

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Revision No. 6706 of 2019 (O&M)

Balbir Singh and Others

... Petitioner(s)

Versus

Baldev Singh (Now Deceased) through his legal representatives and Others

... Respondent(s)

2. Civil Revision No. 6952 of 2019

Jaimal Singh and Others

... Petitioner(s)

Versus

Baldev Singh (Now Deceased) through his legal representatives and Others

... Respondent(s)

3. Civil Revision No. 6980 of 2019 (O&M)

Gurdial Singh and Others

... Petitioner(s)

Versus

Baldev Singh (Now Deceased) through his legal representatives and Others

... Respondent(s)

AND

4. Civil Revision No. 7053 of 2019

Gurdial Singh and Others

... Petitioner(s)

Versus

Gurnam Singh and Others

... Respondent(s)

DATE OF DECISION: 23.09.2022

RESERVED ON: 09.09.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Aman Pal, Advocate
for the petitioner(s).

Mr. Sanjeev Gupta, Advocate
for the respondents.

Anil Kshetarpal, J.

**CM-10231-CII-2021 In CR-6706-2019 And
CM-12013-CII-2021 In CR-6980-2019**

1. In view of the prayer made in the applications, which is supported by an affidavit, the same is allowed, subject to all the just exceptions. The proposed legal representatives, named in para 2 of the applications, are the Class-I heirs of respondent No.1-Sh.Baldev Singh, who is stated to have died on 18.11.2018. They are permitted to be brought on record as the legal heirs of the respondent No.1-Sh.Baldev Singh, for the purpose of defending the revision petitions i.e. CR-6706-2019 and CR-6980-2019, respectively.

CR-6706-2019 And Other Connected Cases

2. Four connected revision petitions have come up for final disposal. The learned counsel representing the parties are *ad idem* that these four revision petitions can, conveniently, be disposed of by a common order.

3. Some peculiar facts are required to be noticed. As many as four different suits for grant of specific performance of the agreement to sell were decreed by the trial Court on 16.08.1994. Four identical conditional decrees for specific performance of the agreement to sell were passed while permitting the decree holder to deposit the balance sale consideration in the Court within a period of 20 days and the defendant was directed to get the

decrees passed by the trial Court were reversed on 24.11.1994 by the First Appellate Court, which led to filing of four regular second appeals. The High Court allowed three regular second appeals on 03.05.2018, whereas, the fourth one was allowed 24.05.2018. Resultantly, the decrees passed by the trial Court were restored. The decree sheets were prepared on 31.05.2018 and a copy thereof was supplied to the plaintiffs. They filed four execution petitions on 04.09.2018. On 07.09.2018, applications to deposit the amount were also filed. The judgment debtors also filed an application under Section 28 of the Specific Relief Act, 1963 (hereinafter referred to as “the 1963 Act”) for rescission of the contract on account of non-payment of the remaining sale consideration. The decree holder as permitted by the Court, deposited the decreetal amount in the Court on 07.09.2018. Consequently, on 16.08.2019, the Executing Court has dismissed the application for rescission of the contract. These four revision petitions have been filed for setting aside the orders dated 07.09.2018 and 16.08.2019.

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-books.

5. On the one hand, the learned counsel representing the judgment debtors contends that as per the trial Court’s judgment dated 16.08.1994, the amount was required to be deposited within a period of 20 days. Since the decree holders have failed to deposit the amount within the stipulated time, the contract was required to be rescinded. He further contends that the High Court, while allowing the regular second appeals, on 03.05.2018 and 24.05.2018, respectively, restored the judgment and decree

deposited within a period of 20 days from 03.05.2018 and 24.05.2018, respectively. Since the decree holders failed to deposit the amount, therefore, the contract should have been ordered to be rescinded. He, in support of his submissions, relies upon the judgment passed by the Supreme Court in *Prem Jeevan v. K.S.Venkata Raman and Another 2017 (2) Civil Court Cases 1*.

6. On the other hand, the learned counsel representing the decree holders submits that the trial Court has correctly extended the period and permitted the decree holders to deposit the amount as ordered in the conditional decree. He submits that a decree passed in favour of the decree holder cannot be permitted to be defeated, unless the Court comes to a conclusion that the decree holder has intentionally failed to honour the conditional decree.

7. It would be noticed here that in *Sardar Mohar Singh v. Mangilal (1997) 9 SCC 217*, the Supreme Court has considered the effect of Section 28 of the 1963 Act in the context of the doctrine of merger, the relevant discussion whereof is as under:-

“4. From the language of sub-section (1) of Section 28, it could be seen that the court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes functus officio. The very fact that Section 28 itself gives power to grant order of rescission of the decree would indicate that till the sale deed is executed in execution of the decree, the trial court retains its power and jurisdiction to deal with the decree of specific performance. It would also be clear that the court

has power to enlarge the time in favour of the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, in spite of an application for rescission of the decree having been filed by the judgment-debtor and rejected. In other words, the court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance... ”

8. In ***Bhupinder Kumar v. Angrej Singh 2009(4) RCR (Civil) 249***, the Supreme Court has again examined the issue of power of the Court to extend the time for compliance of order of payment. The relevant discussion is as under:

“21. It is clear that Section 28 gives power to the court either to extend the time for compliance with the decree or grant an order of rescission of the agreement. These powers are available to the trial court which passes the decree of specific performance. In other words, when the court passes the decree for specific performance, the contract between the parties is not extinguished. To put it clearly the decree for specific performance is in the nature of a preliminary decree and the suit is deemed to be pending even after the decree.

22. Sub-section (1) of Section 28 makes it clear that the court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes functus officio. On the other hand, Section 28 gives power to the court to grant an order of rescission of the agreement and it has the power to

extend the time to pay the amount or perform the conditions of decree for specific performance despite the application for rescission of the agreement/decreed. In deciding an application under Section 28 (1) of the Act, the court has to see all the attending circumstances including the conduct of the parties.”

9. In ***Prem Jeevan’s case*** (*supra*) relied upon by the learned counsel representing the petitioner, a conditional decree for specific performance was passed on 26.09.2008 directing the plaintiff to deposit the amount within a period of two months from the date of order. The decree holders deposited the decretal amount on 07.10.2010 and thereafter, applied for its execution some time in the year 2010. In that context, the Supreme Court has held that the High Court erred in granting extension of time particularly when the Executing Court had refused the same.

10. Once again the aforesaid issue came up for consideration before the Supreme Court in ***P.R. Yelumalai v. N.M. Ravi*** (2015) 9 SCC 52. In that case, the Supreme Court has held that upon passing of a conditional decree, the Court is vested with a discretionary power which must be exercised judiciously and in accordance with law. In that case, it was held that while deciding an application for extension of time of payment, the Court should have been conscious of the fact that the decree holder failed to deposit the amount despite the extension of two months’ time. Thus, the Supreme Court in the facts of that case held that the contract should be rescinded.

11. There is another judgment passed by the Supreme Court in ***Kumar Dhirendra Mullick and Others v. Tivoli Park Apartments (P) Limited*** (2005) 9 SCC 262. In that case, there was a lease deed and an

application filed to rescind the contract was allowed by the Assistant District Judge, Alipore, Calcutta. The Supreme Court, after examining the various judgments, upheld the order.

12. From a careful examination of the aforesaid judgments, it is apparent that Section 28 of the 1963 Act enables the Executing Court to extend the period keeping in view the conduct of the parties. The Courts have also recognized that the decree passed by the trial Court stands merged with the decree passed by the Appellate Court. In this case, the High Court did not fix any time period for deposit of the amount. The application for execution was filed within a period of four months. Immediately, on filing the execution petition, the decree holders have filed an application seeking permission to deposit the remaining amount, which has been allowed. Undoubtedly, the judgment debtors have filed the various applications for rescission of the contract before the amount was deposited, however, in the facts of the case, this Court does not find that there was any unreasonable delay particularly when the High Court did not fix any period for deposit of the amount. The argument of learned counsel representing the petitioner that 20 days' period, as directed by the trial Court, shall revive, is to be examined in the facts of the present case. The decree passed by the trial Court stands merged with the judgment and decree passed by the High Court in the regular second appeal. The question is "whether the decree holder willfully failed to deposit the amount under the decree particularly when the High Court did not fix the time for such payment or there was, in fact, unreasonable delay on part of the decree holder to deposit the amount?"

question is answered in the negative.

14. Keeping in view the facts of the case, it is not considered appropriate to conclude that the decree holders failed to honour the conditional decree. The trial Court has exercised its discretion prudently while extending the time and this Court does not find any reasonable ground to interfere with the order in the exercise of its revisional jurisdiction, which has been passed in accordance with law. Consequently, all the four revision petitions are dismissed.

15. The miscellaneous application(s) pending, if any, in all the revision petitions, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 23, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No