

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 4445 of 2018****Date of Decision: 16.10.2023**

Amarjit Singh (Deceased) through his Legal Representatives
... Petitioner(s)

Versus

Baldev Singh and Another
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. G.S.Nagra, Advocate
for the petitioner(s).

Mr. Rajinder Sharma and Mr. Mridul Sharma, Advocates
for the respondent No.1.

Respondent No.2 already proceeded against *ex parte*.

Anil Kshetarpal, J.

1. The trial Court has extended the period for deposit of decretal amount by two months. The correctness of the aforesaid order has been challenged by the judgment debtor in this revision petition. The operative part of the impugned order reads as under:-

“8. Original file summoned. Perusal of file shows that vide judgment and decree dated 17.12.2013 Id. Predecessor of this court decreed the suit titled as Baldev Singh Vs. Amarjit Singh *ex parte* whereby defendant was directed to execute the sale deed in favour of plaintiff within a period of 2 months from the date of decree on the payment of balance sale consideration by plaintiff as per terms and condition of agreement to sell. However, as per the averments of the applicant he could not

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deposit the balance sale consideration within two month from the date of judgment and decree as he fell ill. Applicant supported this version by filing affidavit in this regard.

9. *On the other hand respondent has not controverted the fact regarding illness of applicant rather, filed separate objection for staying of the execution whereas the fact remains that the present application is not an execution petition but a permission sought for extension of time for depositing balance sale price in compliance judgment and decree dated 17.12.2013.*

10. *Section 148 of CPC granted discretionary powers to court to enlarge any period which is fixed by it from time to time but not exceeding thirty days in total even though the period originally fixed or granted may have expired. Since, a legal and valid judgment and decree is subsisting in favour of the applicant and the decree is not set aside, therefore, the court is of the opinion that the right of the decree holder accrued from judgment and decree dated 17.12.2013 cannot be with held and the applicant cannot be deprived from harvesting the fruits of judgments and decree in his favour. So keeping in view of the facts and circumstances of the case the time of depositing the remaining sale consideration amount Rs. 1,46,250/- is extended for fifteen days from the date of order in the interest of justice.*

11. *The objections filed by the legal heirs of JD Amarjit Singh is hereby dismissed being devoid of merits*

at this stage.”

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The plaintiff has filed a suit for specific performance of the agreement to sell. The petitioner was proceeded against *ex parte*. The suit was decreed on 17.12.2013, the operative part of the judgment reads as under:-

“....Therefore, suit of the plaintiff is decreed regarding the permanent injunction, restraining the defendant from alienating the suit land by way of sale, mortgage, lease gift etc to any other person and for possession by way of specific performance of an agreement to sell dated 3.8.2009 executed by the defendant in favour of the plaintiff of land measuring 2 K which is 1/2 share of the land measuring 4 K bearing khasra numbers 2/14/2. As the relief regarding the specific performance has been given to the plaintiff, so there is no need to grant alternative relief of recovery of Rs. 4,20,000/- to the plaintiff. The defendant is directed to execute the sale deed in favour of the plaintiff within two months from the date of decision of the present case on the payment of balance sale consideration by the plaintiff as per terms and conditions of agreement to sell. Decree sheet be prepared. File be consigned to the record room.”

3. The respondent has filed an application under Section 148 of the Code of Civil Procedure, 1908, for the enlargement of time for deposit of the decretal amount i.e. ₹1,46,250/- on the ground of his sickness, therefore,

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he could not deposit the amount within a period of two months. The trial Court, as noticed above, has allowed the application filed for enlargement of time.

4. The learned counsel representing the petitioner contends that the extension could not be granted as it was the case of a conditional decree passed by the trial Court. The learned counsel submits that the conditional decree could not be defeated by filing an application for extension of time.

5. This Court has considered the submissions of the learned counsel representing the parties. In fact, the operative part of the judgment itself is defective. The Court has not passed the order specifying the time within which the plaintiff was required to deposit the amount in the Court if the defendant (petitioner herein) refused to accept the payment. In this case, the *ex parte* decree was passed on 17.12.2013, whereas, the application for extension of time was filed on 28.05.2014. There is no evidence that the petitioner was negligent or he did not deposit the amount for malafide reasons. There is also no evidence that the plaintiff was not possessing the wherewithal to make the payment. As already noticed, the operative part of the judgment is defective, therefore, the decree holder can be penalized for the same.

6. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

October 16, 2023
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No