111 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2480-2022
Date of decision : 01.09.2022

Nathi Singh **...Petitioner**

Vs.

Jitender Dutt **...Respondent**

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Pradeep Sharma, Advocate for the petitioner.
Mr. Pawan Attri, Advocate for the respondent.

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MANOJ BAJAJ, J.

Petitioner (judgment debtor) has challenged the order dated 12.05.2022 (Annexure P-8) passed by Additional Civil Judge (Senior Division) Kurukshetra in execution petition No.2/2018, whereby his application for dismissal of execution petition and rescinding the contract was dismissed.

Briefly, the facts of the case are that the plaintiff (respondent) brought a suit for specific performance of contract dated 07.11.2006 executed by defendant, whereby he agreed to sell his land measuring 13 kanals 11 marlas, being 1/4th share of the total land measuring 54 kanals 3 marlas comprised in khewat No.51, khatoni No.109, kittas 10 as per jamabandi for the year 2001-2002 with tubewell, situated at village Lohara, Teshil Thanesar, Sub Tehsil Ladwa, District Kurukshetra for a total sale consideration of Rs.10 lacs. Pursuant to this agreement, plaintiff had paid a sum of Rs.5 lacs to the vendor as earnest money, and they agreed to execute the sale deed on 20.02.2007, however, in the event of failure on the part of the defendant, he agreed to return double the amount of earnest money to the plaintiff. As per the plaintiff, he was throughout ready and willing to perform his part of the contract, but defendant failed to keep his words, who also threatened to alienate the suit property, thereby compelling the plaintiff to seek decree for permanent injunction. During pendency of the said suit, the material date of execution of registration of sale deed i.e.20.02.2007 expired, therefore, the suit for injunction was withdrawn, and the present suit for possession by way of specific performance of contract was filed.

The suit was contested by the defendant by filing his written statements, wherein he took preliminary objections regarding its maintainability, concealment of facts etc. and on merits, denied the execution of the agreement to sell. By refuting the other averments in the plaint, it was prayed that the suit be dismissed.

After completion of the pleadings, the trial commenced and the suit filed by plaintiff was dismissed through judgment and decree dated 31.10.2013, however, dissatisfied with the said decree, plaintiff filed an appeal and the same was accepted by first appellate Court vide judgment and decree dated 26.04.2016.

Aggrieved against the judgment and decree dated 26.04.2016 passed by the first appellate Court, the vendor preferred an appeal bearing RSA No.3817-2016 and the same was dismissed by this Court on 07.11.2017, and this decision was further upheld by Hon'ble Supreme Court on 19.02.2018.

During the pendency of the execution petition, the judgment debtor moved an application for dismissal of execution petition of decree-holder and rescinding the contract, which was dismissed on 12.05.2022. Hence this revision petition.

Learned counsel for the petitioner/judgment debtor has argued that while decreeing the suit of the plaintiff, a clear and specific direction was issued to the decree holder to deposit the balance amount of sale consideration within a period of two months and since neither that condition was complied with by the decree holder nor any extension of time was sought by him, therefore, the decree cannot be executed. He submits that the petitioner/judgment debtor had filed an application before the executing court in terms of Specific Relief Act, 1963 for rescission of contract because of failure of decree holder to perform his part of the contract, but the said application has been erroneously dismissed by ignoring the law on the subject in "***Ravi Setia Vs. Madan Lal and others", (2019) 9 SCC 381***. He submits that the impugned order be set aside and the application filed by the judgment debtor for rescission of the contract be accepted.

On the other hand, learned counsel for the respondent/decree holder has argued that the agreement to sell executed between the parties was against the total sale consideration of Rs.10 lacs, and out of it Rs.5 lacs were paid as earnest money, whereas only Rs.5 lacs were to be paid as per the decree dated 26.04.2016 and the said amount was also deposited on 02.01.2018, much before the final decision dated 19.02.2018 by Hon'ble Supreme Court. According to him, when the execution of decree was pending, the judgment debtor moved an application dated 30.04.2019 for staying the execution proceedings on the ground of pendency of SLP, therefore, it cannot be said that the remaining amount of Rs.5 lacs deposited on 02.01.2018 by the decree-holder was a delayed deposit. He submits that the executing Court has examined the background of the case carefully and has rightly refused to rescind the contract by dismissing the application. He submits that the revision petition be also dismissed.

After hearing learned counsel for the parties and considering the above background, this Court finds that the sole issue raised by judgment debtor in this revision petition revolves around the computation of period for deposit of sale consideration before seeking execution of the decree relating to the agreement to sell in question. No doubt, initially the suit filed by decree holder was dismissed by the trial Court on 31.10.2013, but his appeal against the said decree was accepted by first appellate Court and decreed his suit on 26.04.2016. The relevant part of the decree in favour of plaintiff reads as under:-

> *"It is ordered that the appeal is accepted with costs and the impugned judgment and decree are set aside. Consequently, the suit of the appellant-plaintiff is decreed with costs. The respondent-defendant are directed to get the sale deed executed and registered in favour of the appellant-plaintiff within two months from today on receipt of remaining sale consideration and other expenses of stamp and registration charges etc., failing which, the appellant-plaintiff shall be entitled to get the sale deed executed and registered through court."*

Of course, a perusal of the above decree shows that the period of two months was from the date of the decree, but it is also not disputed by learned counsel for petitioner/judgment debtor that against the said decree, he had preferred Regular Second Appeal bearing No.3817-2016 before this Court and the same was dismissed on 07.11.2017. At this stage, it is apt to notice that during the pendency of the regular second appeal, this Court vide order dated 19.01.2017 had protected the possession of the appellant/judgment debtor. Further, the decision of this Court was upheld by the Apex Court as petitioner's SLP was dismissed on 19.02.2018, and the decree dated 26.04.2016 attained finality.

Before examining the argument of learned counsel for petitioner that as the decree holder never sought extension of time in terms of Section 28 Specific Relief Act, 1963, the period of two months granted by the first appellate Court came to an end in June 2016 and decree cannot be executed, this Court deems it appropriate to examine Section 28 Specific Relief Act, 1963 which is extracted below:-

> *28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.*
> *(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.*
> *(2) Where a contract is rescinded under sub-section (1), the court*
> *(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and*
> *(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.*
> *(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—*
> *(a) the execution of a proper conveyance or lease by the vendor or lessor;*
> *(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.*
> *(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.*
> *(5) The costs of any proceedings under this section shall be in the discretion of the court."*

A reading of Sub Section (1) of Section 28 Specific Relief Act, 1963 makes it clear that this provision empowers the Court, which has passed the decree to either extend the time in favour of the purchaser to deposit the requisite amount or can order rescission of the contract in the event of default by the purchaser. This power is vested with the same Court, which had passed the decree. Thus, it is clear that the Court after having finally deciding the controversy between the parties can exercise its control in case a party files an application in terms of the above section as the case may be.

During the course of hearing, it is not disputed by learned counsel for the judgment debtor that he did not file any application for rescinding the contract before the Court which had passed the decree dated 26.04.2016, as the application was filed before the executing court, that too after deposit of balance sale consideration on 02.01.2018. Thus, the decision in Ravi *Setia's case (supra)* which deals with the Section 16 (1) (C) Specific Relief Act, 1963 i.e. the readiness and willingness on the part of the plaintiff to perform his part of the contract is not applicable in this case, as the Hon'ble Supreme Court while analyzing the evidence proceeded to set aside the decree for lack of plaintiff's readiness and willingness to perform his part of the contract.

By now it is well settled law that appeal against judgment and decree passed by Civil Court is continuation of suit and decree would attain finality after the decision by the higher Court, as the initial decree merges in the verdict by the appellate Court. Concededly, the remaining amount of Rs.5 lacs towards the sale consideration stood deposited by decree holder on 02.01.2018, before the decision by the Hon'ble Supreme Court on 19.02.2018, therefore, it cannot be said that in absence of any extension of time as contained in original decree, it had become non-executable, and decree-holder cannot seek execution of decree dated 26.04.2016. Consequently, this Court does not find any merit in this argument as admittedly the original decree passed by the first appellate Court on 26.04.2016 merged in the decree dated 07.11.2017 passed by this Court, and it further got integrated with the decision of the Hon'ble Supreme Court on 19.02.2018. In this regard, reference can be made to the decision of Hon'ble Supreme Court in "***Chandi Prasad Vs. Jagdish Prasad", 2005 (2) R.C.R. (Civil) 737*** and the relevant observation relating to the doctrine of merger reads as under:-

> *"22.The doctrine of merger is based on the principles of propriety in the hierarchy of justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point of time.*
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> *23. It is trite that when an Appellate Court passes a decree, the decree of the trial court merges with the decree of the Appellate Court and even if and subject to any modification that may be made in the appellate decree, the decree of the Appellate Court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the Appellate Court affirms, modifies or reverses the decree passed by the trial court."*

In view of the above discussion, this Court does not find any illegality or impropriety in the impugned order passed by the Executing Court, therefore, no interference is warranted.

Dismissed.

(MANOJ BAJAJ)
JUDGE

01.09.2022

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	Whether speaking/reasoned :	Yes	No
	Whether Reportable :	Yes	No