

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

CR No.979 of 2018 (O&M)
Reserved on: 28.07.2022
Date of decision: 08.08.2022

Kamlesh Kumari

....Petitioner

Versus

Dr. Amit Arya

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vivek Suri, Advocate
for the petitioner.

Mr. Anurag Jain, Advocate
for the respondent.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for setting-aside the order dated 20.01.2018 passed by the trial Court vide which the objections filed by the petitioner in the execution petition filed by the respondent, stands dismissed.

Brief facts of the case are that the respondent/plaintiff Dr. Amit Arya, filed a suit for specific performance of agreement to sell dated 11.12.2004, by way of execution and registration of a sale deed qua the plot in dispute and further to grant a decree of possession or in the alternative for recovery of an amount of Rs.2.46 lacs with interest @ 18%. The petitioner contested the suit, however, the trial Court decreed the suit vide judgment and decree dated 14.05.2011 and it was directed that the petitioner/judgment-debtor, will execute the sale deed in favour of the respondent/decreed-holder on receiving the balance sale

consideration of Rs.8.05 lacs as per the agreement dated 11.12.2004, within a period of 02 months from the date of decree, failing which the respondent/decreed-holder will be at liberty to get the sale deed executed on deposit of necessary expenses.

The petitioner filed an appeal before the Lower Appellate Court, which was partly allowed on 22.04.2013 and vide the decree dated 22.04.2013, the petitioner/judgment-debtor was directed to deposit a sum of Rs.2.00 lacs being double the amount of earnest money along with interest @ 9% p.a. and the said amount was deposited by the petitioner in the Treasury with an information to the respondent.

The respondent/plaintiff preferred a regular second appeal i.e. RSA No.4080 of 2013 and the same was allowed on 08.02.2016, setting-aside the judgment and decree passed by the Lower Appellate Court and the judgment of the trial Court was restored.

Since the primary dispute is with regard to interpretation of the judgment and decree dated 14.05.2011, passed by the trial Court, the same is reproduced as under:-

“It is ordered that the suit of the plaintiff succeeds and is decreed with costs. Resultantly, the plaintiff is entitled for possessions of the suit land and defendant is directed to execute the sale deed in favour of the plaintiff on receiving balance sale consideration of Rs.8,05,000/- from the plaintiff, in terms of the agreement to sell dated 11.12.2004 Ex.P1 within two months from today, failing which the plaintiff shall be at liberty to get executed the sale deed from the court on deposit of necessary expenses. The defendant is also restrained from alienating the suit

land in favour of any other person, except the plaintiff.”

The judgment and decree passed by the Lower Appellate Court dated 22.04.2013, reads as under:-

“This appeal coming on this 22nd day of April, 2013 before me (Sanjay Sandhir, Additional District Judge, Panchkula) for final disposal in the presence of Ms. Kanchan Bala, counsel for the appellant/defendant and Sh. Manoj Kumar, counsel for respondent/plaintiff.

It is ordered that the appeal filed by the appellant/defendant is hereby dismissed. However, decree for recovery of Rs.2,00,000/- being double amount of the earnest money along with interest @ 9% p.a. from the date of execution of agreement to sell till the date of its actual realization is passed in favour of the appellant.”

The operative part of the judgment passed by this Court in RSA No.4080 of 2013, on 08.02.2016, reads as under:-

“In view of what has been discussed hereinabove, the appeal is allowed, judgment and decree passed by the appellate Court is set aside and that of the trial Court is restored. The respondent shall be liable to pay costs throughout.”

Counsel for the petitioner has argued that the decree-holder filed an execution on 04.07.2016 i.e. after 02 months and 25 days but did not deposit the balance sale consideration, however, deposited the amount of Rs.7,39,700/- on 26.08.2016 i.e. after 4½ months of the judgment of this Court by extending 02 months time.

The petitioner/judgment-debtor filed objections on 03.09.2016 and raised an objection that the decree cannot be executed as the time granted by the trial Court has lapsed as the tender of the

amount as well as the time period stipulated in the same, was not adhered to, by the decree-holder.

Counsel for the petitioner has further submitted that only thereafter, balance of Rs.65,300/- were tendered before the Executing court by the decree-holder by way of a demand draft dated 13.12.2016 i.e. more than 10 months of judgment of this Court.

Counsel for the petitioner has also submitted that the trial Court vide impugned order dated 20.01.2018, has dismissed the objections filed by the petitioner by passing the following order:-

“6. After giving fair hearings to both learned counsels and careful scrutiny of judicial file this court is of considered view that the present objections are not maintainable for the reasons discussed below.

7. The careful scrutiny of judicial file reveals that vide judgment and decree dated 14.05.2011 suit for specific performance and permanent injunction was decided in favour of plaintiff. The relevant paragraph is reproduced as:-

“As a sequel to findings of this Court on the aforesaid issues, the suit of the plaintiff succeeds and is decreed with costs. Resultantly, the plaintiff is entitled for possession of the suit land and defendant is directed to execute the sale deed in favour of the plaintiff on receiving balance sale consideration of Rs. 8,05,000/- from the plaintiff, in terms of the agreement to sell dated 11.12.2004 Ex P1 within two months from today, failing which the plaintiff shall be at liberty to get execute the sale deed from the court on deposit of necessary expenses. The defendant is also restrained from alienating the suit land in favour of any other person, except the plaintiff. Decree sheet be drawn accordingly. File be consigned to

the record room, after due compliance.”

The decree holder has clearly stated during the course of arguments that earlier balance sale consideration was deposited in treasury and later on balance amount by way of demand draft was deposited. The original demand draft and e-challan are duly placed on record.

This court relies upon following authorities here i.e.

Tara Singh Vs Sandeep Kumar/ Civil Revision No. 8288 of 2015- it was observed that:-

*(a) “It was not as if that the decree holder had simply allowed for time to go by without any act on his part. If he was moving an application for execution and was also tendering the amount within a reasonable time of 5 months that included two months in between the court was justified in examining the conduct of the parties in the application filed for rescission of decree and consider whether the decree must be declared as rescind or the decree should be allowed to be executed even when there was no application. If the decree holder had not paid the balance within two months but filed it on the 5th month when there was an appeal filed by the defendant to this court, the court was justified in extending the discretion to allow for the execution process to continue and to decline the plea for rescission. A decree lawfully obtained shall not be allowed to be stifled very easily. There have been several pronouncements that underscore the sanctity of a decree and it ought not to be allowed to be rendered nugatory. An *abdul Shaker Sahib Vs Abdul Ral Iman Sahib* and another AIR 1923 Madras 284, it has been held, “it would seem absurd to hold that the mere fact that a date of completion is fixed in the original decree puts an end to the action and that the control of the original court expires on the expiration of that date and thus substitute in effect*

for all the known remedies stated above the simple expedient of treating the action and the decree as dead for all purposes and leaving the vendor in undisturbed possession of property which is not his....”

“In Sardar Mohar Singh Vs Mangilal 1997(9) SCC 217, the Hon'ble Supreme Court has held, while detailing the discretionary powers of the court, that, “that the court does not lose its jurisdiction after grant of the decree for specific performance nor does it become functus officio. Therefore, the court has the powers to enlarge the time of the judgment debtor to pay the amount or to perform the conditions in the decree for specific performance, despite the application for rescission of the agreement/decreed.”

“In R.R. Yelumalai Vs N.M. Ravi 2015(9) SCC 52, it has been held that, “Court has to discretion to extend the time upon an application made by the party required to act within a stipulated time period. Extension of time can be granted even after the expiry of the period originally fixed.”

“As a measure of general practice for the sake of clarity the court that passes decree for specific performance shall incorporate appropriate directions to the plaintiff/decreed holder for deposit and shall not make it a matter of mere inference. Unlike every other suit, where normally the directions are to the defendant/judgment debtor, a decree for specific performance, like a decree for redemption of mortgage or pre-emption, requires positive direction to pay the balance of sale consideration within a period of 02 months and call upon the defendant to execute the sale deed. On failure of unwillingness of the judgment debtor, the decreed holder shall make the deposit in court and resort to execution process. In this case, the deposit has already been made. There is enough justification for not making

the deposit within 2 months. As a matter of prudent practice, every application for deposit beyond the period stipulated in the decree shall be put on notice to the judgment debtor, after receiving the deposit and subject the deposit to the outcome of consideration after eliciting objections from the judgment debtor.”

Further it was observed in “Varinder Garg Vs Balbir Singh/CR No. 6645 of 2016” :-

“In nutshell, it there was no default clause stipulated in the decree for payment of balance sale consideration, then the court has a right to extend the time, even if the balance sale consideration was not deposited within stipulated period. Such extension of time can be ordered without application. Mere failure on the part of the decree holder to deposit the amount does not render the decree ineffective or release the judgment debtor from his liability to satisfy the decree. It is only a wilful default that makes the court to refuse extension in depositing the balance sale consideration.”

“The arguments as raised before the Court in respect of noncompliance of Order 21 Rule 34 CPC though not raised before the executing court, but still this objection can be taken by the petitioner at relevant stage. Since the sale deed has not been executed so far, the petitioner would be at liberty to avail his remedies in accordance with law.”

This Court here relies upon law (discussed above) in support of its viewpoints. The scrutiny of judicial file shows that matter went before Hon'ble Punjab and Haryana High Court in regular second appeal bearing No. 4080 and present execution was filed on 04.07.2016. Thus, the original e-challan and demand draft showing compliance are already placed on record. This Court relies upon above said authorities and in view of same

dismisses the present objections. Nothing in this order shall have any bearing upon merits of the case. Now, to come upon 01.03.2018 for further proceedings.”

Counsel for the petitioner has assailed the findings recorded by the trial Court on the ground that the decree-holder has failed to comply with the time limit fixed in the judgment and decree dated 14.05.2011 passed by the trial Court as the decree-holder was liable to get the sale deed executed within a period of 02 months from the date of decree on deposit of the balance sale consideration.

Counsel for the petitioner has further submitted that since the decree-holder himself was at fault as the execution itself was filed after a delay of 87 days and therefore, the decree becomes non-executable. It is also argued that the objections were filed in view of the provisions of Order 20 Rule 1 read with Rule 12-A CPC.

Counsel for the petitioner has further argued that it is specifically provided under Rule 12-A CPC that when a decree for specific performance of contract for sale or release of immovable property is passed directing that the purchase money be paid by the purchaser, it shall specify the period within which the payment shall be made and therefore, the decree-holder having failed to made the payment within a period of 02 months from the date of decree, in the absence of seeking any extension of time for making the deposit as there is no order of the Court extending the time, the decree cannot be executed.

Counsel for the petitioner has also contended that due to the own lapse of the decree-holder, a valuable right has accrued to the

petitioner/judgment-debtor as the decree-holder never applied for extension/enlargement of time in terms of Section 148 of CPC. It is further submitted that even if Section 148 CPC is to be applied, the Court can extend the time not exceeding 30 days whereas the execution was preferred after a lapse of 87 days and therefore, the Executing Court has wrongly dismissed the objections.

Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court ***"Bhupinder Kumar vs Angrej Singh"***, **2009(4) RCR (Civil) 249**, wherein it has been held that if the vendee has not paid the balance amount within the stipulated period, if the Court finding that there is no just and reasonable cause to extend the time to deposit the balance consideration, the rescinding of the contract under Section 28 of the Specific Relief Act, 1963 is justified.

Counsel for the petitioner has further relied upon the judgment ***"Prem Jeevan vs K.S. Venkata Raman and another"***, **2017 AIR (SC) 628**, passed by the Hon'ble Supreme Court, to submit that under Order 20 Rule 2-A CPC where an objection is raised by the judgment-debtor regarding non-deposit of the amount within the stipulated time and the deposit was neither deposited in the stipulated time nor extension of time was sought, the order of the Executing Court holding that the execution of the specific performance cannot be granted, was upheld. It is also held by the Hon'ble Supreme Court in this judgment that under Section 28-A of the Specific Relief Act, 1963, if the judgment-debtor has not sought recession of the contract, it does not automatically result in extension of time. The operative part of the said judgment, reads as under:-

9. Reference to Order 20, Rule 12A CPC shows that in every decree of specific performance of a contract, the court has to specify the period within which the payment has to be made. In the present case, the said period was two months from the date of the decree.

*10. In absence of the said time being extended, the decree-holder could execute the decree only by making the payment of the decretal amount to the judgment-debtor or making the deposit in the court in term of the said decree. In the present case, neither the said deposit was made within the stipulated time nor extension of time was sought or granted and also no explanation has been furnished for the delay in the making of the deposit. No doubt, as contended by the learned counsel for the decree-holders, relying on judgment of this Court in **Ramankutty Guptan v. Avara - (1994) 2 SCC 642**, in an appropriate case the Court which passed the decree could extend the time as envisaged in the *Specific Relief, 1963*. In the present case no such steps have been taken by the decree-holders.”*

In reply, counsel for the respondent has argued that after the judgment and decree was passed by the trial Court on 14.05.2011, the judgment-debtor preferred an appeal on 15.06.2011, which was decided on 22.04.2013 granting the alternative relief of recovery of Rs.2.00 lacs with interest @ 9% p.a. from the date of execution of agreement to sell till the date of its actual realization. It is further submitted that the decree-holder challenged the said judgment by way of filing a regular second appeal, in this Court and the same was allowed on 08.02.2016, restoring the judgment passed by the trial Court and therefore, the decree-holder has deposited the amount of Rs.7,39,700/- on 26.08.2016 i.e. immediately after the judgment passed

by this Court.

Counsel for the respondent has also argued that since the decree of the trial Court provided that the petitioner/defendant/judgment-debtor was directed to execute the sale deed in favour of plaintiff on receiving the balance sale consideration of Rs.8.05 lacs from the plaintiff within a period of 02 months, from the date of the decree of the trial Court dated 14.05.2011, the said time stood extended from the date of the judgment of this Court i.e. 08.02.2016, when the said decree was restored by this Court.

Counsel for the respondent has also argued that since a direction was given to the defendant to execute the sale deed within a period of 02 months, the execution was filed after 02 months when the defendant/judgment-debtor failed to execute the sale deed and therefore, there is no delay in filing of the execution/deposit of the amount.

Counsel for the respondent has relied upon the judgment of this Court in CR No.6645 of 2016, decided on 19.10.2016, wherein it has been held that the time can be extended even in the absence of any application and the Court can use its discretion for extending the time for deposit of the amount. It is also held that if the decree does not show any contingency then the power of the Court to enlarge the time will be in consonance with the Civil Procedure Code and Specific Relief Act, 1963. It was further observed that since in the said case, there was no default clause, the Court has rightly extended the time even if the balance sale consideration was not deposited within the stipulated time.

Counsel for the respondent has also relied upon the judgment ***“Surinder Pal Soni vs Sohan Lal (D) through LRs & Others”***, 2019(3) RCR (Civil) 883, to submit that it is held by the Hon’ble Supreme Court that once the Appellate Court confirmed the judgment and decree of the trial Court then the same merges with the decision of the Appellate Court and becomes executable and if there is a delay in deposit of the balance sale consideration, equity arises in the decree of a suit for specific performance must weigh in favour of the plaintiff and the objections raised by the judgment-debtors dismissed by the Executing Court were upheld. Facts of this case show that the plaintiff had paid partial payment during the pendency of the appeal before the Appellate Court and within a month thereafter, the decree-holder deposited the balance sale consideration and therefore, it was held by the Hon’ble Supreme Court that the decree-holder acted in a bona fide manner and therefore, the equity arises in favour of the decree-holder in a suit for specific performance.

Counsel for the respondent/decreed-holder has further relied upon the judgment ***“Ramankutty Guptan vs Avara”*** AIR 1994 (SC) 1699, wherein it has been held by the Hon’ble Supreme Court that if a decree for specific performance is passed by the Appellate Court and there is a default for making the payment of the balance sale consideration, an application for recession or extension of time under Section 28 of the Specific Relief Act, 1963 is maintainable in the Appellate Court as appeal is in continuation of the suit. Facts of this case are that the possession of the property was handed over to the

decree-holder and balance sale consideration was deposited when the matter was pending before the High Court, however, the same was not brought to the notice of the High Court regarding the default clause and therefore, holding that the execution was midway, it was held that the decree for specific performance should be executed.

After hearing the counsel for the parties and going through the facts of the case, the following facts emerges:

(a) Vide judgment and decree dated 14.05.2011, it was directed that the plaintiff will pay the balance sale consideration of Rs.8.05 lacs to the defendant, who on receiving the same will execute the sale deed within a period of 02 months from the date of decree failing which the plaintiff was given liberty to get the sale deed executed through the Court on deposit of necessary expenses and a decree of possession was also granted in favour of plaintiff.

(b) The judgment-debtor filed an appeal on 15.06.2011, which was allowed on 22.04.2013, modifying the decree for recovery of Rs.2.00 lacs being double of the earnest money along with interest @ 9% p.a. to be paid by defendant.

(c) The judgment of the Lower Appellate Court was reversed by this Court vide order dated 08.02.2016 passed in RSA No.4080 of 2013 and the judgment of the trial Court was restored.

(d) The respondent/decree-holder filed execution on

04.07.2016 without deposit of the balance sale consideration.

(e) The part amount of Rs.7,39,700/- was deposited on 26.08.2016, without moving any application for extension of time before the trial Court, which passed the decree dated 14.05.2011, and balance amount of Rs.65,300/- was deposited on 13.12.2016, after an objection was already raised by the judgment-debtor that the tender amount is short and the time period was lapsed.

(f) Thus, it is apparent that from the date of the judgment of this Court dated 08.02.2016, restoring the judgment and decree of the trial Court dated 14.05.2011, vide which 02 months time was granted to the decree-holder to offer the balance sale consideration to the judgment-debtor, on merger of the said decree, the 02 months period stood extended till 08.04.2016.

The execution was filed on 04.07.2016 i.e. after 87 days of the 02 months extended time granted by this Court and further part amount of Rs.7,39,700/- was deposited on 26.08.2016 i.e. after about 138 days of the extended time w.e.f. 08.04.2016 and finally even the remaining amount of Rs.65,300/- was deposited on 30.12.2016 i.e. about 245 days with effect from the extended time i.e. 08.04.2016.

From the conduct of the decree-holder, it is apparent that though, he was willing to get the sale deed executed but apparently he was not ready with the money which he never deposited within 02

months extended time as noticed above.

There is no dispute with regard to the judgments cited by counsel for the respondent/judgment-debtor i.e. ***Surinder Pal Soni's case (supra)*** and ***Raman Kutty's case (supra)***, however, on facts the judgments are distinguishable as in ***Surinder Pal Soni's case (supra)***, the plaintiff has deposited the balance sale consideration within 01 month from the passing of the original decree of the trial Court and in ***Raman Kutty's case (supra)***, it is held that the application for extension of time was filed before the Appellate Court whereas in the instant case, the petitioner has not shown any readiness to deposit the balance sale consideration with the trial Court immediately within 02 months even, after the judgment passed by this Court and never moved any application before the Appellate Court/this Court to allow him to deposit the balance money subject to final outcome of the case.

In view of the judgment of the Hon'ble Supreme Court in ***Prem Jeevan's case (supra)***, the time of 02 months w.e.f. 08.04.2016, does not automatically result in extension of time merely by filing the execution application. Even otherwise, in the absence of any application filed by the respondent/judgment-debtor for extension of time in view of ***Bhupinder Kumar's case (supra)***, the decree becomes inexecutable.

It is worth noticing that the Executing Court has wrongly assumed that in the light of the judgments relied upon in the impugned judgment, the time stands extended once the execution application is filed and subsequently, the amount is deposited.

In fact, no such power lies with the Executing Court as in view of the judgment in *Raman Kutty's case (supra)* relied upon by the decree-holder himself, it is held that where there is default of making the balance sale consideration, the application for extension of time is maintainable before the Appellate Court where decree of trial Court merged. Admittedly, no application was filed after decision of the regular second appeal judgment on 08.02.2016, for extending the time and therefore, the Executing Court has wrongly assumed that merely by filing the execution, the time to deposit the balance amount stands extended as even otherwise, the Executing Court has no power to extend the time even if an application is filed.

In view of the above, the present petition is allowed and the impugned order dated 20.01.2019, is set-aside and the objections filed by the petitioner/judgment-debtor stands accepted and execution petition is dismissed.

Disposed of, accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

08.08.2022

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