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

CR-3663-2022 (O&M)

Date of decision : 05.09.2022

Paramjit Singh through LR Mandeep Singh

...Petitioner

Vs.

Amrik Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Amit Dhawan, Advocate
for the petitioner.

MANOJ BAJAJ, J.

Mandeep Singh (judgment debtor) has preferred this revision petition under Article 227 Constitution of India to challenge the order dated 14.07.2014 (Annexure P-7) passed by learned Additional Civil Judge (Senior Division), Nakodar, whereby application filed by decree-holder seeking extension of time to deposit the balance sale consideration in terms of the decree dated 22.08.2013 was allowed. Further, petitioner has challenged the order dated 29.07.2022 (Annexure P-12) passed in execution petition No.49/2014 by Additional Civil Judge (Senior Division) Nakodar, whereby his applications under Order IX Rule 7 CPC and under Order IX Rule 13 CPC, were dismissed.

Briefly, the facts leading to the petition are that the plaintiffs, namely, Amrik Singh and Nirmal Singh filed a suit for possession by way of specific performance of agreement to sell dated 12.09.2001 relating to land

measuring 18 kanals 8 marlas comprised in K/K No.62/94, killa No.18//6/2(3-0), 7(7-12), 7/2(1-5), 14(6-11) situated in the area of Village Issewal, Tehsil Shahkot, District Jalandhar, which was executed by Paramjit Singh (now deceased)-defendant No.1 @ Rs.2,80,000/- per acre (total sale consideration of Rs.6,44,000/-) and out of it, a sum of Rs.3,65,000/- was paid as earnest money to the vendor. As per this agreement, the sale deed was to be executed on or before 11.03.2002 upon payment of balance sale consideration. Plaintiffs were throughout ready and willing to perform their part of the contract, but the defendant No.1 did not keep his words and ignored the request of the plaintiffs for execution and registration of sale deed, who instead alienated some part of the suit property in favour of Balwant Singh-defendant No.3. Apart from it, the suit property was already mortgaged with State Bank of Patiala, Branch Shahkot against a sum of Rs.4,50,000/-. As the defendant No.1 failed to perform his part of the agreement, therefore, on this cause of action, the plaintiffs filed the suit.

The suit was contested by defendant No.1 through his legal representatives by filing written statement, wherein various preliminary objections were raised. On merit, the execution of the agreement to sell and alleged payment of earnest money was denied. As per the averments in the written statement, plaintiffs obtained the signatures of defendant No.1 on blank papers for furnishing surety in some other case and later on misused the same by converting it into the document. It was pleaded that the agreement to sell being result of fraud and misrepresentation is not binding upon him and while denying the other averments, it was prayed that the suit be dismissed.

In the written statement filed by defendant No.2-Bank, it was not

disputed that the suit property was mortgaged with it against a loan of Rs.4,50,000/-, however, the agreement to sell relied upon by the plaintiffs was denied for want of knowledge.

Defendant No.3-Balwant Singh filed a separate written statement and pleaded that defendant No.1/Paramjit Singh had agreed to sell his land measuring 23 kanals 18 marlas to him for a total sale consideration of Rs.5,10,000/- by executing the agreement to sell dated 07.01.2004 and against that a sum of Rs.3 lacs was paid as earnest money. Since the defendant No.1 died and his legal heirs failed to execute the sale deed, therefore, he filed a suit for specific performance titled “Balwant Singh Vs. Kulwinder Kaur etc.”, which is pending adjudication. According to him, the present suit is a result of connivance between the plaintiffs and defendant No.1. On merits also, he denied the averments made in the plaint and prayed for dismissal of the suit.

After completion of pleadings, the trial Court framed issues and thereafter, the parties adduced their respective evidence and considering the same, the trial Court vide judgment dated 09.09.2010 declined the prayer for specific performance of contract, but granted the alternative relief by holding that the plaintiffs are entitled to recovery of earnest money of Rs.3,65,000/- from defendant No.1 along with interest. The suit of the plaintiffs against the other defendant Nos.2 and 3 was dismissed.

Aggrieved against the judgment and decree dated 09.09.2010, appeal bearing No.7914-2010 was filed by plaintiffs and the same was accepted, and the claim of the plaintiffs for specific performance of contract was decreed with costs. The defendant No.1 through his legal heirs was directed to execute the sale deed in favour of appellants/plaintiffs in terms of

agreement to sell dated 12.09.2001 on payment of balance sale consideration within a period of three months. It was further ordered that if the legal heirs fail to execute the sale deed in favour of the appellants, they would be at liberty to get the sale deed executed through Court.

Thereafter, the decree-holder moved an application dated 07.12.2013 seeking permission to deposit the balance sale consideration price of Rs.2,79,000/- in favour of judgment debtor and the said application was contested by respondent Kulbir Kaur (mother of the petitioner) by filing reply dated 09.04.2014, but the same was allowed by the Additional Civil Judge (Sr.Division), Nakodar vide impugned order dated 14.07.2014 (Annexure P-7).

Later the decree-holder preferred execution petition on 25.09.2014 and during pendency of the said execution petition, the petitioner moved an application under Order IX Rule 13 CPC for setting aside the order dated 14.07.2014 as well as the order dated 06.01.2018, whereby the petitioner Mandeep Singh and his brother Sandeep Singh were proceeded against *ex parte*. The application was also contested by the decree-holder, who filed their reply dated 21.11.2018 and the executing Court vide order dated 14.07.2014 dismissed both the applications. Hence this revision petition.

Learned counsel for the petitioner has argued that the agreement to sell dated 12.09.2001 relied upon by the decree-holders was executed by petitioner's father, namely, Paramjit Singh, but before filing the suit, Paramjit Singh had expired and suit was filed against the legal heirs i.e his widow and minor sons, namely, Mandeep Singh and Sandeep Singh. He submits that though only alternative relief of refund of earnest money was ordered vide decree dated 09.09.2010 passed by the trial Court, but the appellate Court in an

appeal by plaintiffs modified the said decree by ordering specific performance of the contract. He submits that the sons of Paramjit Singh were minor and the proceedings vide judgment and decree dated 22.08.2013 against them were not effectively contested by their mother-Kulbir Kaur, therefore, the petitioner had moved an application under Order IX Rule 13 CPC as well as Order IX Rule 7 CPC for setting aside the order dated 14.07.2014 and 06.01.2018, respectively. He submits that the applications have been dismissed by the Executing Court erroneously by ignoring the fact that the petitioner attained majority only on 20.09.2011, who came to know about the Court proceedings on 20.09.2018. Therefore, the Additional Civil Judge, Nakodar wrongly held that the application filed by the petitioner on 01.10.2018 is barred by limitation period. Learned counsel further argued that as three months period as granted by the decree dated 22.08.2013 had expired, therefore, the said period could not have been extended. He prays that the impugned orders dated 14.07.2014 (Annexure P-7) and 06.01.2018 (Annexure P-12) be set aside.

After hearing learned counsel and considering his submissions, this Court finds that the entire case of judgment debtor-Mandeep Singh is founded upon the ground that when the decree under execution was passed against him, he was minor and was not aware of the case proceedings and his mother did not defend the claim of the plaintiffs effectively. Concededly, the decree ordering specific performance of contract was passed by the first Appellate Court on 22.08.2013 and by that time, the petitioner Mandeep Singh had attained majority. The judgment and decree dated 22.08.2013 was challenged before this Court through RSA No.5026-2013 filed by Kulbir Kaur along with her sons, including petitioner-Mandeep Singh and the said appeal

was dismissed on 24.04.2014. Finally, the decision of this Court was upheld by Hon'ble Supreme Court on 03.05.2017, when Special Leave to Appeal bearing No.C-1785-2015 filed by Kulbir Kaur and another was also dismissed. Thus, it is evident that the petitioner-Mandeep Singh after having attained the majority had independently adopted his remedy of appeal, but having failed upto the Supreme Court, has chosen to file this application after a long delay.

Apart from it, the application for depositing the balance sale consideration was allowed on 14.07.2014 i.e. after the decision of the regular second appeal, therefore, by virtue of *doctrine of merger*, it cannot be said that the period of three months originally granted by the Court decreeing the suit for specific performance of contract had expired. In this regard, reference can be made to decision dated 01.09.2022 passed by this Court in CR-2480-2022 “*Nathi Singh Vs. Jitender Dutt*”.

Further, the decision dated 14.07.2014 is an order and is not a decree, therefore, the application under Order IX Rule 13 CPC was otherwise not maintainable. Similarly, the argument that the petitioner was not aware of the execution proceedings pending against him is also not worth acceptance, because on 06.01.2018, counsel for one of the judgment debtors had appeared before the executing Court and petitioner had been pursuing his remedies of appeal along with other judgment debtors.

A perusal of the impugned orders reveals that the executing Court has carefully gone through the material on record and has rightly refused to exercise the jurisdiction.

In view of the above discussion, this Court does not find any illegality or impropriety in the impugned orders passed by the Executing Court,

therefore, no interference is warranted.

Dismissed.

(MANOJ BAJAJ)
JUDGE

05.09.2022
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No