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1.CR-3503-2012 (O&M)

....Petitioner

..Respondent

....Petitioner

..Respondent

....Petitioner

..Respondents

REKHA SIHAG
2022.12.12 16:56
I attest to the accuracy and
authenticity of this order/judgment.
Chandigarh

ANIL KSHETARPAL, J (Oral)

1. By this order, three connected petitions i.e CR-3503-2012, 6096-2012 and COCP-1515-2021 shall stand disposed of.

2. The petitioner herein is a judgment debtor. In a suit for possession by way of specific performance of the agreement to sell, a conditional decree in favour of the decree holder was passed on 29.11.2004 while directing the plaintiff (decree holder) to deposit the amount within one month. The suit filed by the plaintiff (decree holder) was decreed with the cost of Rs.14,963.50. The judgment debtor's first appeal against the judgment and decree was dismissed on 21.08.2009 by the First Appellate Court. During the pendency of the first appeal, the decree holder filed an execution petition on 16.07.2007, while offering to pay the balance amount of Rs.2036.50 after adjusting the amount of mortgage as well as the cost. While filing the reply to the execution petition, the judgment debtor disclosed that the mortgage amount of Rs.40,000/- has already been deposited. The decree holder filed a rejoinder on 11.07.2008 while offering to pay the remaining amount after adjusting the costs. However, the Executing Court did not pass any order either permitting the decree holder to deposit the amount or refusing the same. Ultimately, on 14th June, 2011, the decree holder filed an application in this regard. The application was allowed and the amount was deposited on 11th September, 2012. In the meantime, an application filed by the judgment debtor for rescission of contract was also dismissed.

3. The Executing Court while dismissing the judgment debtor's objection has allowed the execution of the decree. Challenging the correctness of the aforesaid orders, these two revision petitions have been filed. In COCP no. 1515 of 2021 the judgment debtor complains that the interim order dated 5th February, 2013 directing the parties to maintain the status quo has been violated.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record of the Executing Court.

5. Learned counsel representing the judgment debtor contends that the decree holder was required to deposit the amount within a period of one month from the trial Court's judgment dated 29th November, 2004, whereas, the amount was deposited only on 11 September, 2012. He submits that the Executing Court has erred in allowing the execution petition. While elaborating, he further submits that although the decree holder did file the execution petition on 16th July, 2007, however, he never deposited the amount in the stipulated time.

6. On the other hand, learned counsel representing the decree holder contends that the judgment debtor's first appeal against the main judgment and decree was dismissed on 21st August, 2009 resulting in the merger of the decree of the trial court into the judgment of the First Appellate Court. He submits that the decree holder filed an execution petition on 16th July, 2007 i.e. even before the decree dated 21.08.2009 was passed by the First Appellate Court. He submits that the decree holder has been making sincere efforts to fulfill the conditional decree

and the delay has been caused on the part of the court in permitting him to deposit the amount. Thus, it should not result in denial of justice to him.

7. This Court has considered the submissions. The correctness of the facts noticed above is not disputed. It is evident that the decree holder filed an execution petition on 16th July, 2007 i.e before the decision in the first appeal. He offered to pay the amount after adjusting the mortgage amount as well as the cost awarded in his favour. Once the judgment debtor brought to his notice that the mortgage amount has already been paid, he filed a rejoinder offering to pay the remaining amount. The attention of the Court has not been drawn to any daily/zimini order passed by the Executing Court directing or permitting the decree holder to deposit the amount. In such circumstances, it was only on the application of the decree holder that the amount was permitted to be deposit in the year 2012. Thus, the decree holder has not been at fault. The judgment debtor could have accepted the amount in order to facilitate the registration of the sale deed, once his first appeal was dismissed, however, he kept contesting the execution petition. On that point in time, the Executing court failed to permit the decree holder to deposit the amount. In such petitions, the court, in order to test the correctness of the assertions made in the execution petition, is required to permit the decree holder to deposit the amount forthwith. The maxim '*Actus Curiae Neminem Gravabit*' which means that an act of the court shall prejudice no one becomes applicable to the facts of the present case.

8. Thus, any delay on the part of the court should not result in injustice. In the facts of the case, it is not possible to record a finding that the decree holder has failed to comply with the decree. Hence, no ground to interfere is made out.

9. In COCP No. 1515 of 2021, the petitioner (judgment debtor) complains of delivery of possession during the pendency of the interim order. Once, the decree-holder has been held entitled to possession, no further order is required to be passed. Hence, all the three petitions are dismissed.

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

14.11.2022
rekha

(ANIL KSHETARPAL)
JUDGE

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