

201

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5352-2016 (O&M)

Date of Decision: 29.11.2022

Tarsem Singh (deceased) through his LRs

.. Petitioner

Vs.

Piara Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Krishan Singh Dadwal, Advocate and
Ms. Neha Jain, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

The petitioner (judgment debtor) has filed this revision petition to challenge the order dated 18.05.2016 (Annexure P-5), passed by executing court, whereby his objections relating to the delay in depositing the amount of Rs.50,000/- by the decree holder pursuant to the order dated 06.12.2010 passed by this Court in CR No.1237 of 2002, were dismissed and further warrants of possession were issued.

Learned counsel has argued that the suit for possession by way of specific performance of an agreement to sell dated 18.04.1991 filed by Piara Singh was decreed on 23.12.1994 and the said decree is pending for execution before the Executing Court. He submits that during the execution petition, the judgment debtor had filed objections and the same were dismissed on 02.02.2002, which resulted in filing of CR No.1237 of 2002 before this Court, wherein on 28.02.2002, this Court had issued notice of motion and directed the judgment debtor to deposit a sum of Rs.50,000/- before the trial Court within a period of one month. He submits that finally

the said revision petition was dismissed on 06.12.2010 and it was also ordered that the decree holder shall deposit a sum of Rs.50,000/- before issuance of warrants of possession, as the said amount was withdrawn by the decree holder during the pendency of the revision. According to the learned counsel, since the amount of Rs.50,000/- was not deposited by decree holder in a period of one month, therefore, he cannot seek execution of the decree dated 23.12.1994 in view of the provisions of Section 28 Specific Relief Act, 1963. He submits that the impugned order warrants interference and the objections filed by the petitioner (judgment debtor) be accepted.

After hearing the learned counsel and considering the material on record, this Court finds that the execution proceedings now relates to the delivery of possession, as pursuant to the decree dated 23.12.1994, the sale deed in respect of the suit property already stands executed on 14.09.1998. Of course, while issuing notice of motion in the revision petition filed by the judgment debtor, this Court had directed the decree holder to deposit a sum of Rs.50,000/-, but this deposit cannot be construed as a refund of the sale consideration agreed to be paid by the purchaser to the vendor. Therefore, in the facts and circumstances of this case, the argument that by virtue of Section 28 Specific Relief Act, 1963, the decree cannot be executed is absolutely misplaced, because the sale deed in respect to the suit property already stood executed in favour of the decree holder long back on 14.09.1998. Apart from it, the stand of the judgment debtor that once the decree holder had withdrawn the sum of Rs.50,000/- during the pendency of the revision petition, he cannot seek possession of the subject property already stands rejected by this Court in decision dated 06.12.2010. Thus, it

is clear that the judgment debtor is raising the same argument in the garb of Section 28 Specific Relief Act, 1963, which is not available to him after execution of the sale deed. Further, a reading of the impugned order reveals that the executing Court has carefully examined the material on record, while dismissing the objections by judgment debtor and the order does not suffer from illegality or impropriety.

29.11.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No