

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

CR No.4323 of 2018 (O&M)
Date of decision: 1st December, 2022

Jatinder Singh

... Petitioner

Versus

Ram Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ishan Gupta, Advocate for the petitioner.
Mr. Gopal S. Nahel, Advocate for the respondent.

MANJARI NEHRU KAUL, J.

Petitioner/deed-holder is impugning the order (Annexure P-8) dated 07.04.2018 passed by learned Executing Court, Dhuri whereby the execution application filed by him for execution of the judgment and decree dated 13.03.2010 in civil suit No.875 of 03.09.2008, was dismissed.

Learned counsel for the petitioner submits that the impugned order suffered from patent illegality and had been passed without appreciating the facts in the right perspective.

Learned counsel submits that the Executing Court while passing the impugned order, failed to appreciate that though as per the compromise deed dated 13.03.2010, the sale deed was to be executed by the parties on or before 18.04.2010, however, rights of the petitioner

were not extinguished after the said date, in view of the conduct of the parties. He further submits that the deadline for execution of the sale deed was mutually extended by the parties, which was apparent from the fact that the respondent/judgment-debtor executed a sale deed No.1467 qua 10 Bighas 7 Biswas land out of the total land measuring 19 Bighas, on 29.07.2010 in favour of one Gamdur Singh son of Gurcharan Singh and Janak Raj son of Janak Nath, at the instance of the petitioner/decreed-holder. Still further, learned counsel submits that vide order dated 03.02.2012 (Annexure P-3), the alienation of the remaining portion of the suit property owned by the respondent was stayed by Additional Civil Judge (Sr. Divn.), Dhuri in a suit instituted by one Achhra Singh, due to which the petitioner was unable to get the sale deed qua the remaining portion of suit land executed. Learned counsel has further gone on to submit that even during the pendency of the aforesaid suit instituted by Achhra Singh, the respondent had assured the petitioner and also executed an affidavit dated 18.03.2013 (Annexure P-4), wherein the respondent referred to the compromise decree passed by the Lok Adalat and affirmed it, and still further it was stated that he would be bound to execute the sale deed qua the remaining land after vacation of stay passed by the Additional Civil Judge (Sr. Divn.), Dhuri. Learned counsel submits that subsequently the suit instituted by Achhra Singh was withdrawn on the basis of

compromise deed dated 19.09.2014 and since the stay on alienation of the suit property no longer existed, the petitioner approached and requested the respondent on multiple occasions to execute the sale deed qua the remaining portion of land, however, in vain. Thus, left with no other alternative, the petitioner filed the execution application on 12.01.2015. Learned counsel has vehemently urged that the petitioner would not lose his right to execute the compromise decree dated 13.03.2010, merely because the execution application had been filed after about five years, more so, when the respondent had admittedly agreed to abide by the compromise decree even after the expiry of deadline set out as per the compromise arrived at between the parties.

Learned counsel for the respondent, while controverting the submissions made by the counsel opposite, contends that the impugned order does not warrant any interference as it is in accordance with the provisions of law. He submits that the petitioner had failed to get the sale deed executed as per the compromise arrived at between the parties due to paucity of funds, therefore, after sleeping over the matter for as long as five years, he could not now seek execution of the sale deed. Learned counsel has urged that stay was granted only on 03.02.2012 and prior to that from 29.07.2010 till the date when the stay was granted by the Court at Dhuri, the petitioner never approached the

respondent for execution of the sale deed, from which it is discernible that he was unable to comply with the terms and conditions of the compromise. Learned counsel has vehemently submitted that the affidavit dated 18.03.2013 (Annexure P-4) rather reflects upon the bona fides of the respondent, and the petitioner can certainly not be permitted to take advantage of the same for getting the sale deed executed now in his favour. Learned counsel thus, asserts that since the petitioner has failed to comply with the terms and conditions as stipulated in the compromise deed, his right to enforce the compromise decree now stands extinguished.

I have heard learned counsel for the parties and perused the relevant material on record.

It would be relevant to notice here that during the pendency of the suit for specific performance instituted by the petitioner against the respondent, they arrived at an amicable settlement and entered into a compromise dated 17.02.2010 (Annexure P-1), and accordingly a compromise decree dated 13.03.2010 (Annexure P-2) was passed by the Lok Adalat. As per the terms and conditions set out in the compromise, the respondent was to execute the sale deed qua the suit land on receipt of the balance sale consideration, in favour of the petitioner or in favour of any other person nominated by the petitioner on or before 18.04.2010. Admittedly, no sale deed was executed on or

before the said date i.e. 18.04.2010. Therefore, the question which arises for consideration is whether the petitioner is entitled to get the sale deed executed beyond the date fixed i.e. 18.04.2010. The fact which predominantly seemed to have weighed with the Executing Court while passing the impugned order was that since the parties had failed to comply with the terms and conditions of the compromise decree, and as no sale deed was executed on or before 18.04.2010, rights of the parties stood extinguished, and hence the petitioner could not seek execution of the said compromise decree, that too after a delay of almost five years.

This Court, however, is of the opinion that the Executing Court failed to take into consideration some relevant facts and also overlooked the conduct of the parties.

It would be apposite to point out here that even though the deadline agreed upon between the parties, for execution of the sale deed, was 18.04.2010, however, the respondent still went ahead to execute the sale deed No.1467 dated 29.07.2010 qua a portion of the suit property in favour of the persons nominated by the petitioner i.e. Gamdur Singh and Janak Raj. Still further, an affidavit dated 18.03.2013 (Annexure P-4) was sworn in by the respondent whereby he not only affirmed the compromise decree dated 13.03.2010 but also affirmed that he would be bound to receive an amount of ₹ 27.00 lacs

from the petitioner and execute the sale deed qua the remaining portion of the suit property in his favour after the stay operating against the alienation of the suit property was vacated. The respondent, therefore, did not repudiate the compromise dated 17.02.2010 even after the sale deed was not executed on or before 18.04.2010, as agreed upon by the parties. Therefore, when the suit filed by Achhra Singh was withdrawn and injunction order vacated, the petitioner would have stood entitled to get the sale deed in question executed, more so, when it is not the case of the respondent either that the affidavit dated 18.03.2013 (Annexure P-4) was a forged or fabricated document or a result of coercion. It would also be pertinent to reproduce the relevant part of compromise dated 19.09.2014 (Annexure P-9) entered into between the respondent and Achhra Singh along with others, which reads thus:-

“3. That if in future Jatinder Singh @ Goldy will file any case against Ram Singh regarding land of Bhojowal then both the parties of the compromise will fight that case.”

A perusal of the above reproduced extract of Annexure P-9 leaves no manner of doubt that there was indeed a collusion between the respondent and Achhra Singh, and it was thus for reasons but obvious, the respondent turned turtle, and was now not ready and willing to execute the sale deed in favour of the petitioner.

Even otherwise, no notice or any other communication was ever sent by the respondent to the petitioner to express his intention to revoke the compromise arrived at between the parties due to non-compliance of the terms and conditions of compromise dated 17.02.2010, by the petitioner.

In the facts and circumstances as enumerated hereinabove, the instant petition is allowed and the impugned order dated 07.04.2018 (Annexure P-8) is set aside. The Executing Court is directed to continue with the execution proceedings in accordance with law. The parties are directed to appear before the Executing Court on 10.01.2023.

(MANJARI NEHRU KAUL)
JUDGE

December 1, 2022

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No