

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(117)

CR-3335-2023 (O&M)

Date of Decision : 29.05.2023

Raj Mohan Singh

...Petitioner

Versus

Tajinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Varinder Kumar Sandhir, Advocate for the petitioner.

Harsimran Singh Sethi J. (Oral)

The present civil revision petition has been filed challenging the order dated 15.05.2023 passed by the learned Addl. Civil Judge (Sr. Divn.), Amritsar.

Learned counsel for the petitioner argues that in the present petition, the decree was passed in favour of the respondent-decree holder but as he failed to deposit the sale consideration, the decree passed in favour of the respondent could not be executed and it has to be treated that the respondent was not ready to perform his duty as envisaged under law. In support of his argument, learned counsel for the petitioner relies upon the judgment of Hon'ble Supreme Court of India in ***Chandi Parsad Vs. Jagdish Parsad, 2005 (Vol.II)RCR (Civil) 737.***

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

The only argument, which has been raised in the present petition is that the respondent-decree holder was required to deposit the sale consideration amount within a period of two months or within the extended period but as the same has not been deposited, the decree seeking the specific performance cannot be executed any further and the order passed by the Executing Court is bad in law. Learned counsel for the petitioner submits that the said settled principle of law has already been affirmed by Hon'ble Supreme Court of India in ***Chandi Parsad's case (supra)***.

It may be noticed that in a recent judgment, the same question of law, as being raised in the present petition, came up for consideration before the Hon'ble Supreme Court of India while deciding Civil Appeal No. 5360 of 2019 titled as ***Surinder Pal Soni Vs. Sohan Lal (D) through LR and others***. Hon'ble Supreme Court of India, after considering ***Chandi Parsad's case (supra)***, held that where there was an appeal preferred against the judgment and decree allowing the specific performance of an agreement, the doctrine of merger will come into effect and the decree of the appellate court becomes executable. The relevant paragraph 15 of the said judgment is as under :-

“15 More recently, the decision in Chandi Prasad (supra) was followed by a two judge Bench of this Court in Shanthi v T D Vishwanathan⁹ rendered on 24 October 2018 in the following terms :

“7. ...When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intents and purposes, the suit continues. When

a higher forum entertains an appeal and passes an order on merit, the doctrine of merger would apply. The doctrine of merger is based on the principles of the propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an 8 (2019) 4 SCC 376 9 Civil Appeal No. 10442 of 2011, 2018 SCC OnLine SC 2196 order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point of time.”

In the present case, learned counsel for the petitioner concedes that against the judgment and decree of the trial court dated 22.09.2015, an appeal was preferred by the petitioner which appeal only came to be decided on 02.08.2017 and the judgment and decree of the trial court dated 02.09.2015 merges in the decree of the appellate court dated 02.08.2017 and prior to the said date, the sale consideration had already been deposited by the respondent.

Learned counsel for the petitioner very fairly concedes the factum that keeping in view the judgment of the Hon’ble Supreme Court of India in ***Surender Pal Soni’s case (supra)***, challenge raised to the impugned order cannot be accepted.

That being so, once it is a conceded position that the order impugned is in conformity with the settled principle of law, no interference is called for by this Court in the present civil revision petition and the same is hereby dismissed.

CM-10000-CII-2023

As the main petition has been dismissed, the present application also stands dismissed.

May 29, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No