

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

CR-4106-2016 (O&M)

Date of decision : 15.12.2022

Surjit Kaur (since deceased) through LRs ... Petitioner(s)

Versus

Bhajan Kaur ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.S. Rangpuri, Advocate for the petitioner.

Mr. Sarju Puri, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

The present revision petition under Article 227 of the Constitution of India has been filed for setting aside the impugned order dated 18.05.2016.

The brief facts relevant to the present *lis* are that on 09.06.2000 the DH-plaintiff-respondent herein filed a suit for specific performance of agreement to sell dated 07.05.1999. The suit was decreed vide judgment and decree dated 12.01.2007. The operative part of the decree reads as under :

“It is ordered that the suit of the plaintiff is hereby decreed with costs for the relief of specific performance of agreement dated 7.5.1999, with a direction to the defendant to execute a registered sale deed in favour of the plaintiff regarding the land measuring 5 marlas as per terms and conditions of the agreement after receiving the balance sale consideration. The plaintiff is

directed to deposit the balance sale consideration in the court, within two months from today. Thereafter, the defendant shall join the execution of the sale deed in favour of plaintiff as per terms and conditions of the agreements to sell dated 7.5.1999. If the defendant fails to do within stipulated period, then the plaintiff will be at liberty to get the sale deed executed by recourse of law. In case the plaintiff fails to deposit the remaining sale consideration, within stipulated period, in that even the suit of plaintiff shall stand dismissed, automatically.”

Aggrieved by the said judgment and decree, an appeal was preferred by the JD-defendant-petitioner herein on 21.02.2007. The appeal came to be dismissed on 03.10.2008. Thereafter, a regular second appeal bearing RSA-934-2009 was preferred by the JD-defendant-petitioner herein which was dismissed as withdrawn on 26.10.2009. After the withdrawal of the regular second appeal, an application to deposit the balance sale consideration was filed on 09.02.2010. On 10.02.2010, an endorsement was made on the application itself by the Civil Judge (Senior Division) which reads as under :

*“Be deposited at own
responsibility.*

Sd/- 9/2/2010

CJSD”

The DH-plaintiff-respondent herein applied for a certified copy of the order of this Court passed in RSA-934-2009. Thereafter, an application for enlargement of time was filed on 15.05.2010. The DH-plaintiff-respondent meanwhile also filed an execution petition on

24.07.2010. The JD-defendant-petitioner herein filed objections in the execution petition and subsequently filed an application under Section 28 of the Specific Relief Act, 1963. The objections were dismissed vide order dated 28.10.2013 and the sale deed was executed through the agency of the Court on 21.11.2013. Aggrieved by the orders, the JD-defendant-petitioner herein preferred a civil revision petition being CR-7404-2013 and vide order dated 11.03.2016 this Court remanded the matter to the Executing Court to dispose off the application for extension of time filed by the DH-plaintiff-respondent herein and the application filed by the JD-defendant-petitioner herein under Section 28 of the Specific Relief Act. Vide the impugned order dated 18.05.2016, the application under Section 28 of the Specific Relief Act was dismissed holding that since the sale deed had already been executed, hence, no further action was required and further that it would be deemed that the Court had impliedly extended the time.

Learned counsel for the JD-defendant-petitioner would contend that no reasons whatsoever are forthcoming in the impugned order for allowing the application for extension of time. Infact, it has been held that there would be an implied enlargement of time in view of the fact that the sale deed already stood executed. It is further the contention of learned counsel that there was a specific clause in the decree by the Trial Court that in case the sale consideration was not deposited within the stipulated period then the suit of the DH-plaintiff-respondent would stand dismissed automatically. Learned counsel for the JD-defendant-petitioner would contend that the regular second appeal bearing RSA-934-2009 was dismissed as withdrawn on 26.10.2009 and the amount even if taken to have

been correctly deposited on 09/10.02.2010 would be beyond the period of two months and hence no extension could have been granted. In support of his arguments, learned counsel for the JD-defendant-petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of **P.R. Yelumalai Vs. N.M. Ravi [2015(2) RCR (Civil) 585]**.

Per contra, learned counsel for the DH-plaintiff-respondent has contended that the enlargement of time has rightly been granted and that the amount was deposited on 09.02.2010 i.e. shortly after the dismissal of the regular second appeal bearing RSA-934-2009. Learned counsel for the DH-plaintiff-respondent has relied upon the judgment of Hon'ble Supreme Court in the case of **Surinder Pal Soni Vs. Sohan Lal (D) Thru LR & Ors. [2019(3) RCR (Civil) 883]** to contend that extension could have been granted.

Heard.

In the present case a specific order was passed by this Court in CR-7404-2013 remanding the case back to the Executing Court to decide the application filed by the DH-plaintiff-respondent herein for extension of time as well as the application filed by the JD-defendant-petitioner herein under Section 28 of the Specific Relief Act. A perusal of the impugned order reveals that the order is totally bereft of any reasoning. Rather it has been held by the Court that there would be an implied extension of time for depositing the balance sale consideration on account of the presentation of the draft sale deed and the appointment of the Local Commissioner for execution of the sale deed in favour of the DH-plaintiff-respondent herein.

The impugned order is a non-speaking order and does not deal with the

application for extension of time and hence cannot be sustained in law.

In view of the above, the present revision petition is accordingly allowed. The matter is remanded back to the Court concerned to decide the application for extension of time and the application under Section 28 of the Specific Relief Act afresh on merits, in accordance with law.

It is made clear that the sale deed executed in favour of the DH-plaintiff-respondent herein shall be subject to the outcome of the aforesaid applications. The parties are directed to appear before the Court concerned on 22.12.2022.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

15.12.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO