

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4722-2023

Reserved on : 30.11.2023

Pronounced on : 20.12.2023

Ashok Kapoor and another

. . . Petitioner(s)

Versus

Santosh Rani and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Argued by: Mr. Hitesh Ghai, Advocate
for the petitioner(s).

Mr. Rajan Singh Dadwal, Advocate
for respondent No.1.

Service *qua* respondents No.2, 3 & 4
dispensed with vide order dated 08.11.2023.

SANJAY VASHISTH, J.

1. Present revision petition has been filed by the Judgment Debtors (JDs/petitioners herein), impugning the order dated 25.04.2023 (Annexure P-5), vide which, application dated 11.11.2021, filed by respondent No.1 [Decree Holder (DH)], for extending the time for deposit of the balance sale consideration within 10 working days, has been allowed.

Another order under challenge is dated 14.07.2023 (Annexure P-6), vide which, Executing Court dismissed the application dated 08.09.2021, filed by the petitioners (JDs) for declaring the agreement to sell rescinded under Section 28(1) of the Specific Relief Act, 1963 (in short, 'Act of 1963').

2. Facts of the case are that DH – Santosh Rani filed a suit for possession by way of specific performance of agreement dated 04.09.2012,

with a direction to the defendants to execute, and to register the sale-deed of the house/property measuring 375 sq. yards bearing M.C.J. No.4520, situated in the area of Mohalla Sainchran Jagraon, Tehsil Jagraon, District Ludhiana. Said suit was instituted on 26.09.2014, against (1) Sudha Kapoor, (2) Ashok Kapoor, (3) Jaisika, (4) Ruchi; and (5) Nandan Kapoor (now JDs).

Learned trial Court vide judgment & decree dated 04.02.2019, decreed the suit by directing the defendants to execute and register the sale-deed in favour of the plaintiff within a period of two months from the date of order, on payment of balance sale consideration. Plaintiff (DH) was also directed to pay interest @ 12% per annum, to defendant No.1 (JD) (as per her share in the remaining sale consideration), along with balance sale consideration from 01.12.2016, till payment. Relief ordered by the learned trial Court is reproduced here-below:-

“RELIEF. (ISSUE NO. 5)

16. In view of my findings on issues no. 1 and 2, suit of the plaintiff is hereby decreed and the defendants are directed to get execute and register the sale deed in favour of the plaintiff within a period of two months from the date of this order on payment of balance sale consideration and further, plaintiff is directed to pay interest at the rate of 12% per annum to the defendant No. 1 (as per her share remaining sale consideration) alongwith balance sale consideration from 01.12.2016 till payment. Further, the defendants are hereby restrained from alienating the suit property in any manner to any person except the plaintiff. Decree-sheet

be drawn accordingly and file be consigned to record room.”

3. Operative part of the decree-sheet dated 04.02.2019, is also reproduced here-under:-

“Plaint presented on: 26.09.2014

This suit si coming on this day i.e. 4th of February 2019 for final disposal before me (Pradeep Syngal, PCS, Additional Civil Judge (Senior Division), Jagraon in the presence of Sh. Sandeep Gupta, Advocate counsel for plaintiff, Sh. Gurtej Singh Gill, Advocate counsel for defendant No.1, Sh. Kewal Krishan Kapil, Advocate counsel for defendants No.2, 4 and 5 and defendant No.3 exparte.

It is, hereby, ordered that suit of the plaintiff is hereby decreed and the defendants are directed to get execute and register the sale deed in favour of the plaintiff within a period of two months from the date of this order on payment of balance sale consideration and further, plaintiff is directed to pay interest at the rate of 12% per annum to the defendant No.1 (as per her share remaining sale consideration) along-with balance sale consideration from 01.12.2016 till payment. Further, the defendants are hereby restrained from alienating the suit property in any manner to any person except the plaintiff.”

4. On 14.03.2019, defendant No.1, consented for execution of the sale-deed *qua* her half of the share; and, suit was contested by the petitioners

only, as the dispute remained only with regard to the half of the share of the property in question. Thus, the dispute was in regard to the half of the share of the property.

5. On 13.03.2019, defendants No.2 to 4 (petitioners and respondent No.4) filed an appeal bearing No. CA/264/2019, dated 13.03.2019, before the learned Lower Appellate Court. Said appeal is still pending

Execution application was filed by the Decree Holder (DH) on 05.08.2019. Defendants joined the execution proceedings on 10.12.2019. However, due to the outbreak of pandemic COVID-19 situation, material proceedings could not take place.

On 11.11.2021, respondent No.1 (DH) filed an application for extension of time for depositing the balance sale consideration.

On 25.11.2021, an application under Section 28(1) of the Act of 1963, declaring the agreement as rescinded, and for dismissal of the execution application, was filed by the petitioners (JDs).

Another application for staying the execution proceedings was filed by JDs on 07.03.2022.

On 25.04.2023, application moved by plaintiff (Decree Holder) for extension of time was allowed by granting 10 days time to deposit the balance sale consideration. Plaintiff deposited the balance sale consideration on 03.05.2023.

On 14.07.2023, application moved by JDs for rescinding the agreement was dismissed by the Executing Court.

On 28.07.2023, sale-deed was executed through Commission appointed by the learned Executing Court.

6. This way, from the narration of the incidences mentioned here-above, a fact emerges on record that application under Section 28(1) of the Act of 1963, moved by JDs and application for extension of time for depositing the balance sale consideration moved by the Decree Holder, both were pending before the learned Executing Court since November 2021, but without deciding the issue of rescinding of the agreement, vide order dated 25.04.2023, application for extension of time was allowed by granting 10 days time to the Decree Holder for depositing the balance sale consideration.

7. Counsel for the petitioners (JDs) submits that application for extension of time is not maintainable before the Executing Court, because, already there is a decree for performing the respective part of performance to the suit. Further, direction to the defendants to execute and register the sale-deed within two months, was subject to the payment of balance sale-consideration by the plaintiff (DH). Decree was passed on 04.02.2019, and within two months thereafter, Decree Holder was required and expected to qualify the inherent direction given in the decree, and thereafter, only, Judgment Debtors were bound to execute the sale-deed, in favour of plaintiff.

Further submits that in the present case, application moved by the Decree Holder for extension of time, is after 1011 days, which *prima facie* shows that Decree Holder was not in a position to comply with the direction given by the trial Court because of insufficient funds to pay the balance sale consideration. Thus, extension of time granted by the Executing Court beyond the time mentioned in the decree, would amount, going beyond the decree. Thus, impugned order dated 25.04.2023 (P-5) is without jurisdiction.

8. While assailing the impugned orders dated 25.04.2023 (P-5) (granting extension of time to DH) and dated 14.07.2023 (P-6) (disposing of the application filed under Section 28(1) of the Act of 1963, as infructuous), counsel for the petitioners (JDs) opens his arguments by submitting that there is inherent defect in both the impugned orders, because at the time of passing the order dated 25.04.2023 (P-5) in the application filed by the Decree Holder, another application granting the exclusive right to the Judgment Debtors, by virtue of the statutory right i.e. under Section 28(1) of the Act of 1963, was also pending adjudication. Thus, both were required to be decided together, rather, as per the legitimate expectation of the Judgment Debtors, the application under Section 28(1) of the Act of 1963, ought to have been decided prior in time to the application for extension of time.

For convenience, Section 28 of the Act of 1963, is reproduced here-under:-

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has

obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or the lessee as earnest money or deposit in connection with the contract.

(3) If the purchase or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.”

9. While submitting so, counsel for the petitioners (JDs) contends that with the non-deposit of the balance sale consideration within two months of the decree passed by the learned trial Court, or even up-till the period of more than 2 years, 9 months and 5 days (total 1011 days), of the

decree of suit, an exclusive right accrued to the Judgment Debtors (petitioners) over the suit property under Chapter IV, Section 28(1) of the Act of 1963.

Therefore, both the orders impugned herein, are required to be set-aside by allowing the present revision petition.

10. In his support, counsel for the petitioners (JDs) refers to the judgment of the Hon'ble Apex Court rendered in "**P. Shyamala v. Gundlur Masthan, 2023(2) RCR (Civil) 135 : Law Finder Doc Id #2140017**", and refers to paragraphs No.2.1, 2.2 and 5, 6 & 8, of the judgment, which are as under:-

"2.1 That the trial Court passed an ex-parte judgment and decree on 12.10.2013 and passed a decree for specific performance of the agreement to sell dated 9.5.2012. While decreeing the suit, the trial Court directed the respondent – original plaintiff to deposit the balance sale consideration of Rs. 15,00,000/- within two weeks before the trial Court. The trial Court also observed that in case the defendant fails to execute the sale deed on receiving the balance of sale consideration, the plaintiff is at liberty to get it done through process of law. Therefore, under the decree dated 12.10.2013, the plaintiff was required to deposit Rs. 15,00,000/- within a period of two weeks from the judgment and decree dated 12.10.2013. Thus, as per the judgment and decree dated 12.10.2013, the respondent – original plaintiff was required to pay/deposit the balance sale consideration of Rs. 15,00,000/- on or before 21.10.2013. However, the respondent herein – original plaintiff failed to pay/deposit the balance sale consideration as ordered by the trial Court.

2.2 After a period of 853 days from the date of judgment and decree dated 12.10.2013 passed by the trial Court, the original plaintiff – respondent herein filed an

application before the trial Court under Section 148 of the Code of Civil Procedure (for short, 'CPC') and Section 28 of the Specific Relief Act being I.A. No. 732/2016 in O.S. No. 291/2013 and prayed for extension of time to deposit the balance sale consideration which the plaintiff was required to deposit on or before 21.10.2013, as per the judgment and decree dated 12.10.2013. At this stage, it is required to be noted that after the ex-parte judgment and decree, the mother of the appellant – original defendant died on 13.01.2015 and the appellant herein being legal heir of the original defendant was brought on record. Simultaneously, the appellant, being the legal representative of the original defendant, filed an application being I.A. No. 914/2017 in O.S. No. 291/2013 under Section 28 of the Specific Relief Act, 1963 to rescind the Agreement to Sell dated 9.5.2012.

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5. *We have heard learned counsel for the respective parties at length. At the outset, it is required to be noted that by an ex-parte judgment and decree dated 12.10.2013, the trial Court passed a decree for specific performance of the agreement to sell dated 9.5.2012. In the agreement to sell dated 9.5.2012, the total sale consideration was Rs. 23,00,000/-, against which Rs. 8,00,000/- was paid as advance. The balance sale consideration of Rs. 15,00,000/- was directed to be deposited/paid by the plaintiff under the ex-parte judgment and decree dated 12.10.2013, within two weeks from the said date, which expired on 21.10.2013. Nothing is on record that any steps were taken by the plaintiff either to deposit/pay the balance sale consideration of Rs. 15,00,000/- or even calling upon the defendant to execute the sale deed as per the judgment and decree passed by the trial Court dated 12.10.2013 till the present application under Section 148 CPC and Section 28 of the Specific Relief Act was filed on 7.6.2017/19.06.2017 with a huge delay of 853 days, seeking*

extension of time to deposit the balance sale consideration. The reasons for delay are set out hereinabove. The explanation which was given by the plaintiff, narrated hereinabove, can hardly be said to be a sufficient explanation as to why the plaintiff did not pay the balance sale consideration as per the judgment and decree or even did not make an application within a reasonable time under Section 148 CPC and Section 28 of the Specific Relief Act seeking extension of time for making payment. If the plaintiff was ready with the money payable towards the balance sale consideration, he could have got the sale deed executed through power of attorney after effecting deposit/payment. In absence of any sufficient explanation, such a huge delay of 853 days ought not to have been condoned by the trial Court.

6. *It is observed and held by this Court in the case of V.S. Palanichamy Chettiar Firm (supra) that provisions to grant specific performance of an agreement are quite stringent. Equitable considerations come into play. The Court has to see all the attendant circumstances including if the vendee has conducted himself in a reasonable manner under the contract of sale. It is further observed that therefore, the Court cannot as a matter of course, allow extension of time for making payment of balance amount of consideration in terms of a decree. It is further observed that in absence of any explanation whatsoever even by the decree holders as to why they did not pay the balance amount of consideration as per the decree or did not make an application under section 28 of the Specific Relief Act seeking extension of time for making payment, equity demands that discretion be not exercised in favour of the decree holders and no extension of time be granted to them to comply with the decree.*

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8. *Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand and considering Section 28 of the Specific Relief Act, we are of the*

opinion that the trial Court erred in exercising the discretion in favour of the plaintiff and erred in extending the time in favour of the plaintiff to deposit the balance sale consideration of Rs. 15,00,000/- by condoning the huge delay of 853 days, which as observed hereinabove has not been explained sufficiently at all. As observed hereinabove, after the plaintiff was directed to deposit the balance sale consideration of Rs. 15,00,000/- within a period of two weeks from the date of ex-parte judgment and decree dated 12.10.2013, which the plaintiff failed to deposit/pay, even no application for extension of time under Section 148 CPC and Section 28 of the Specific Relief Act was made thereafter within a reasonable time and was made after a period of 853 days. Nothing is on record that in between any notice was given to the defendant to execute the sale deed as per the judgment and decree on deposit of the balance sale consideration. The application filed by the plaintiff under Section 148 CPC and Section 28 of the Specific Relief Act seeking extension of time to deposit the balance sale consideration was hopelessly delayed. As observed hereinabove, Section 28 of the Specific Relief Act seeks to provide complete relief to both the parties in terms of a decree of specific performance. Therefore, the trial Court failed to exercise the discretion judiciously in favour of the defendant and erred in exercising the discretionary power in favour of the plaintiff, that too with a delay of 853 days. The High Court has erred in confirming the same and dismissing the revision applications. Under the circumstances, the order passed by the trial Court allowing the application of the plaintiff being I.A. No. 732/2016 seeking extension of time to deposit the balance sale consideration deserves to be dismissed and I.A. No. 914/2017 filed by the defendant – appellant under Section 28 of the Specific Relief Act to rescind the agreement to sell dated 9.5.2012 deserves to be allowed.

However, at the same time, to strike the balance between the parties the amount of Rs. 8,00,000/- paid by the

plaintiff as an advance is to be returned to the plaintiff with 12% interest per annum from 9.5.2012 till the actual payment, within a period of six weeks from today, failing which it shall carry interest @ 18% per annum.”

11. Counsel for the petitioners (JDs) submits that in the said judgment, Hon’ble the Apex Court noticed that Decree Holder had moved an application for extension of time for depositing of the balance sale consideration, after a period of 853 days from the date of judgment & decree dated 12.10.2013, according to which, plaintiff was required to pay/deposit the balance sale consideration of Rs.15,00,000/- within two weeks i.e. on or before 21.10.2013.

In the present case, judgment and decree in favour of Decree Holder is dated 04.02.2019, and the application for extension of time has been moved on 11.11.2021 i.e. after a period of 1011 days about 2 years, 9 months and 5 days.

12. He also places reliance upon judgment of Hon’ble the Kerala High Court rendered in “**Anandavally v. Natesan, 1992(2) KLT 833 : Law Finder Doc Id #454411**”, and submits that Hon’ble the Kerala High Court almost in a similar situation, where the direction was to the defendant to execute the sale-deed in respect of the suit property in favour of the plaintiff within one month, after receiving the balance sale consideration, held in paragraphs No.8 & 9, as under:-

“8. S. 28 of the Specific Relief Act provides that if the purchaser does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor can apply, in the suit to have the contract rescinded and the court is given power to rescind the contract subject to

the other conditions mentioned in S. 28. The scope of this section was considered by a Division Bench of this Court in Joseph George v. Chacko Thomas, 1992 (1) KLT 6 in which it was held that for the application of S. 28 of the Act, there must be a wilful default on the part of the decree-holder to deposit the money as ordered in the decree.

9. *So the next question to be considered is as to whether the lower court was justified in rescinding the contract by exercising its power under S. 28 of the Specific Relief Act. Counsel for the revision petitioner-decree-holder contended that on the wording of the decree, no time for payment of the purchase money is stipulated in the-decree and as such the provisions of S. 28 cannot apply at all. I am not inclined to agree with this contention. **On the wording of the decree which I have already stated in the first paragraph, it provides that the defendant shall execute a sale deed in respect of the suit property in favour of the plaintiff within one month and that too after receiving the balance sale consideration. It is well-known that the vendor is bound to execute the sale deed only on receipt of the sale consideration. In other words, payment of the sale consideration is a condition precedent for his executing a sale deed and that is what is provided for in the decree. On a reading of the decree I have no doubt in my mind that what the court intended was to fix a time-limit for the decree-holder to pay the balance purchase price as contemplated under Order 20 Rule 12A of the Code of Civil Procedure. Thus, the contention of counsel for the revision petitioner that no time is fixed in the decree cannot be accepted.***

13. Another reliance is placed upon the judgment of the Hon'ble the Gauhati High Court, rendered in "**Mrs. Ranjana Bezbaruah and Anr. v. Smt. Banti Bharali**, 2021 AIR (Gauhati) 72 : Law Finder Doc Id #1811662", wherein, the argument of the Decree Holder that there was no

specific direction for the plaintiff to deposit the amount within the specified time, as the term “preferably” was used by the learned trial Court in its decree, was rejected.

14. On the other hand, counsel appearing for respondent No.1 (only contesting one, being Decree Holder) relies upon the judgment of Hon’ble the Madhya Pradesh High Court rendered in “**Khoobiram v. Urmila Chouhan & Ors., 2010 AIR (Madhya Pradesh) 211 : Law Finder Doc ID #246641**”, and refers to paragraph No.14, which says as under:-

“14. Section 28 (supra) comes into play when a purchaser under the decree does not within the period allowed by the decree or such further period as the Court may allow to pay the purchase money or other sum which the Court has ordered him to pay does not pay/deposit it. Thus, it becomes necessary for the Court (us) to examine that whether while granting the decree the decree holder purchaser was directed to pay a particular money within a particular period and further whether the decree-holder has defaulted in making compliance of the decree in this respect. Decree granted in favour of respondent Nos. 1 and 2 has already been produced verbatim hereinabove which goes to show that the Court while granting the decree in favour of them did not impose any obligation on them to pay the balance consideration within a particular period. Instead, the obligation was imposed upon the defendant/petitioner to receive the balance consideration from plaintiffs in pursuance of the agreement dated 28-11-90 and to execute the registered sale-deed within a period of two months from the date of decree. There was no direction in the decree to the decree-holders to pay or deposit the balance consideration within a period of two months. It was for the judgment-debtor/petitioner to receive the balance consideration and execute the sale deed within a period of two months from the date of decree. Obligation so imposed on

judgment-debtor/petitioner ought to have been discharged by him which could have been performed by issuing a notice by him to the decree-holders requiring the latter to pay the balance consideration within two months or to move a necessary application before the Executing Court within a period of two months seeking direction thereby to decree holders to make the payment of balance consideration within the period prescribed in the decree. In none of the clauses of the decree any condition is imposed on the decree-holders to make the payment of consideration within a particular or stipulated period. Decree under execution is couched and worded in a specific manner which obliges the judgment-debtor/petitioner to receive balance consideration and execute the registered sale-deed within a period of two months from the date of decree. There is no specific direction in the decree to the decree-holders to pay or deposit the balance consideration within a period of two months or in a particular period. Decree-holders could have been accused only if the judgment-debtor/petitioner would have within a period of two months from the date of decree as per the direction contained in the decree applied in the Executing Court or would have issued a notice to the decree holder to make the payment. This having not been done, decree-holders cannot be stated to have committed any default within the meaning of Section 28. Consequently, Section 28 of the Specific Relief Act has no application and does not get attracted in the facts & circumstances of the present case viewed in the light of the wordings employed in the decree. Admittedly, the subsequent purchasers i.e. respondent Nos. 3 and 4 have purchased the suit property from the judgment-debtor/petitioner during the pendency of the suit and have made construction during pendency of the suit. Accordingly, they being pendente lite transferee have been rightly directed in the decree to hand over the possession. They themselves are to be blamed if the purchase itself was made of the suit property during pendency

of lis and the construction was made during that period despite knowledge of pending suit for specific performance based on sale agreement in favour of plaintiffs. They were granted time to remove the construction at their own cost. This having not been done, the Executing Court directed the Court Nazir to remove the construction and submit his report on 12-01-09. Two days before, decree-holder No. 2 was murdered allegedly by respondent No. 3 and his brother against whom Sessions Trial is stated to be pending. Considering the entire facts and circumstances, the decree in question containing no obligation on the decree-holders to pay or deposit and balance consideration within a particular time cannot be construed in contrary manner so as to treat the decree holders as defaulters and deprive them of the fruits of the decree on the cost of life of one of the decree-holders. In case if the decree despite containing no obligation on decree holders is construed in contrary manner and decree-holders are considered as defaulters, this obviously would encourage lis pendence transfers in favour of persons with muscle powers. In the law cited by the learned Advocate for judgment-debtors, on obligation put on the decree-holder was found to have been contravened on account of failure on his part to make its compliance. In the case of Chanda (AIR 2007 Supreme Court 1514) (supra), itself, it has been observed :

"9. The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the Court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The Court does not cease to have the power to extend the time even though the trial Court had earlier directed in the decree that payment of balance price to be made by certain date and on failure the suit to stand dismissed. The power

exercisable under this section is discretionary.

Since as discussed hereinabove no time was fixed in the decree for making payment or deposit by the decree-holder, the question of extension of time did not arise so long as the execution petition is within limitation and the conditions or any of them contained in the decree is not flouted by the decree-holders. Powers under Article 227 of the Constitution of India are to be exercised to keep the subordinate Courts within the legal limitations and further to protect the litigants from injustice. Impugned order is not found to have caused any injustice. More so, it is found to be in furtherance of justice in the facts and circumstances of the case.

Resultantly, there being no substance in the petition, the same is hereby dismissed summarily with no order as to costs.

Petition dismissed.”

15. Besides, reliance is also placed upon another judgment of the Hon’ble the Apex Court rendered in “**Gurbax Singh v. Bhajan Singh alias Harbhajan Singh, 2010(15) SCC 739 : Law Finder Doc Id #548200**” (Date of Decision: 15.11.2022), wherein, Hon’ble the Apex Court decided the same issue in favour of Decree Holder.

16. Now, for deciding the issue, this Court realizes that two orders are before it i.e. order dated 25.04.2023 (P-5), vide which on the application dated 11.11.2021, filed by Decree Holder, time period of 10 working days was extended/granted to the Decree Holder to deposit the balance sale consideration.

Another order under challenge is dated 14.07.2023 (P-6), passed in the application dated 08.09.2021, whereby, prayer made by the Judgment Debtors (petitioners herein) for rescinding of the agreement to sell by virtue of Section 28(1) of the Act of 1963, was dismissed.

Although, as per the zimni orders produced by respondent No.1 (Decree Holder), application for rescinding of the agreement to sell has been filed on 25.11.2021, but petitioners (Judgment Debtors) have mentioned the date of the application in the petition as 08.09.2021.

Be that as it may, without any confusion on the said aspect, this Court deems it appropriate to proceed to decide the fate of the present revision petition, by taking note of the fact that at one point of time, and even thereafter, both the applications were pending before the Executing Court without any decision.

17. First of all, this Court is not convinced with the first argument addressed by the petitioners (JDs) that the order of extension of time granted to the Decree Holder, for depositing of the balance sale consideration is without jurisdiction. This question has already been answered by the Hon'ble the Apex Court in the judgment rendered in "*Ramakutty Gupta v. Avara*, 1994 AIR (Supreme Court) 1699 : Law Finder Doc Id #43155", wherein, the Hon'ble Apex Court held in categoric manner that after passing the decree for specific performance, the Court does not cease to have any jurisdiction. The Court retains control over the decree, even after the decree has been passed. Thus, power is vested with the Court to examine the situation, either for extension of time or for rescinding contract under Section 28(1) of the Act of 1963, as claimed for. **Emphasis to paragraph No.9 of the said judgment.**

18. Therefore, both the applications are maintainable before the Executing Court, as having been filed by the Judgment Debtors and Decree Holder in the present case.

In addition, this Court is of the view that application under

Section 28(1) of the Act of 1963, filed by the Judgment Debtors could also be instituted before the learned Appellate Court, where the appeal is stated to be pending till date. Thus, answer is against the petitioners (Judgment Debtors), and such applications are very well maintainable before the Executing Court also.

19. Before proceeding any more, by noticing the submissions and the law addressed by both the sides, this Court is having certain reservations for making its observations on the issues raised by both the sides in the present revision petition.

Reason for expressing the reservation is very simple that as the application under Section 28(1) of the Act of 1963 filed by the Judgment Debtors, has been disposed of being rendered infructuous, without dealing with it on merits, this Court has been deprived from having a perusal over the view point of the first Court i.e. the Executing Court, regarding the said issue.

20. On the other hand, vide order dated 25.04.2023 (P-5), time period has been extended, whereas, at that time, issue raised at the instance of Judgment Debtors regarding the rescinding of the agreement to sell was also pending before it. Thus, this Court feels that either the issue raised by the Judgment Debtors **could have been decided prior in time** or at least along with the application moved by the Decree Holder for seeking extension of time for depositing the balance sale consideration, which is sought after about 1011 days from the date of passing of the decree dated 04.02.2019.

21. Another aspect is that decision in one application i.e. filed by the Decree Holder for extension of time before even rendering the

application as infructuous filed by the Judgment Debtors, has resulted into the causing of prejudice to the rights of the Judgment Debtors, which in fact, has accrued because of undisputed fact of filing of the application by Decree Holder, after a long gap. Thus, the legitimate expectation of the Judgment Debtors would be that their rights under Section 28(1) of the Act of 1963, be decided first, because, in a situation, where the agreement to sell in question is held rescinded, plea for extension of time for depositing of balance sale consideration would automatically be rendered infructuous. In other words, that could be a justifiable reason with the Executing Court to pass an order for rendering infructuous of the said application.

However, it does not mean that submissions of the Judgment Debtors before this Court, regarding the rescinding of the agreement to sell, has been accepted. It is so observed, just on the basis of assumption taking a hypothetical situation.

In case, this Court now proceeds with the merits of the case and holds it otherwise, then in said situation rights of the Decree Holder would get prejudice, because the amount has already been deposited under the judicial order passed by the Executing Court, and probably, sale-deed has also been executed. Therefore, this Court is of the view that both the applications should be decided together, by one and the same Court, that may be the Executing Court, as in the present case.

22. Accordingly, present revision petition is allowed, and the **impugned orders dated 25.04.2023 (P-5) and dated 14.07.2023 (P-6), are hereby set-aside.**

Executing Court is directed to take note of all the facts in chronological order, and thereafter, decide both the applications together;

- (i) Application moved by the Decree Holder for extension of time for depositing of the balance sale consideration, in compliance to the decree dated 04.02.2019,
- and
- (ii) Application moved by the Judgment Debtors under Section 28(1) of the Special Relief Act, 1963, for rescinding of the agreement to sell dated 04.09.2012.

Let this exercise be completed within four weeks, from the date of receipt of certified copy of this order by the Executing Court.

Parties are directed to appear before the Executing Court together on or before 08.01.2024 for seeking a fresh decision in view of the directions passed by this Court, within the specified time.

Registry is directed to forward a copy of this order to the Learned District Judge, Ludhiana, for its further transmission and required action.

Nothing said here-in-above, be taken as an expression of opinion on merits, rather, same is based upon the *prima facie* basis.

(SANJAY VASHISTH)
JUDGE

December 20, 2023

J.Ram

Whether speaking/reasoned: ✓ *Yes*/~~No~~

Whether Reportable: ✓ *Yes*/~~No~~