

206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6773-2018
Date of Decision: 09.03.2023

Hans Raj and another Petitioners

Versus

Vijay Kumar Jain Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Babbar Bhan, Advocate,
for the petitioners.

None for the respondent.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India praying for setting aside the order dated 15.09.2018 (Annexure P-1) passed by the Civil Judge (Junior Division), Bhiwani, whereby the application filed by the petitioner/defendant/JDs under Section 28 of the Specific Relief Act, 1963, has been dismissed.

The brief facts of the case are that the petitioners herein were judgment debtors in the suit for specific performance, in which the decree was passed as reproduced herein under:-

“It is ordered that the suit of the plaintiff for specific performance of the agreement to sell dated 03.02.2004 succeeds and accordingly decreed with costs. It is also declared that the hibanama bearing registration No.1359 dated 07.10.2004 and sale deed bearing

registration No.1313 dated 10.10.2005 executed by the defendant No.1 in favour of the defendant No.2 alongwith consequent mutations bearing No.1069 dated 20.10.2004 and 1094 dated 20.12.2005 are illegal, void ab initio and accordingly these are not binding upon the rights of the plaintiff. The defendant No.1 is hereby directed to execute and the register the sale deed with respect to the suit property in favour of the plaintiff within two months from the date of this judgment after receiving the remaining sale consideration of Rs.8,00,000/- from the plaintiff. The expenses of the registration shall be borne by the plaintiff after deducting the costs of the suit.”

In view of the above decree, the petitioners had filed an application under Section 28 of the Specific Relief Act, 1963, before the Executing Court for rescission of agreement to sell on the ground that the balance sale consideration was not paid by the decree holder within a period of two months, hence, the petitioners had a right to get the agreement rescinded. That application has been dismissed by the Executing Court. Hence, the present petition has been filed.

Learned counsel for the petitioners has submitted that a perusal of the decree shows that the direction given in the decree was to execute the sale deed only 'after' receiving the money from the decree holder. Since, neither the decree holder had paid the money within two months nor had he

shown any readiness and willingness for the same, therefore, the decree had become nullity for default of the decree holder in making the payment in compliance of the decree. Hence, the application filed by the petitioners should have been accepted and the agreement should have been ordered to be rescinded.

Having heard the learned counsel for the petitioners and having perused the case file, this Court does not find any substance in the argument raised by the learned counsel for the petitioners. A perusal of the decree shows that the direction was issued to J.D-petitioner No.1 to execute the sale deed in favour of the decree holder within two months, of course, after receipt of the balance of the sale consideration from the plaintiff/decreed holder. Rather, the plain English written in the decree shows that there was no direction issued to the decree holder to deposit the money with the Court or to make the payment of the same to the judgment debtor within a period of two months. He was bound to make the payment, at any time within a period of two months, if the petitioners had so approached to him with an offer of execution of the sale deed. Moreover, the expenses of registration were to be borne by the plaintiff-D.H after adjusting costs. Such expenses would have been known only after the petitioner would have initiated the process of registration. However, there is nothing on record to show that the petitioners ever made any effort to execute the sale deed in favour of the decree holder and that they ever asked the decree holder to make the payment of balance sale consideration to them.

On the contrary, the record shows that when the sale deed was

not executed by the petitioners in favour of the decree holder within two months, then the decree holder had filed an execution petition. In that execution petition, the present petitioners had filed objections saying that since the petitioners had already challenged the decree in appeal, therefore, the execution proceedings should be adjourned sine die, till the appeal was decided. The very fact that the petitioners prayed for adjourning the execution petition sine die; by putting forward an excuse of pendency of the appeal; shows that even at the time of taking up of the execution petition by the Executing Court, the petitioners were not ready and willing to execute the sale deed in favour of the decree holder. These are the very findings recorded by even the Court below. This Court does not find any reason or ground to differ with the findings recorded by the Court below. A person who seeks equity must follow equity. Instead, the petitioners appear to have played trick upon the decree holder.

In view of the above, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

09.03.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No