

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**Revision Petition No.6142 of 2007 (O&M)
Date of decision: 28.02.2023**

Kartar Singh

...Petitioner(s)

Vs.

Surinder Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Paramjit Batta, Advocate for the petitioner.

Mr. Jaideep Verma, Advocate for the respondent.

NIDHI GUPTA, J.

CM-4999-CII-2010

This is an application under Section 151 CPC seeking permission to place on record the document(s) which are necessary for just adjudication of the matter and exemption from filing certified copies of Annexure R7 to Annexure R11.

After going through the contents of the application, the same is allowed subject to all just exceptions.

CM-13310-CII-2016

This is an application under Section 151 CPC seeking permission to place on record copies of Daily General (Roznamcha) for the year 1995-96 as well as 2004-05 as Annexure R5 & Annexure R6 respectively.

After going through the contents of the application, the same is allowed subject to all just exceptions and Annexure R5 and Annexure R6 are taken on record.

MAIN CASE

Present Revision Petition has been filed by the Judgment Debtor seeking setting aside of impugned order dated 02.08.2007 (Annexure P1) passed by learned Additional District Judge, Rupnagar, affirming the order of trial Court dated 12.05.2006 (Annexure P2) passed in Civil Suit No.13 dated 14.01.2006 whereby application of petitioner under Order 39 Rules 1 & 2 read with Section 151 CPC for grant of temporary injunction restraining defendant-respondent from taking possession of suit land during pendency of the Suit, has been dismissed; and also for setting aside order dated 10.01.2006 (Annexure P3) passed by learned Additional Civil Judge (Senior Division), Rupnagar whereby objection petition of the petitioner/judgment debtor against execution of decree dated 04.10.2002 for non-compliance of condition of payment of balance sale consideration within the period of two months as fixed therein, was dismissed.

2. Brief facts of the case are that respondent/plaintiff/decreed holder had filed a Civil Suit No.182 dated 18.08.1998 titled as "Surinder Singh Vs. Kartar Singh" in the Court of learned Additional Civil Judge (Senior Division), Rupnagar seeking specific performance of agreement of sale dated 02.06.1997, executed by the petitioner in favour of respondent in respect of suit land

measuring 4 kanal 3 marla. Though the agreement was vociferously denied by the petitioner, however said Suit was decreed by learned Additional Civil Judge (Senior Division), Rupnagar vide judgment and decree dated 04.10.2002. Operative part of the said judgment and decree is reproduced hereinbelow:-

*“THIS SUIT IS COMING ON THE 4TH DAY OF OCTOBER 2002 FOR FINAL DISPOSAL BEFORE ME (SH RAVINDER SINGH, PCS, ADDL. CIVIL JUDGE (Sr. Div), ROPAR IN THE PRESENCE OF SH. A.L. VERMA, ADV. COUNSEL FOR THE PLAINTIFF AND SH. D.S. DEOL, ADV. COUNSEL FOR THE DEFENDANT. IT IS ORDERED THAT THE SUIT OF THE PLAINTIFF SUCCEEDS AND THE SAME IS ACCORDINGLY DECREED WITH COSTS FOR THE SPECIFIC PERFORMANCE OF THE AGREEMENT TO SELL DATED 2.6.1997 AND THE **DEFENDANT IS DIRECTED TO EXECUTE THE SALE DEED AFTER RECEIVING THE BALANCE SALE CONSIDERATION WITHIN A PERIOD OF 2 MONTHS FROM THE DATE OF PASSING OF THIS DECREE, OTHERWISE, THE PLAINTIFF SHALL BE ENTITLED TO GET THE SAME EXECUTED BY FILING THE EXECUTION.**”* (Emphasis supplied)

3. It is the pleaded case of the petitioner that respondent/decreed-holder failed to comply with the condition set out in abovesaid decree inasmuch as, respondent failed to deposit balance sale consideration of Rs.57,500/- within the stipulated period of two months and was therefore, not entitled to have the said decree executed even through the Court because of his willful non-compliance of the said condition.

4. It has further been pleaded by the petitioner that even no extension of time was sought by respondent/decreed-holder to deposit the said amount. Subsequently, when the petitioner came to know that Sale Deed dated 03.08.2005 is being executed through a Local Commissioner by Executing Court, the petitioner filed objection petition

on the plea that execution of Sale Deed through Local Commissioner is in violation of judgment and decree dated 04.10.2002; and that respondent/decreed-holder had failed to comply with conditions stipulated in the said decree; as also not taken permission from the Court to deposit balance sale consideration beyond stipulated period; and therefore, he was not entitled for the relief claimed in the execution.

5. However, Learned Executing Court dismissed said objection petition filed by the petitioner/judgment-debtor vide impugned order dated 10.01.2006 (Annexure P3) holding that:

“... .. But the JD did not get the sale deed executed within 2 months as per the judgment and decree in question. After that the decree holder has deposited the balance sale consideration amount in the court. There was no specific time limit prescribed in the judgment for the decree holder to deposit the balance sale consideration. Now the sale deed has already been executed and only the warrants of possession are to be issued.”

6. Accordingly, the petitioner on legal advice filed Civil Suit No.13 dated 14.01.2006 for declaration to the effect that Sale Deed dated 03.08.2005 is illegal, null and void and has no effect on his rights as the same is in violation of judgment and decree dated 04.10.2002 along with consequential relief of permanent injunction restraining the respondent/defendant from taking possession of the suit property. Along with said Civil Suit, the petitioner also filed an application under Order 39 Rules 1 & 2 CPC seeking temporary injunction against the respondent from taking possession of suit land till final decision of the case. It is this

application which was dismissed by learned Court below vide impugned order dated 12.05.2006 (Annexure P2); and appeal filed by the petitioner against above said order was also dismissed by learned Additional District Judge vide impugned order dated 02.08.2007 (Annexure P1). Hence, present Revision Petition.

7. Vide order dated 29.11.2007, this Court issued Notice of Motion limited to Annexure P3, and ordered as follows:-

“There is no merit in the present revision, so far as it relates to order Annexure P.1 passed in the civil suit filed by the petitioner. The revision to that extent is, accordingly, dismissed. However, notice of motion is issued in respect of the validity or otherwise of order Annexure P.3 for 25.2.2008.

Meanwhile, parties shall maintain status quo regarding possession as it is obtaining today.”

8. Annexure P3 is the order dated 10.01.2006 whereby objections filed by the petitioner have been dismissed by the Executing Court.

9. It is vehemently submitted by learned counsel for the petitioner that respondent failed to comply with the condition contained in the judgment and decree dated 04.10.2002. It is submitted that as per stipulation made in the said judgment and decree, respondent was required to deposit balance sale consideration within two months i.e. by 04.12.2002. However, admittedly, respondent had failed to make said

deposit within the stipulated period, and deposited money only on 12.12.2002.

10. It is further submitted that in terms of Section 28 of the Specific Relief Act, 1963 as balance sale consideration was not deposited by the respondent within stipulated period, therefore, agreement between the parties would be deemed to have been rescinded. In this regard, learned counsel relies upon decision of Hon'ble Supreme Court in case of ***Bhupender Kumar Vs. Angrej Singh 2009 (4) RCR (Civil) 249.***

11. It is submitted that accordingly, as condition of the judgment and decree has not been fulfilled, respondent could not have been permitted to subsequently deposit balance sale consideration, especially in view of the fact that no extension of time had been sought by the respondent to comply with conditional decree. In support of his contention, learned counsel for the petitioner relies upon judgment of this Court in ***Civil Revision No.3271 of 1982 titled as "Resham Singh & Others Vs. Manmohan Singh Kent & Others"***.

12. It is further submitted that as the respondent had failed to deposit sale consideration within stipulated time and no explanation was given for said failure, therefore, as per Order 20 Rule 12-A CPC, judgment and decree in question was rendered unacceptable.

13. Per contra, learned counsel for respondent submits:

a) that perusal of judgment and decree dated

04.10.2002 shows that respondent was entitled to get the Sale Deed

executed by filing execution upon failure of petitioner to execute the same;

b) that in actual fact, the petitioner had failed to execute the Sale Deed in favour of respondent; and it was only in this circumstance that respondent was constrained to file Execution Petition Annexure R7, along with application Annexure R8 for permission to deposit balance sale consideration, on 12.12.2002;

c) that vide order dated 12.12.2002 itself, learned Additional Civil Judge (Senior Division), Rupnagar had allowed his application; pursuant to which vide Deposit Form dated 12.12.2002 Annexure R9 the said amount was deposited in the Treasury the very same day;

d) As the petitioner did not file any objections to the Execution petition, draft sale deed was produced before the learned Executing Court. However, the petitioner failed to file any objections to the said draft sale deed also;

e) that accordingly, the Sale Deed was got executed by the Local Commissioner on behalf of petitioner/judgment debtor on 03.08.2005 in the office of Joint Sub-Registrar, Chamkaur Sahib, pursuant to which even possession of the suit land has been taken by the respondent;

f) that it is only at this stage that the petitioner finally filed objections to the Execution Petition, after three years, on 03.08.2005 (Annexure R10); to which the respondent filed reply on 03.09.2005 (Annexure R11).

g) Learned counsel further refers to Annexure R6 which is copy of Roznamcha to submit that actually the petitioner had mortgaged the suit land which was redeemed by the respondent on 27.07.2005 upon payment of Rs.80,000/-. Accordingly, the respondent had paid not just sale consideration of Rs.2,75,000/- but had also paid an amount of Rs.80,000/- to repay the loan taken by the petitioner for suit land;

h) that judgment and decree dated 04.10.2002 cannot be stated to be a conditional decree;

i) that the petitioner did not come forward to execute the said judgment and decree as a result of which respondent was constrained to file the Execution Petition;

j) that extension of time was granted to deposit balance sale consideration to the respondent upon application;

k) It is reiterated that a perusal of Annexure R8 which is application seeking permission to deposit balance sale consideration, shows that extension of time had been granted and therefore, there was no error in the impugned order dated 10.01.2006 whereby objections filed by the petitioner had been dismissed by learned Executing Court.

14. In rebuttal, it is submitted by learned counsel for the petitioner that pure question of law that arises in the present case is whether the respondent had sought extension of time and in what manner has he shown his bona fide and sincerity to deposit sale consideration in time.

15. No other argument is raised on behalf of the parties.

16. I have heard learned counsel for the parties.

17. I find merit in the submissions made on behalf of the respondent.

18. The only submission on behalf of learned counsel for the petitioner is that the judgment and decree dated 04.10.2002 was conditional, inasmuch as petitioner was directed thereby to execute the Sale Deed dated 02.06.1997 after receiving balance sale consideration within a period of two months from the date of passing of the decree.

19. However, perusal of said judgment and decree clearly shows that the respondent-plaintiff was given the option to get the sale deed executed through the Executing Court also. Said judgment and decree dated 04.10.2002, categorically permits that in case petitioner fails to execute sale deed *“otherwise, the plaintiff shall be entitled to get the same executed by filing the execution.”* Thus, in view of this clear liberty granted by the learned Executing Court to the respondent, it cannot be said that the present judgment and decree was conditional. I find that in the present case it is a misnomer to suggest that the decree under execution was ‘conditional’. In fact, in the case of **Resham Singh (supra)** relied upon by the petitioner, the decree in said case was ‘conditional’ inasmuch as it was stipulated therein that balance sale consideration had to be paid within one month *“failing which the plaintiff’s Suit was to stand dismissed”*. Admittedly, facts in the present case are distinguishable as no such condition is contained in the present decree. On the contrary, in the

present case, upon failure of the petitioner/judgment debtor to execute the decree, respondent/decreed holder has been permitted to approach the Executing Court. Thus, petitioner can derive no benefit from his argument regarding Order 20 Rule 12-A CPC, as also from reliance placed upon judgment of this Court in ***Resham Singh (supra)***.

20. Further, much stress has been made by learned counsel for the petitioner that the respondent did not deposit balance sale consideration within the stipulated time of two months, and did not even seek extension of time to make the said deposit. In my view, the very premise on which learned counsel for the petitioner is basing his case is misplaced as, the record amply bears out that the respondent was constrained to file Execution application dated 12.12.2002 (Annexure P7), along with Application dated 12.12.2002 (Annexure R8), seeking permission to deposit balance amount of Rs.57,500/-, only because the petitioner failed to execute the sale deed. Further, said application of the respondent to deposit the balance sale consideration was duly allowed by the learned Additional Civil Judge (Senior Division), Rupnagar on 12.12.2002 itself; in pursuance to which respondent had duly deposited the balance sale consideration with the Executing Court on the very same day. Admittedly, said order dated 12.12.2002 was never challenged by the petitioner. Thus, I find no merit in the facetious argument on part of the petitioner that the respondent did not seek extension of time to deposit balance sale consideration.

21. Moreover, it does not lie in the mouth of the petitioner to question the bona fide of the respondent as, intention of the petitioner is clearly borne out from the record of the case.

22. In this regard the following undisputed facts may be noticed:

a) That as the petitioner failed to execute the Sale Deed in favour of the respondent, the respondent was constrained to approach the Executing Court, and file Execution Petition Annexure R7, along with application Annexure R8 for permission to deposit balance sale consideration, on 12.12.2002. It may noted that nothing has been stated or brought on record by the petitioner to show that he was ready and willing to perform his part of the contract. On the contrary, as will be demonstrated hereinbelow, the petitioner resorted to dilatorious methods;

b) Thereafter, as no objections were received on behalf of the petitioner to the Execution petition, draft sale deed was produced before the learned Executing Court. The petitioner failed to file any objections to the said draft sale deed also. Accordingly, learned Executing Court passed the following order on 16.07.2005:-

"The present execution application has been filed on the basis of judgment and decree dated 4.10.2002 passed by the then learned Addl. Civil Judge (Sr. Divn.), Ropar. The decree holder has filed the draft sale deed and copy of the same was given to the judgment debtor to file reply, but judgment debtor has not filed the reply and costs has also not been filed. As such, defence of the judgment debtor is struck off. Now, execution clerk of this Court to get the sale deed executed as per the

judgment and decree dated 4.12.2002. Her fee is assessed as Rs.500/- to be paid by the Decree Holder. Remaining amount of sale consideration if any be deposited within 7 days. Report be awaited for 3.9.2005."

c) It was only thereafter, that the Sale Deed was got executed by the Local Commissioner on behalf of petitioner/judgment debtor on 03.08.2005 in the office of Joint Sub-Registrar, Chamkaur Sahib, pursuant to which possession of the suit land has been taken by the respondent;

d) Clearly, the occasion to get Sale Deed executed through Local Commissioner arose only because petitioner did not come forward at any stage;

e) Admittedly, objections to the Execution Petition were filed by the petitioner only thereafter, on 03.08.2005 vide Annexure R10 *after* the Sale Deed already stood executed. Petitioner thus, filed objections three yearsafter the Execution Petition was filed on 12.12.2002.;

f) that respondent has also cleared the loan taken by the petitioner on suit property besides paying the entire sale consideration.

23. None of the above facts have been denied by learned counsel for the petitioner. In my view, the above facts clearly establish the intractable conduct of the petitioner, and show that the intention of the petitioner to execute the sale deed was doubtful and questionable. Thus, the respondent was left with no choice except to take recourse to the alternative option of filing Execution petition, as granted by the trial Court.

24. For the reasons stated above, I find no error in the impugned order dated 10.01.2006; and I thus, find no merit in the present Revision Petition and the same is hereby **dismissed**.

25. Pending application(s) if any also stand(s) disposed of.

28.02.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No