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

CR No.652 of 2019 (O&M)
Date of decision: 12.10.2022

Harbans Lal

....Petitioner

Versus

Kashmiri Lal

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ravi Malhotra, Advocate
for the petitioner.

ARVIND SINGH SANGWAN J. (Oral)

CM-12537-CII-2019

Heard.

Allowed as prayed for.

Documents (Annexure P-6) are taken on record subject to
all just exceptions.

CM-25678-CII-2019

Heard.

Allowed as prayed for.

Document (Annexure P-7) is taken on record subject to all
just exceptions.

CR-652-2019 (O&M)

Prayer in this petition is for setting-aside the order dated
06.05.2017 passed by the trial Court vide which the application filed by
the respondent/defendant to dispose of the civil suit with a direction to
the petitioner/plaintiff to deposit the balance sale consideration within a
period of 02 months i.e. upto 06.07.2017, was passed.

Brief facts of the case are that the petitioner has filed a civil suit against the respondent for possession of by way of specific performance of agreement to sell dated 16.05.2012. As per the plaint, it is stated that the respondent/defendant has agreed to sell the land in dispute @ Rs.8200/- per sq. yds and Rs.10.00 lacs as earnest money was paid at the time of execution of the agreement to sell. It was agreed between the parties that the land will be partitioned on or before 15.01.2013 and thereafter, the sale deed will be executed on receipt of the balance sale consideration.

The petitioner filed the civil suit on 12.05.2015 with the aforesaid prayer that a decree of specific performance of agreement to sell be passed.

The respondent/defendant appeared in the civil suit and filed an application that the partition has already been done and the petitioner/plaintiff be directed to pay the balance sale consideration so that the sale deed is executed.

The trial Court, after hearing both the counsel for the parties, passed the impugned order with the following observations:-

“3. After hearing Ld.Counsels for both the parties and perusing the record on file this court is of the considered view that present application has been filed by defendant to dismiss the suit because plaintiff is not ready and willing to perform his part of the contract as he has no ready money available with him. On the perusal of file it is revealed that plaintiff has filed the present suit for possession by way of specific performance of the agreement to sell dated 16.05.2012 executed by defendant in favour of plaintiff along with relief of permanent injunction. It is pertinent to mention here that par para no.2 and 3 of plaint it is mentioned that defendant had agreed to sell the suit land @ Rs.8200/- per Square yard

and defendant had received Rs.10 Lacs as earnest money on 16.5.2012.

4. Ld. Counsel for the plaintiff has argued that condition was mentioned in the agreement to sell itself that defendant will get the land partitioned first and thereafter sale deed will be executed but it had not been executed till 15.1.2013. These arguments of counsel for plaintiff has been duly opposed by counsel for defendant by submitting that partition had been effected vide order dated 28.7.2015 by the competent court of jurisdiction, which has not been disputed by the plaintiff also. From all these facts and pleadings it is clear that defendant is ready and willing to perform his part of contract, whereas plaintiff does not seem to be ready and willing to perform his part of contract, though he had filed the present suit for possession by way of specific performance of agreement to sell dated 16.05.2012.

5. In view of these facts & circumstances application in hand stands disposed off with the direction to plaintiff, “that if he is still ready and willing to perform his part of contract, then he will pay the amount of balance sale consideration to defendant within two months and defendant will get the sale deed executed in favour of plaintiff on receipt of balance sale consideration and in the event of failure on the part of plaintiff to pay the balance sale consideration within two months, the suit of plaintiff will be dismissed, otherwise will be decreed. Now the case stands adjourned to 28.9.2017 to pay balance sale consideration and for further proceedings.”

A perusal of the order would show that a clear two months time was given to the petitioner/plaintiff to pay the balance sale consideration failing which the suit of the plaintiff will be dismissed.

The petitioner preferred an appeal before the Lower Appellate Court challenging the said order, however, the appeal was dismissed as withdrawn on 12.09.2018 and thereafter, the present revision petition has been filed.

At the very outset, before opening the arguments, in reply to a Court query, counsel for the petitioner/plaintiff could not dispute

that at no point of time, the petitioner had deposited the balance sale consideration, however, it is argued on behalf of the petitioner that the petitioner paid another amount of Rs.5.00 lacs on 15.01.2013 and some endorsement/an additional agreement dated 15.01.2013 was executed in the presence of the witnesses.

Counsel for the petitioner has further submitted that since there was a stipulation in the agreement to sell that the sale deed will be executed after getting the partition, the trial Court was not justified in passing the impugned order, directing the petitioner to pay the balance sale consideration.

After hearing the counsel for the petitioner, I find no merit in the present petition. Apparently, in order to show the readiness and willingness, the petitioner was required to deposit the balance sale consideration in compliance of the order dated 06.05.2017, before the trial Court and only then, he could have challenged the said order on the grounds available. In terms of Section 148 of the Civil Procedure Code, no application was filed by the petitioner before the trial Court for seeking extension of time and rather the petitioner preferred an appeal before the Lower Appellate Court, which remained pending for a considerable long time and was ultimately withdrawn on 12.09.2018.

Thus till date, no request is made for seeking extension of time for depositing the balance sale consideration is made since 2017.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

12.10.2022

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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No