

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Revision No. 5476 of 2018

Ravinderpal Singh Arora (Since Deceased through his Legal Representatives
... Petitioner(s)

Versus

Mehanga Singh
... Respondent(s)

AND

2. Civil Revision No. 9245 of 2018

Ravinderpal Singh Arora (Since Deceased through his Legal
Representatives)
... Petitioner(s)

Versus

Mehanga Singh
... Respondent(s)

DATE OF DECISION: 01.12.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Swarn Tiwana, Advocate
for the petitioner(s).

Mr. Vijay Sharma, Advocate
for the respondent.

Anil Kshetarpal, J.

1. These two connected revision petitions have come up for disposal. The petitioner is a decree holder. His suit for grant of decree of possession by way of specific performance of the agreement to sell dated 04.04.2005 was allowed on 22.09.2016. The concluding part of the judgment

reads as under:-

“Consolidating the discussion referred above, the court holds that the suit of the plaintiff stands decreed. The plaintiff is held entitled to specific performance of agreement to sell dated 04.04.05 on payment of balance sale consideration to the defendant within 2 months from the date of passing of this judgment, failing which the plaintiff shall be at liberty to get his right enforced in due course of law. Parties to bear their own costs. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.”

2. The petitioner (decree holder) claims that though Sh.Mehnga Singh (defendant) did not receive the amount, however, in the execution of a decree passed against Sh.Mohinder Singh, who is the brother of Sh.Mehnga Singh, the sale deed has been executed by Sh.Mohinder Singh on 22.11.2016 in favour of the petitioner. The execution petition was filed to execute the decree on 25.04.2017. The petitioner, while filing the execution petition, asserted that he has been making efforts to pay the amount to Sh.Mehanga Singh and he also visited the office of the Sub-Registrar on 21.11.2016.

3. The relevant paragraph of the execution petition is extracted as under:-

“The Hon’ble Court had decreed the suit of the plaintiff/decree holder on payment of balance sale consideration to the defendant within two months from the date of passing of the judgment, failing which the plaintiff shall be at liberty to get his

right enforced in due course of law. The decree holder remained ready and willing to perform his part of contract and to pay the balance sale consideration to the J.D. The decree holder many a times verbally requested the J.D to get the sale deed execute and register in his favour after receiving balance sale consideration, but the J.D did not heed to the request of the decree holder. It is pertinent to mention here that another suit titled as Ravinderpal Singh vs Mohinder Singh was also decreed along with the present suit. The said Mohinder Singh is the real brother of present J.D and J.D was also attorney of said Mohinder Singh in the said suit. The said Mohinder Singh had already executed sale deed in favour of the person of the choice of decree holder. On the said date the present J.D was also called to get the sale deed execute and register in favour of decree holder and the decree holder had brought the amount payable to the J.D on the said day i.e. 21.11.2016 but the J.D. did not come up. On the next day again the decree holder kept on waiting the JD in the Tehsil complex, along with his, nominee in whose favour the decree holder intends to get the sale deed execute and register from the JD but again the JD did not come present. The JD to cover up his failure to get the sale deed execute and register in favour of decree holder, got created a false affidavit of his presence in the Tehsil complex, on 22.11.2016. The decree holder is still ready and willing to perform his part of contract and get the balance sale

consideration deposited before the Hon'ble court as and when directed by the Hon'ble Court. The Hon'ble Court can appoint a local commissioner to get the sale deed execute and register in favour of decree holder on behalf of JD, if JD did not come present to get the sale deed execute and register in favour of decree holder. The decree holder is in possession of remaining sale consideration and expenses of the sale deed to get the same execute and register from the J.D."

4. Sh.Mehanga Singh filed an application under Section 28 of the Specific Relief Act, 1963 (hereinafter referred to as "the 1963 Act") for rescission of the contract which has been allowed by the Executing Court on 07.04.2018 while dismissing the execution petition.

5. Challenging the correctness of the aforesaid orders, these two revision petitions have been filed.

6. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

7. On the one hand, the learned counsel representing the petitioner contends that in compliance with the conditional decree, the petitioner made efforts to pay the amount to Sh.Mehanga Singh within the given time of two months, however, he refused to receive the same. He submits that the plaintiff was given the liberty to get his rights enforced in due course of law after the expiry of a period of two months from the date of the judgment and decree. However, if Sh.Mehanga Singh committed default in receiving the payment, the further period within which the amount was to be deposited

was not specified. He further submits that the petitioner was not afforded

any opportunity to prove the fact of such default including his presence in the office of the Sub-Registrar on 21.11.2016. He was also not permitted to prove that Sh.Mohinder Singh, brother of Sh.Mehanga Singh had executed a sale deed in a similar manner in favour of the petitioner on 22.11.2016.

8. On the other hand, the learned counsel representing the respondent submits that the agreement to sell was executed on 04.04.2005 and now, after a period of 17 years has elapsed, it will be inequitable to permit the enforcement of the decree.

9. This Court has considered the submissions while analyzing the arguments. It would not be appropriate to express an opinion on the merits of the case particularly when this Court is of the considered view that the matter is required to be remitted to the Executing Court for deciding afresh after granting an opportunity to the parties to lead evidence. However, it would be noted that the trial Court has passed the decree for specific performance of the agreement to sell on 22.11.2016 after finding that it was Sh.Mehanga Singh who committed default in performing his part of the contract. In such circumstances, the petitioner was required to be given an opportunity to prove his case particularly when while passing the judgment, the Court did not fix any time in case the defendant fails to receive the payment within a period of two months.

10. Keeping in view the aforesaid facts, the impugned orders are set aside. Let the Executing Court cull out the necessary issues and permit the parties to lead their respective evidence. Needless to observe that the observations made by this Court while passing this order shall not be construed as a final opinion on the merits of the case. The parties, through

their learned counsel, are directed to appear before the Executing Court on 22.12.2022. The Executing Court is directed to make sincere endeavours for expeditious disposal of the execution petition, positively, within a period of nine months, from today.

11. With the observations made above, both the revision petitions are disposed of.

**(Anil Kshetarpal)
Judge**

**December 01, 2022
“DK”**

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No