

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7915 of 2017 (O&M)
Date of decision: 07.09.2022

Ankur

..Petitioner

Versus

Subhash

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nipun Verma, Advocate,
for the petitioner.

Mr. Kanhiya Soni, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

In a suit filed by the petitioner, for grant of decree of possession by way of specific performance of the agreement to sell, the trial court passed a conditional decree on 11.07.2017. The concluding part of the judgment reads as under:-

“On receipt of balance sale consideration of Rs.5,00,000/- from the plaintiff within a period of two months from the date of decree. If the defendant failed to do so, the plaintiff shall be at liberty to get the sale deed of the suit land executed and registered in his favour through the process of the court and to get the possession of the same. The defendant is further restrained permanently from alienating the suit land to any person other than the plaintiff. Decree sheet be drawn accordingly. Thereafter, the case file be consigned to the record room after necessary compliance.”

The aforesaid decree became final between the parties. It was passed in the presence of the learned counsel representing the respective parties, namely, the plaintiff and the defendant. On 18.09.2017, the plaintiff filed an application for permission to deposit the amount of Rs.5,00,000/-. It

was asserted that the plaintiff in terms of the decree contacted the Judgment

Debtor, but the Judgment Debtor, after giving false assurance to the plaintiff, ultimately refused to execute the sale deed. The application filed by the decree holder has been dismissed on the ground that the said period of two months has expired.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

On a careful reading of the operative part of the judgment which also forms a part of the decree, it is evident that the defendant was directed to put the plaintiff in possession of the suit land after execution and registration of the sale deed in favour of the plaintiff as per the agreement to sell dated 06.06.2013, on receipt of balance sale consideration of Rs.5,00,000/- within a period of two months from the date of decree. This is the first part of the decree. The second part of the decree starts with the following sentence:-

“If the defendant failed to do so, the plaintiff shall be at liberty to get the sale deed of the suit land executed and registered in his favour through the process of the court and to get the possession of the same.”

Once the Judgment Debtor failed to honour the directions issued by the court, the second part comes into operation. There is no time/period prescribed for the second part. In any case, the application has been filed within a period of 6 days from the date on which the first mode of executing sale deed, provided in the first part of the decree, failed. The first part obligates the Judgment Debtor to honour the decree by putting the plaintiff in possession on execution of the sale deed after receipt of Rs.5,00,000/-. Hence, the Executing Court erred in returning the finding that the application filed by the petitioner was beyond the prescribed time.

The learned counsel representing the Judgment Debtor contends that the Judgment Debtor stands deprived of the amount since 06.06.2013. The argument of the the argument counsel representing the Judgment Debtor is fallacious.

The plaintiff filed a suit for possession by way of specific performance of the agreement to sell because the Judgment Debtor failed to honour the commitment. The trial Court, after appreciating the evidence, held that the plaintiff is entitled to decree for specific performance. The court directed the Judgment Debtor to put the plaintiff in possession by executing the sale deed on receipt of Rs.5,00,000. However, he did not honour the same. The plaintiff, promptly, filed an application in the Court. Hence, there is no equity in favour of the Judgment Debtor.

However, the amount of Rs. 5,00,000/- has remained with the plaintiff for all these years. Hence, the decree holder is permitted to deposit the amount within one month, from today, along with interest @ 12% per annum from the date of decree till the date of its deposit so as to balance the equities.

The revision petition is allowed.

All the pending miscellaneous applications, if any, are also disposed of.

September 07, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*