

CR-4417-2023

-1-

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

271

CR-4417-2023

Date of decision : 08.11.2023

Prem Singh

..... Petitioner

Versus

Dharam Pal and another

..... Respondents

CORAM : HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Rakesh Nagpal, Advocate
for the petitioner.

Mr. Akshay Jain, Advocate
for respondent No. 2.

AMARJOT BHATTI J.

1. The present petitioner/judgment debtor has filed revision petition under Article 227 of the Constitution of India for quashing of order dated 25.07.2023 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Guhla in Execution No. 05 of 2023 titled “Dharam Pal versus Prem Singh and another”.

2. The learned counsel for the petitioner argued that respondent No. 1 had filed suit for possession by way of specific performance of agreement to sell dated 12.02.2011 which was decreed on 17.04.2017. The copy of judgment and decree is Annexure P-1. Thereafter, the present petitioner filed an appeal before learned Additional District Judge, Kaithal which was dismissed on 31.10.2017. Thereafter, the respondent No. 1 filed execution application on 21.01.2023 for the execution of judgment and decree dated 17.04.2017. The said execution application is Annexure P2. The present petitioner/judgment debtor filed

objections to this execution application being time barred, condition not fulfilled by the Decree Holder. The copy of objections is Annexure P-3 and reply filed by respondent No. 1 is Annexure P-4. The said objections are declined by learned Additional Civil Judge (Senior Division), Guhla by passing impugned order dated 25.07.2023, Annexure P-5. It is argued that the execution application is not executable as the agreement if any stands rescinded. The decree dated 17.04.2017 is not enforceable as the balance sale consideration was not deposited by the respondent/decreed holder as per spirit of decree. There was no stay of any kind passed by any Court. Even then the balance sale consideration was not deposited as per the directions in judgment and decree dated 17.04.2017. As per Article 137 of the Limitation Act, 1963, in any application where no period of limitation is provided then the period of limitation is three years when the right to apply accrues. The learned Executing Court has not taken into account the provisions of Section 28 of the Specific Relief Act, 1963 regarding recession of agreement. Without considering these facts, the objections have been wrongly declined. To support his arguments, the learned counsel for petitioner has relied upon the authority cited in ***1977 RLR 195, Punjab and Haryana High Court (DB)***, case titled “**Smt. Manno alias Jaswant Kaur versus Hazura Singh and others**”, where in that case it was held that “*in a decree for specific performance on payment of Rs. 15,000/- was not executed for a long period of 10 years, it was concluded that it amounts to waiver of decree-holder’s rights and the execution in such like case cannot be allowed and as per the provisions of Section 28 of the Specific Relief Act, 1963, the agreement to sell stood rescinded.*” It is argued that the judgment and decree dated 17.04.2017 in favour of Dharam Pal, respondent No. 1 is no more executable being barred by limitation as well as under the

provisions of Section 28 of the Specific Relief Act, 1963. Therefore, the impugned order dated 25.07.2023 (Annexure P-5) passed by the learned Executing Court may kindly be set aside and the execution application filed by the decree-holder may kindly be dismissed.

3. I have considered the arguments advanced before me and I have also gone through the impugned order dated 25.07.2023, Annexure P-5. The factual position is not disputed. It is matter of record that Dharam Pal, respondent No. 1 filed suit for possession by way of specific performance of agreement to sell dated 12.02.2011 which was ultimately decreed vide judgment and decree dated 17.04.2017. The copy of judgment and decree is Annexure P-1. It is also matter of record that the present petitioner had filed an appeal bearing Civil Appeal No. 220 of 2017 which was dismissed for non-deposit of Court fee vide order dated 31.10.2017, which is Annexure P-6. The execution application has been filed on 21.01.2023, which is Annexure P-2. The present petitioner filed objections Annexure P-3, taking the stand that the execution application is not executable as the agreement stood rescinded. The decree-holder failed to fulfill the terms and conditions of decree dated 17.04.2017 passed by the Court, therefore, the decree-holder was left with no right to execute the same and it was also alleged that the execution is barred by limitation. This application was contested by the decree-holder Dharam Pal by filing reply, which is Annexure P-4 and ultimately, the objections were declined by passing impugned order dated 25.07.2023, which is Annexure P-5. For the proper disposal of this civil revision, the Court is required to see the relief granted in favour of the respondent No. 1/decreed-holder. The relief clause in judgment and decree dated 17.04.2017 runs as under :-

“42. In view of discussion over all above issues, the suit of plaintiffs succeeds and is hereby decreed with costs to the effect that the

plaintiffs are entitled to specific performance of agreement to sell dated 12.02.2011 from the defendant with respect to the suit property as detailed in para no. 1 of the plaint. The defendants are directed to get the sale deed executed and registered in favour of the plaintiffs with respect to the suit property within three months from today failing which the plaintiffs would get the same executed through the assistance of the Court on receiving payment of balance sale consideration and stamp/registration charges and after clearing the said mortgage/loan of PARDB, Samana or any other encumbrance over the suit land, which was a term and condition of agreement between the parties. In case, the defendants fail to clear the loan of the bank, then the plaintiffs are at liberty to clear the said loan out of the balance sale consideration. The defendants are directed not to alienate the suit property in any manner or create any charge/encumbrance on the suit property. Decree-sheet be prepared accordingly. File be consigned to the record room after due compliance.”

The perusal of aforesaid relief clause indicates that the defendant Prem Singh i.e. the present petitioner was directed to get the sale deed executed and registered in favour of the plaintiff with respect to the suit property within three months from the passing of decree, failing which the plaintiff was given right to get the same executed through the assistance of the Court, on receiving balance sale consideration, stamp/registration charges and after clearing the mortgage/loan of PARDB, Samana or any other encumbrance over the suit land. It was a term and condition of agreement between the parties. Thereafter, it was held that in case the defendants failed to clear the loan of the bank, then the plaintiff is at liberty to clear the said loan out of the balance sale consideration. It was further directed that the defendants not to alienate the suit property in any manner or create any encumbrance on the same. In the case in hand, the defendants did not execute the sale deed within a period of three months from the passing of decree nor made any effort to clear the loan. Therefore, it is rightly held by the Executing Court that the

CR-4417-2023

-5-

aforesaid conditions were applicable to the defendant/judgment debtor i.e. the present petitioner. Thereafter, in case of failure on the part of judgment debtor, the decree-holder was given a right to clear the loan. The respondent/decreed-holder in his reply to the objections categorically stated that the bank was not disclosing the detail of loan account of the defendant/judgment debtor No. 1 and it was alleged that the bank will submit their detail of loan in the Court. Ultimately, the bank was also impleaded as one of the respondent in the execution application. Therefore, considering the aforesaid facts, it cannot be said that there was any lapse on the part of respondent No. 1 /decree-holder Dharam Pal. In-fact, the present petitioner/judgment-debtor No.1 never cooperated for the execution of judgment and decree dated 17.04.2017 and ultimately, the decree-holder was compelled to get the judgment and decree executed through the assistance of the Court.

In view of my above discussion, I do not find any reason to interfere in the impugned order dated 25.07.2023 (Annexure P-5) and the same is accordingly, upheld by dismissing the present civil revision.

Pending application(s), if any, shall also stands disposed of.

(AMARJOT BHATTI)
JUDGE

08.11.2023

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