IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(102) **CR No. 5957 of 2018**
Date of Decision : 08.02.2023

Gurbhej Singh (since deceased) through his Lrs.
...Petitioners

Versus

Satnam Singh and others
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Arora, Advocate for the petitioners.

Mr. Sharad Mehra, Advocate for respondents No. 1 and 2.

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Harsimran Singh Sethi J. (Oral)

In the present civil revision petition, the challenge is to the order dated 06.08.2018 (Annexure P-3) passed by the trial court by which, the application filed by the petitioners-plaintiffs under Section 148 of CPC for the extension of time for depositing the amount as the judgment and decree dated 20.10.2012 (Annexure P-1) passed by the learned Civil Judge (Sr. Divn.), Tarn Taran, has been dismissed.

Learned counsel for the petitioners-plaintiffs argues that the late husband of petitioner no. 1, namely, Gurbhej Singh had filed a civil suit for specific performance of an agreement to sell dated 18.12.2006 for a land measuring 3 kanals 4 marlas. During the pendency of the said suit, Gurbhej Singh died and the petitioners, who are the legal heirs of Gurbhej Singh, were brought on record. The competent court of law allowed the said suit seeking specific performance on 20.12.2012 and the relevant part of the said order is reproduced as under :

"26. In view of my findings on the above issues, the suit of the plaintiff for specific performance of the agreement to sell in question succeeds and the same is hereby decreed with costs and the defendants no. 1 and 2 are directed to execute the sale deed in favour of the plaintiff on payment of balance sale consideration out of which mortgaged amount of ₹1,00,000/- shall be paid to the defendant no. 5 out of which ₹50,000/- shall be paid by the plaintiff and remaining half shall be paid by defendants no. 1 & 2, as per agreement to sell dated 18.12.2006 within a period of two months from today, failing which, the plaintiff can get the sale deed executed by due process of law. Further the defendants no. 1 and 2 are restrained from alienating the suit property in favour of any other person except the plaintiff. Decree sheet be prepared. The file be consigned to the record room."

A bare perusal of the above would show that the sale consideration for the property in question had already been paid by the deceased but as the property was under mortgage with defendant no. 5 for a sum of ₹1,00,000/-, the trial court while passing the judgment and decree dated 20.10.2012 (Annexure P-1) directed that ₹50,000/- will be paid by the petitioners-plaintiffs and remaining ₹50,000/- to be paid by respondents-defendants no. 1 and 2 out of the said consideration to release the land from mortgage, which money was to go to defendant no. 5, for which, two months' time was granted.

As a sum of ₹50,000/-, which was to be paid to defendant no. 5 by petitioners-plaintiffs for release of the land from mortgage, was not deposited by the petitioners-plaintiffs within a period of two months, an application was filed under Section 148 of CPC seeking extension of time on the ground that the money could not be deposited due to the unavoidable circumstances. The said application for extension of time was ultimately dismissed by the trial court while passing the order dated 06.08.2018 (Annexure P-3), which order is under challenge in the present civil revision petition.

Learned counsel for the petitioners-plaintiffs argues that in the present case, the extension of time has been declined by the trial court on the ground that there was a specific direction to deposit the 'balance sale consideration', whereas the sale consideration had already been given at the time of the agreement itself and a sum of ₹50,000/- was to be deposited by the petitioners-plaintiffs in order to redeem the land from mortgage, which amount was to be paid to defendant no. 5 within two months hence, the application filed by the petitioners has been declined by the Executing Court by taking into consideration the facts, which are non-existing. Hence, the impugned order dated 06.08.2018 (Annexure P-3) is liable to be set-aside and the time of depositing the amount of ₹50,000/- in order to redeem the land from mortgage to be paid to defendant no. 5 be extended.

Learned counsel for respondents No. 1 and 2 submits that though, the said amount of ₹50,000/- was required to be deposited by the petitioners-plaintiffs as per the judgment and decree dated 20.10.2012 (Annexure P-1) to be paid to defendant no. 5 in order to redeem the mortgage land but once the same was part of the decree, it was incumbent upon the petitioners to comply with the said direction within the timeframe granted and the order passed by the trial court declining the extension of time is perfectly valid and legal as the extension of time is the discretion of the court and once, the court has exercised its discretion, not to allow the extension of time, the said decision of the trial court is inconsonance with the judgment of the Hon'ble Supreme Court of India in Civil Appeal Nos.

502-503 of 1999 titled as ***V.S. Palanichamy Chettiar Firm Vs. C. Alagappan,*** decided on 03.02.1999 hence, the present civil revision petition may kindly be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

One fact, which is conceded, is that the sale consideration in respect of the agreement to sell in question for which the specific performance was allowed by the competent court of law had already been paid at the time of the agreement itself. As per the decree, the land was under mortgage with defendant no. 5 and a sum of ₹1,00,000/- was required to be paid to redeem the said mortgage land i.e. a sum of ₹50,000/- was to be paid by the decree holders and the remaining amount of ₹50,000/- was to be paid by the judgment debtor in order to redeem the mortgaged land so that the land in question could be transferred in the name of the decree holders as per the decree.

The trial court has totally misread the decree while passing the impugned order dated 06.08.2018 (Annexure P-3) on the ground that the sale consideration was not paid as directed. Once, it is not disputed by the parties before this Court that the sale consideration already stood paid, the basis of the impugned order dated 06.08.2018 (Annexure P-3) that sale consideration was not paid by the petitioners-plaintiffs is totally incorrect hence, the said impugned order cannot be sustained in the eyes of law.

As far as the judgment being relied by the learned counsel for respondents No. 1 and 2 in ***V.S. Palanichamy Chettiar Firm's case (supra),*** the said judgment will not be applicable in the facts and circumstances of the present case. Though, it has been held by the Hon'ble

Supreme Court of India that once the balance sale consideration as per the decree was not deposited for a period of five years, the court should be careful in exercising discretion so as to allow the extension of time. In the said case before Hon'ble Supreme Court of India, the claim of extension of time after a period of 5 years was declined. In ***V.S. Palanichamy Chettiar Firm's case (supra),*** the sale consideration as required to be paid under the decree was yet to be paid whereas, in the present case, the amount of ₹50,000/-, which was required to be paid by the decree holder was in order to redeem the mortgaged land, which was to be paid to defendant no. 5 and not the judgment debtor hence, the judgment being relief upon by respondents no. 1 and 2 will not be applicable in the facts and circumstances of the present case.

Further, Hon'ble Supreme Court of India while deciding Civil Appeal No. 5360 of 2019 titled as ***Surinder Pal Soni Vs. Sohan Lal (D) Thru LR & Ors.,*** decided on 23.07.2019, after considering ***V.S. Palanichamy Chettiar Firm's case (supra),*** held that equities in matter arisen out of a decree in a suit for specific performance must be in favour of the decree holder. The Hon'ble Supreme Court of India held that even where the direction by the trial court to deposit the amount was only deposited after the decision in the appeal, the decree holder acted in a bona fide manner. In the present case, the objection is only qua the non-deposit of mortgage money, which was to be paid to defendant no. 5 and not the judgment debtor. Hence, once it is conceded before this Court that consideration money was paid by the decree holder to the judgment debtor in the year 2006 itself at the time of the agreement to sell in question, the equities must prevail in favour of the decree holder so as to allow the extension of time, especially when the judgment debtor has not invoked Section 28 of the Specific Relief Act.

Further, learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court of India in SLP(C) No. 2283 of 1997 titled as ***Sardar Mohan Singh through Power of Attorney Holder, Manjit Singh Vs. Mangilal @ Mangtya,*** decided on 15.01.1997 holding that the extension of time is the discretion of the competent court of law keeping in view the facts and circumstances of each case. As per the judgment in ***Mangilal @ Mangtya's case (supra),*** once a competent court of law has exercised discretion, to enlarge the time for execution of the judgment and decree, unless and until the same is shocking and based upon incorrect facts, the same need not to be interfered.

In the present case, the order passed by the trial court dated 06.08.2018 (Annexure P-3) declining the extension of time, is based upon incorrect facts hence, the same cannot be sustained. Further, this Court will like to exercise the discretion in favour of the petitioners as conceded between the parties, the sale consideration had already been paid at the time of execution of the agreement in the year 2006 and it was only a sum of ₹1,00,000/-, which was required to be paid to defendant no. 5 with whom the property was under mortgage so as to release the property in question and the total amount of ₹1,00,000/- mortgage money was divided half and half between the decree holder and the judgment debtor so as to safeguard the interest of defendant no. 5.

Keeping in view the fact that the amount, which is required to be paid, is not qua the sale consideration of the land but to redeem the land from mortgage, which money was to go in favour of defendant no. 5 and not the judgment debtor hence, keeping in view the facts and circumstances of the present case, wherein it is conceded by the parties that the consideration money was paid to the judgment debtor as far back as in 2006, the time for execution of the decree needs to be extended.

Even otherwise, it is conceded by the learned counsel for respondents No. 1 and 2 that no application has been filed by the judgment debtor under Section 28 of the Specific Relief Act, 1963 after the expiry of two months' time. Even up to now, there is no such application, which has been filed by the judgment debtor. That being so, the prayer made in the present civil revision petition for setting-aside the order dated 06.08.2018 (Annexure P-3) passed by the trial court, is accepted. Further, prayer for extension of time for execution of the judgment and decree dated 20.10.2012 (Annexure P-1) is also accepted. The time for execution of the decree is extended for a period of four weeks from the receipt of the certified copy of this order. In case, the time period extended is not availed by the petitioners, the present civil revision petition be deemed to have been dismissed.

Civil revision petition is allowed in above terms.

February 08, 2023 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No