings recorded by the learned Ist Appellate Court cannot be interfered with for the simple reason that the plaintiff is a co-sharer in respect of the entire land comprised in the aforesaid Khewat/Khatauni and as such the sale has rightly been pre-empted by the plaintiff.

In the consequence, it is found that the appeal in hand does not involve any question of law, much less substantial question of law and is, therefore, dismissed with costs."

On receipt of the judgement and the decree passed by the

High Court in Regular Second Appeal, the decree holder applied to the court for permitting him to deposit the balance amount of Rs.22,600/-. The court directed the treasury to submit a report. On 30.05.2014, the execution application along with the treasury report was put up before the Presiding Judge. The judgement debtor filed an objection petition on 17.09.2015. The decree holder filed reply to the objection petition on 22.12.2015. The decree holder again submitted an application to permit him to deposit the balance amount of Rs.22,600/- vide an application dated 16.11.2017, which was allowed and the decree holder deposited the amount on the same day. The objection petition filed by the judgment debtor has been dismissed while passing the impugned order.

Heard learned counsel representing the parties at length and with their able assistance perused the paper book. Learned counsel representing the petitioner while relying upon order dated 02.02.1990, extracted above, contends that the order passed by the trial court on 30.10.1987 stood revived on decision of the Regular Second Appeal vide order dated 20.08.2013. Hence, they submit that the amount was required to be deposited within one month from the date of the judgment of the High Court. He relies upon the judgment passed by the Supreme Court in '**Dattatraya vs. Shaikh Mahaboob Shaikh Ali and another**' AIR 1970 SC 750.

Per contra, learned counsel representing the respondents contends that the respondent, on receipt of copy of judgement and decree passed by the High Court, filed an application before the executing court in this regard. He further submits that the High Court while deciding

the appeal did not fix the period for deposit of the amount. He submits that the respondent has offered to deposit the amount within a reasonable time and therefore, the executing Court has correctly dismissed the objection petition.

It may be noted here that the trial court while passing the decree on 31.10.1987 directed the respondent to deposit the amount on or before 31.11.1987. This order was complied with by the respondent. Thereafter, it was the defendant (petitioner) who filed the first appeal as well as the second appeal and obtained interim orders. No doubt, the High Court while passing interim order dated 02.02.1990 observed that the respondent shall deposit the amount within the time given for that purpose. However, when the appeal was decided on 20.08.2013, the court did not fix the period or the time for re-deposit of the amount (which was permitted to be withdrawn). As per the judgement passed by trial court, the amount was required to be deposited on before 31.11.1987. From the aforesaid facts, inference cannot be drawn that the trial court had granted one month time after the date of the judgement and therefore, the time period after judgment passed by the High Court would remain the same, particularly, when the High Court did not fix any time limit. This matter can be examined from another prospective. The respondent did comply with the conditional decree on deposit of amount of Rs.38,000/- within the time prescribed. It was due to the pendency of the Regular Second Appeal, the respondent was permitted to withdraw the amount. In an ideal situation, the Court while deciding the appeal should have fixed the time for deposit. In the absence thereof,

the respondent cannot be punished if the amount has been deposited within a reasonable time. There is no clarity as to when the certified copy of the judgement passed by the High Court alongwith decree was available. In fact, the attention of the executing court has not been drawn to this fact. In such circumstances, this Court is required to decide the matter on the basis of the material available.

As far as the judgement passed by the Supreme Court in **Dattatraya's** case (supra) is concerned, it may be noted that the Court, on examination of the facts, held that fresh limitation will start from the date of the judgment passed by the High Court. The issue involved in the present revision petition was neither debated nor decided.

Keeping in view the aforesaid facts, no ground to interfere is made out. Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

07.05.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE