

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CR-852 of 2019(O&M)
Date of Order: 13.05.2022

Ishwar Singh

..Petitioner

Versus

Khazani Devi

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.P.S.Virk, Advocate, for
Mr. K.S.Dhaliwal, Advocate, for the petitioner.

Mr. Sanjeev Deswal, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

The decree holder assails the correctness of the order passed by the Executing Court while declaring that the agreement to sell dated 06.07.2013 stands rescinded and dismissing the execution petition.

The petitioner filed a suit for specific performance of the agreement to sell with respect to agricultural land measuring 27 kanals and 10 marlas. The suit was decreed on 09.03.2018. A conditional decree was passed in favour of the petitioner, operative part whereof reads as under:-

“In view of my findings on issues no.1, 2 and 4, the present suit of the plaintiff is decreed with costs and decree of specific performance of agreement to sell dated 06.07.2013 regarding the suit property is passed in favour of plaintiff and against the defendant. The defendant is directed to get the sale deed of the suit land executed and registered in favour of plaintiff on receiving balance sale consideration within two months from the date of decree, failing which the plaintiff shall be at liberty to approach the court agency for execution of sale deed in his favour on payment of balance sale consideration. The defendant is restrained from alienating the suit land in favour of anybody else than the plaintiff. Decree sheet be prepared accordingly. File be consigned to the record room, after due compliance.”

The decree holder did not comply with the decree as he did not deposit the balance sale consideration within the time prescribed by the Court. He filed the execution petition but chose to never deposit the amount.

The respondent filed an application under Section 28 of the Specific Relief Act, 1963. The Executing court after finding that the plaintiff has failed to fulfill the said condition, dismissed the execution petition while rescinding the agreement to sell.

The learned counsel representing the petitioner contends that in view of the provisions of Section 28 and Section 30 of the Specific Relief Act, 1963, the respondent be directed to refund the amount of earnest money to the petitioner.

Per contra, the learned counsel representing the respondent contends that the order of rescinding the contract is consequential to the dismissal of the execution petition as the petitioner failed to comply with the decree as he failed to pay the balance sale consideration to the respondent.

In the considered opinion of the Court, the Executing Court has correctly dismissed the execution petition while declaring the contract rescinded. In a case where there was a conditional decree in favour of the petitioner, who fails to comply with the same, the natural consequences are to follow. The petitioner cannot be permitted to execute the decree now. This being the position, the rescission of the contract is merely consequential in nature.

Keeping in view the aforesaid facts and the conduct of the petitioner also, he is not entitled to refund of the amount.

Hence, dismissed.

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

May 13, 2022
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(ANIL KSHETARPAL)
JUDGE

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