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

**CR-3723-2019 (O&M)
Reserved on : 16.08.2022
Date of decision : 30.08.2022**

Jarnail Singh (now deceased) through LRs ....Petitioners

Versus

Ram Lal and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashish Grover, Advocate for the petitioners.

Mr. Binderjit Singh, Advocate for respondent No.1.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 06.05.2019 (Annexure P-6) whereby the objections filed by the petitioners in the execution application have been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff (Raj Kumari) filed a civil suit against the defendant (Jarnail Singh) for possession by way of specific performance of agreement to sell dated 16.11.2006 and for permanent injunction. The said suit was decreed vide judgment and decree dated 20.01.2012. The appeal filed by the defendant (Jarnail Singh) was dismissed vide judgment and decree dated 21.04.2015. The said judgment and decree attained finality inasmuch as the same was not challenged before this Court by either of the parties. Respondent No.1 (Ram Lal) being the successor of the plaintiff (Raj Kumari) filed an execution petition on 02.12.2017 for executing the judgment and decree dated

20.01.2012. Since the defendant (Jarnail Singh) had in the meanwhile died, an application was filed in the execution petition by the legal representatives of the defendant (Jarnail Singh) for being impleaded as a party which application was allowed and thereafter they filed their objections. Reply to the objections was filed by respondent No.1 (Ram Lal) being the successor of the plaintiff (Raj Kumari). Vide the impugned order the objections filed by the legal representatives of the defendant (Jarnail Singh) were dismissed. Hence, the present revision petition.

It has been contended by the learned counsel for the petitioners, who are the legal representatives of the defendant (Jarnail Singh), that in the judgment and decree dated 20.01.2012 passed by the Trial Court, it was specifically held that the suit for possession by way of specific performance of agreement to sell dated 16.11.2006 was decreed and the defendant was directed to execute and register the sale deed in favour of the plaintiff within a period of three months, on depositing of the balance sale consideration by the plaintiff within a period of two months from the date of passing of the judgement. Learned counsel for the petitioners submitted that the balance sale consideration was not deposited as directed and even after dismissal of the appeal filed by the defendant (Jarnail Singh) the balance sale consideration was not deposited. It is further submitted that it was only on 02.12.2017, when the execution petition was filed, that a line was mentioned in the application that permission may be granted to deposit the balance sale consideration. Learned counsel for the petitioners would further contend that at no point of time was any application moved for extension of the period for depositing the balance sale consideration and there was no explanation forthcoming as to why the said balance amount, as directed vide judgment and decree dated 20.01.2012, was not deposited by the plaintiff (Raj Kumari) or by respondent No.1 being her successor. Counsel for the petitioners would further contend that vide the impugned order the extension granted to the respondent No.1 for depositing the balance amount was illegal and against the well settled principles of law. It is further the contention that in the absence of any explanation for not depositing the amount, the respondent No.1 would not be entitled to the equitable relief. In support of his contentions, reliance has been placed upon **V.S. Palanichamy Chettiar Firm Vs. C. Alagappan [1999 (1) RCR (Civil) 634]**, **Bhupinder Kumar Vs. Angrej Singh [2009 (8) SCC 766]** and **Prem Jeevan Vs. K.S. Venkata Raman & Anr. [AIR 2017 SC 623]**.

Per contra, learned counsel for respondent No.1 has contended that it is always well within the powers of the Court to extend the time for depositing the balance sale consideration. It is further the contention that the judgment and decree of the Trial Court merged with the judgment and decree of the lower Appellate Court and that the time given by the Trial Court for payment of the balance amount could always be extended. In support of his contentions he has relied upon **Surinder Pal Soni Vs. Sohan Lal (D) Thru LR & Ors. [2020 (15) SCC 771]**, **Kishor Ghanshyamsa Paralikar (Dead) Vs. Balaji Mandir Sansthan Mangrul (Nath) & Anr. [2022 (3) RCR (Civil) 37]**, **Nanha Vs. Risala & Anr. [2007 (5) RCR (Civil) 655]**, **Mohinder Singh & Anr. Vs. Satpal Singh & Ors. [2010 (42) RCR (Civil) 867]**, **Pawan Kumar Vs. Mangal Sain Bansal [2010 (22) RCR (Civil) 777]** and **Gayatri Devi & Anr. Vs. Darshan Ram & Anr. [2017 (2) PLR 429]**.

Heard.

In the present case, on 20.01.2012, the following decree was passed by the Trial Court :

> *"The suit has come up for final disposal before me (K.K. Singla, Addl. Civil Judge (Senior Division), Bathinda), in the presence of Sh. Rakesh Kumar Rana, Counsel for the plaintiff and Sh. Rajdeep Goyal, counsel for defendant. It is ordered that suit filed by the plaintiff for possession by way of specified performance of agreement to sell dated 16.11.2006 is decreed with costs and defendant is directed to execute and register the sale deed pertaining to 157/3225 share out of the property detailed in the head note of the plaint within 3 months on depositing balance sale consideration by plaintiff within two months from today."*

The said judgment and decree passed by the Trial Court merged with the judgment and decree dated 21.04.2015 passed by the lower Appellate Court. No time period was stated in the said judgment and decree passed by the lower Appellate Court for payment of the balance sale consideration by the plaintiff (Raj Kumari). The time frame for depositing the balance sale consideration as stated in the judgment and decree of the Trial Court which, after the passing of the judgment and decree by the lower Appellate Court, was a period of 2 months. Neither the plaintiff (Raj Kumari) nor her successor respondent No.1 deposited the balance sale consideration within the stipulated period or after the dismissal of the appeal and it is only on 02.12.2017, when the execution petition was filed, that a prayer was made that permission be granted to deposit the balance sale consideration.

Hon'ble Supreme Court in the case of **V.S. Palanichamy**

Chettiar Firm (*supra*) has held as under :

> *"16. The agreement of sale was entered into as far back on February 16, 1980, about 19 years ago. No explanation is forthcoming as to why the balance amount of consideration could not be deposited within time granted by the court and why no application was made under Section 28 of the Act seeking extension of time of this period. Under Article 54 of the Limitation Act, 3 years period is prescribed for filing the suit for specific performance of contract of sale from the date of the agreement or when the cause of action arises. Merely because a suit is filed within the prescribed period of limitation does not absolve the vendee-plaintiff from showing as to whether he was ready and willing to perform his part of agreement and if there was non-performance was that on account of any obstacle put by the vendor or otherwise. Provisions to grant specific performance of an agreement are quite stringent. Equitable considerations come into play. Court has to see all the attendant circumstances including if the vendee has conducted himself in a reasonable manner under the contract of sale. That being the position of law for filing the suit for specific performance, can the court as a matter of course allow extension of time for making payment of balance amount of consideration in terms of a decree after 5 years of passing of the decree by the trial court and 3 years of its confirmation by the appellate court ? It is not the case of the respondent-decree holder that on account of any fault on the part of the vendor-judgment-debtor, the amount could not be deposited as per the decree. That being the position, if now time is granted, that would be going beyond the period of limitation prescribed for filing of the suit for specific performance of the agreement though this*

provision may not be strictly applicable. It is nevertheless an important circumstance to be considered by the Court. That apart, no explanation whatsoever is coming from the decree-holder-respondents as to why they did not pay the balance amount of consideration as per the decree except what the High Court itself thought fit to comment which is certainly not borne out from the record. Equity demands that discretion be not exercised in favour of the decree holder-respondents and no extension of time be granted to them to comply with the decree."

In the case of **Bhupinder Kumar** (*supra*) it has been held as under :

"12. If we apply the above principles to the facts of the present case, the order of the Executing Court and the High Court cannot be faulted with. The suit for specific performance is in the nature of discretionary remedy and on equity, the appellant was not entitled to get the decree executed since he failed to place relevant materials about his inability to tender or deposit the decreed amount. It is relevant to mention that the sale agreement was executed on 20.11.1990, the suit for specific performance was filed on 13.12.1991 and suit was decreed on 13.10.1998 stipulating that the balance sale consideration was to be paid by 13.01.1999. In fact, only after the judgment debtor filed an application for rescission of agreement on 28.05.2001, the application for extension of time was moved on 13.08.2001. As discussed earlier, though the Court has power and discretion to extend the time for fulfillment of the contract, in the case on hand, there is neither any material to show that the appellant was having the required money nor had he tendered or deposited the

> *same as per the terms of the decree. Both the Executing Court and the High Court found that there was no just and reasonable cause to extend the time for depositing the balance consideration."*

The judgments relied upon learned counsel for respondent No.1 are distinguishable and are not applicable to the facts of the present case inasmuch as in the case of **Nanha** (*supra*) the amount had been deposited shortly after the appeal was dismissed by the Appellate Court. In the case of **Mohinder Singh** (*supra*) also the balance sale consideration stood deposited within a month after passing of the decree. In the case of **Pawan Kumar** (*supra*) it was held that there were sufficient grounds made out for extending the period for depositing the balance amount. In the case of **Gayatri Devi** (*supra*) it was held that it is only a willful default that makes the Court to refuse the extension of time. In the said case the Trial Court had passed the decree for specific performance on 30.08.1996 and two months time was granted for depositing the balance sale consideration. Against the said decree an appeal was filed which was dismissed by the lower Appellate Court on 19.07.2001. The execution petition was filed in five months thereafter on 22.12.2001 and on 07.08.2002 the decree-holder filed an application for deposit of the balance sale consideration. In the present case the balance sale consideration was sought to be deposited more than two and a half years after the decision by the lower Appellate Court and would fall in the exception of a willful default. In the case of **Surinder Pal Soni** (*supra*) the judgment and decree of the Trial Court was affirmed by the Appellate Court on 17.01.2015 and on 19.02.2015 the balance amount of consideration was deposited. Further, in the said case the appellant therein had already paid an amount of Rs.5,85,000/- and out of the total sale consideration only an amount of Rs.1,15,864/- remained.

In the present case the permission to deposit the balance sale consideration was sought by respondent No.1 while filing the execution petition on 02.12.2017. The appeal of the defendant (Jarnail Singh) was dismissed by the lower Appellate Court on 21.04.2015. There is no explanation forthcoming as to why the plaintiff (Raj Kumari) or her successor respondent No.1 did not take any steps to deposit the balance sale consideration upon dismissal of the appeal by the lower Appellate Court on 21.04.2015. No cogent or compelling reasons are also forthcoming in the execution petition or in the reply to the objections for not having deposited the balance sale consideration within the time granted or within a reasonable time after the dismissal of the appeal by the lower Appellate Court.

Keeping in view the law as discussed above as well as the peculiar facts of the present case, it is clear that in case there is no compliance of the judgment and decree, except when there had been compelling circumstances for not depositing the amount, time cannot be extended. In my view, in the present case the decree had become unexecutable. The Executing Court has committed an illegality and perversity in granting time to the respondent No.1 to deposit the balance sale consideration. For the reasons aforementioned, the impugned order is set aside and the revision petition stands allowed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

30.08.2022
Yogesh Sharma

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO