

2023:PHHC:140271

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

CR-5833-2019 (O&M)
Date of decision: 02.11.2023

Harbhajan Singh

....Petitioner

Versus

Kuldeep Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sandeep Arora, Advocate for the petitioner
 Mr. Vipin Mahajan, Advocate for respondent no.1
 Mr. J.S.Mahal, Advocate for respondent no.2

ANIL KSHETARPAL, J (Oral)

1. The judgment debtor assails the correctness of the order dated 19.07.2019, passed by the Executing Court while permitting the decree holder to execute the decree while dismissing the petitioner's objection petition. In order to comprehend the issue involved in the present case, relevant facts, in brief, are required to be noticed.

2. The respondent-Kuldeep Singh filed a suit for possession by way of the specific performance of the agreement to sell. The same was decreed vide the judgment and decree dated 05.12.2014. A conditional decree for possession by way of specific performance of the agreement to sell was passed while directing the plaintiff to deposit the balance sale consideration, within a period of 2 months from the date of the decree. However, the defendant filed the first appeal. The aforesaid appeal was dismissed on 23.08.2017.

3. Para 16 of the judgment passed by the First Appellate Court reads as under:

“In view of my aforementioned discussion, I find that learned trial court has rightly decreed the suit of the respondent/plaintiff for possession by way of Specific Performance of agreement to sell dated 2.7.2009. The sale deed executed by appellant/defendant no.1 in favour of respondent/defendant no.2 is null and void and accordingly, I do not find any illegality in the Judgment and decree passed by learned trial court and there is no ground to interfere and accordingly appeal being devoid on merits is hereby dismissed. The parties are left to bear their own costs. The appellant and respondent/defendant no.2 are directed to execute the sale deed in favour of respondent/plaintiff Kuldip Singh within the period of two month from today on receipt of balance sale consideration, failing which respondent/plaintiff shall at liberty to get the sale deed executed in his favour through court of law by depositing the remaining sale consideration in the court. Decree be prepared. Trial court file be returned back along with a copy of this Judgment and appeal file be consigned to the Record Room.”

4. It is the case of the decree holder that a certified copy of the judgment was made available on 09.09.2017, and the decree holder immediately filed the application for deposit of the amount, which was allowed on 27.10.2017, and the amount was deposited in

the Court. He further submits that pursuant to the deposit of the amount, the sale deed has already been executed in favour of the decree holder on 09.08.2019.

5. Learned counsel representing the petitioner contends that as per the directions of the trial court, the plaintiff was required to deposit the amount within a period of 02 months from 05.12.2014. However, he failed to deposit the amount. Therefore, the conditional decree cannot be executed.

6. This Court has considered the submissions made by learned counsel representing the parties.

7. The judgment and decree passed by the trial court has merged in the judgment and decree passed by the First Appellate Court. The First Appellate Court has directed the petitioner to execute the sale deed within a period of 02 months on the receipt of the entire balance sale consideration. If the petitioner fails to execute the sale deed then an opportunity has been given to the decree holder to deposit the sale consideration in the court. In other words, no time has been fixed by the First Appellate Court for depositing the said amount in the Court. In this case, immediately an application for the execution of the decree was filed and the amount was deposited in the Court within nearly 02 months. Once the decree passed by the trial court stands merged with the judgment and decree passed by the First Appellate Court, the petitioner at

present cannot insist to execute the trial court's decree. It is the petitioner, who filed the first appeal. In these circumstances, no ground to interfere is made out.

8. Hence, dismissed.

9. All the pending miscellaneous applications, if any, are also disposed of.

02.11.2023

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No