

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Sr. No.245

**CR No.3231 of 2022 (O&M)
Reserved on 18.11.2022**

Date of Decision: 06.01.2023

Ved Singh (since deceased) through LRs

.... Petitioner

Versus

Rameshwar (since deceased) through LRs
and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. RakeshNehra, Senior Advocate with
Mr. Ajay Ghangas, Advocate and
Mr. Ankit Yadav, Advocate
for the petitioner.

Mr. Puneet Jindal Sr. Advocate with
Mr. Gautam Goel, Advocate
for respondent No.1.

Mr. Ravinder Hooda, Advocate
for respondents No.2 to 4.

Mr. A.P.S.Nain, Advocate
for respondents No.6 to 8.

TRIBHUVAN DAHIYA, J.

This revision petition has been filed under Article 227 of the
Constitution of India for setting aside the order dated 12.07.2022

(Annexure P-6) whereby the Executing Court allowed the

respondents/plaintiffs/decreed holders' application (hereinafter referred to as 'decreed holders') to deposit the balance sale consideration amount in terms of the judgment and decree dated 01.02.2011 (Annexure P-1).

2. The facts of the case in brief are, an agreement to sell was entered into between the parties on 23.08.2004 to get the sale deed executed and registered in favour of the decree holder after payment of balance sale consideration amounting to Rs.39,46,250/-. Violation of terms of the agreement led to filing of the suit for possession by way of specific performance of the agreement by the plaintiffs/decreed holders, which was decreed by the trial Court against the petitioner/defendant/judgment debtor (hereinafter referred to as 'judgment debtor') vide judgment and decree dated 01.02.2011. The operative part of the decree dated 01.02.2011 reads as under:

It is ordered that the suit of the plaintiff for specific performance of agreement to sell dated 23.08.2004, is decreed in favour of the plaintiff and against the defendants and defendant No.1 through his LRs is directed to perform his part of contract by executing a sale deed of the suit land in terms of agreement Ex.P-1 in favour of the plaintiff pertaining to the suit land within three months from the date of judgment and get the same registered in the office of Sub-Registrar, Sonapat, failing which the plaintiff will be at liberty to approach the court of law within three months thereafter, for getting the agreement Ex.P-1 executed in accordance with law. The sale deeds Ex.D-3 and Ex.D-4 are also set aside being illegal, void and not binding on the rights of the plaintiff. Suit is decreed with cost.

3. The judgment debtor filed appeal against the same before the lower appellate Court, which was dismissed on 24.12.2013 affirming the judgment of the trial Court. The interim stay dated 03.03.2011 on the trial Court decree stood vacated with dismissal of the appeal. The Regular Second Appeal (RSA) filed against the judgments and decree before this Court was dismissed on 26.02.2015, and Special Leave Petition (SLP) against the same was also dismissed by the Supreme Court on 11.07.2015.

4. Soon after dismissal of appeal by the lower appellate Court on 24.12.2013, an execution application was filed by the decree holders on 25.01.2014, along with an application dated 25.01.2014 (Annexure P-3) to deposit the balance sale consideration in Court for execution and registration of the sale deed. The same, however, remained pending before the Executing Court, despite dismissal of the aforementioned RSA as well as the SLP.

5. Subsequently, on 09.11.2017 an application under Section 28 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act') was filed by LR's of defendant No.1/judgment debtor for rescission of the agreement to sell dated 23.08.2014 on the ground that the decree holders failed to perform their part of the contract and deposit the balance sale consideration within the stipulated period of three months from the date of decree. The application was dismissed by the Court vide order dated 04.04.2022 (Annexure P-5). Thereafter, the impugned order dated 12.07.2022 dismissing the judgment debtor's objections was passed, after noticing dismissal of the application for rescission and the decree holders were allowed time to deposit the balance sale consideration. The case was adjourned for filing proof of deposit of the balance sale consideration and draft of sale deed. Pursuant thereto, the balance sale consideration was deposited on 20.07.2022.

6. Learned senior counsel for the judgment debtor has argued that the decree in question dated 01.02.2011 has become in-executable since the decree holders have failed to perform their part of the contract to deposit balance sale consideration within three months of the decree. The extension of time to deposit the same was not sought by them by moving appropriate application under Section 28 of the Act. Without extension of time, the deposit of balance sale consideration now on 20.07.2022 could not have been made, and the same is inconsequential. The decree will still remain in-executable, as the time to deposit the balance sale consideration cannot be extended. In support of the contentions, he has relied upon the judgment passed by the Supreme Court of India in *V.S.Palanichamy Chettiar Firm versus C.Alagappan* 1999(4) SCC 702.

7. *Per contra*, learned counsel for the decree holders has argued that the execution application was filed within time, and the decree holder was entitled to deposit the balance sale consideration, which had been done. This petition has been filed only to delay execution of the decree which is pending for about nine years now, despite the judgment debtor having lost up to the Supreme Court.

8. Learned counsel for the parties have been heard.

9. The issue to be considered before this Court is, whether the decree in question has become in-executable on the decree holder's failure to deposit the balance sale consideration in terms thereof, and he could not have been permitted to do so belatedly vide the impugned order.

10. The suit for specific performance was decreed by directing the judgment debtor through his LRs to perform his part of the contract by executing the sale deed in terms of the agreement to sell within a period of

three months from the date of the judgment/decreed, i.e., 01.02.2011. Interim stay on operation of the decree was vacated only with dismissal of judgment debtor's appeal against the same by the lower appellate Court on 24.12.2013. Soon thereafter, the decree holders filed the execution application, dated 25.01.2014, along with an application to deposit the balance sale consideration. The application somehow remained pending before the Executing Court and the balance sale consideration could not be deposited. It is not disputed between the parties that no specific order to deposit the balance sale consideration was passed on that application. The judgment debtor's application for rescission of the agreement to sell was finally dismissed by the Court only on 04.04.2022. Thereupon, the objections were also dismissed by the impugned order, dated 12.07.2022, allowing the decree holders to deposit the balance sale consideration, which was accordingly deposited by them soon thereafter on 20.07.2022.

11. In this factual background, it cannot be said there was any delay or failure on the part of decree holders in seeking execution of the decree in question. The filing of execution application along with the application seeking permission to deposit the balance sale consideration by them, itself establishes willingness to perform their part of the contract, and readiness to deposit the balance sale consideration as well. It was awaiting decision on the judgment debtor's objections as also the application, dated 09.11.2017, for rescission of the agreement to sell, that the execution proceedings remained pending. Therefore, the decree holders have not failed in any manner to perform their part of the agreement, nor were they required to move any application seeking extension of time to deposit the balance sale consideration under Section 28 of the Act. They had moved the application to deposit the balance sale consideration on 25.01.2014 itself, i.e., within

three months of vacation of the stay on the decree by dismissal of appeal by the lower appellate Court on 24.12.2013. In this circumstances, no exception can be taken to the impugned order allowing the decree holder to deposit the balance sale consideration.

12. The reliance placed by the learned senior counsel on the Supreme Court judgment in *V.S.Palanichamy Chettiar Firm case (supra)* is misplaced. In that case there was no explanation by the decree holders as to why they could not deposit the balance consideration amount in terms of the decree within the time stipulated, and the Executing Court had dismissed their execution applications for not doing so. Besides, the execution applications were filed three years after dismissal of appeals by the High Court against the decree of specific performance granted in their favour. In this background, the Supreme Court held that the discretion in favour of such decree holders to grant extension of time for depositing the balance sale consideration, was not to be exercised. No such situation arises in the instant case, and the judgment has no application. As discussed above, neither any extension of time under Section 28 was sought, nor was it required, as the decree holder was prompt in seeking execution of the decree and permission to deposit the balance consideration amount. He deposited the same as and when asked to do so by the Executing Court by deciding his application moved for the purpose. He could not have done that unless permitted by the Court. In case the application remained pending with the Court for one reason or another, the decree holder cannot be blamed for that.

13. Therefore, the decree in question is executable, and the Executing Court has validly permitted deposit of balance sale consideration in term thereof, vide the impugned order.

14. The petition, accordingly, stands dismissed.
15. Pending miscellaneous application(s), if any, stand disposed of
as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

06.01.2023
Maninder

Whether speaking/reasoned : Yes

Whether reportable : Yes