

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. R. No.7282 of 2019

Pronounced On : December 13, 2023

Hemant Kumar

.... Petitioner

vs.

Jai Chand and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sachin Mittal, Advocate
for the petitioner.

Mr. Paramveer Singh, Advocate
for Mr. Samir Rathore, Advocate
for respondent no.1.

* * *

GURBIR SINGH, J. :

1. Challenge in this revision petition is to order dated 17.08.2019, passed by learned Additional Civil Judge (Senior Division), Hathin (Annexure P-4), whereby the application filed by respondent no.1 for recession of judgment and decree dated 01.07.2017 has been allowed.

2. The brief facts, relating to the passing of the impugned order, are that respondent no.1 herein - Jai Chand son of Munshi entered into an agreement to sell dated 02.11.2011 with the petitioner. The petitioner filed a suit for specific performance. Vide judgment and decree dated 01.07.2017, the said suit was decreed. It was held therein that the petitioner was entitled for specific performance of the agreement dated 02.11.2011, for payment of balance sale consideration and respondent no.1 was restrained from interfering in possession over the suit property. Respondent no.1 was also

directed to get the sale deed executed in respect of the suit property in favour of the petitioner and proforma respondent no.2, within one month of passing of judgment. Otherwise, the petitioner would be at liberty to get the sale deed executed in his favour as per agreement.

3. Respondent no.1 moved an application that he approached the petitioner many times for payment of balance sale consideration and execution of sale deed in his favour but he neither paid the balance sale consideration nor asked respondent no.1 for execution and registration of the sale deed, whereas the petitioner was required to pay the balance sale consideration within 45 days. So, the petitioner was not willing to perform his part of the agreement. Under Section 28 of the Specific Relief Act, if any decree-holder fails to pay the balance sale consideration and to get the sale deed registered, then in that case, judgment and decree passed in his favour is liable to be set aside.

4. In reply to the above-said application, the petitioner denied the allegations and stated that he approached respondent no.1 to come present before the office of Sub-Registrar, Hathin and receive the balance sale consideration to execute the sale deed and get the same registered but respondent no.1 avoided the matter on one pretext or the other.

5. After hearing both the parties, learned Trial Court allowed the application filed by respondent no.1 and agreement to sell dated 02.11.2011 was rescinded, subject to the condition that respondent no.1 would repay the money received by him as sale consideration to the petitioner, upon restoration of possession by the petitioner.

6. Learned counsel for the petitioner has argued that after passing

decree for specific performance, the Court does not become *functus officio*. The Court has power to enlarge the time for execution of decree or to extend time for compliance of the conditional decree, as mentioned in the decree for specific performance. There was no time fixed in the decree for deposit of the payment of the balance sale consideration and no notice was given by the judgment-debtor to pay the said amount. So, the learned Trial Court could not rescind the agreement to sell in question. The petitioner was always ready and willing to perform his part of the contract. The balance amount has already been deposited, in pursuance of the order dated 18.11.2019, passed in the present revision petition. Learned counsel has relied upon a judgment of Hon'ble Supreme Court in **Sardar Mohar Singh vs. Mangilal @ Mangtya – 1997 (9) SCC 217**, decided on 15.01.1997.

7. Learned counsel for respondent no.1 has argued that the decree in question was passed on 01.07.2017 and the sale deed was to be got executed in respect of the suit property within one month. The petitioner did not pay the balance amount within stipulated period nor moved any application for extension of time to pay the said amount. So, learned Trial Court has rightly passed the impugned order, thereby allowing application moved by respondent no.1, rescinding the agreement to sell dated 02.11.2011. He has relied upon two judgments of Hon'ble Supreme Court, passed in the cases of **V.S.Palanichamy Chettiar Firm vs. C. Alagappan – 1999(1) RCR (Civil) 634** and **P. Shyamala vs. Gundlur Masthan – 2023(2) RCR (Civil) 135**.

8. I have heard the submissions made by learned counsel for both the parties.

9. The relevant concluding portion of the ex-parte decree dated 01.07.2017, which has been passed in the case in hand, reads as under :-

“It is ordered that, the suit of the plaintiff succeed and decreed with costs to the effect that plaintiff is entitled of specific performance agreement dated 02.11.2011 on payment balance sale consideration and defendants are restrained from interfering in possession over the suit property. Defendants are directed to get the sale deed executed in respect of the suit property in favour of the plaintiff and proforma defendant within one month from today, otherwise the plaintiff is at liberty to get the sale deed executed in his favour as per agreement.”

10. In case **P. Shyamala (supra)**, relied upon by learned counsel for respondent no.1, it is held that if a decree-holder, under Section 28 of the Specific Relief Act, does not make application for 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, while relying on the case **V.S.Palanichamy Chettiar Firm (supra)**.

11. In the case in hand, the decree was passed on 01.07.2017. Although no time was fixed for depositing the amount of balance sale consideration but specific directions were given to the defendants to get the sale deed executed within one month from the date of passing the decree. Otherwise, the plaintiff was given liberty to get the sale deed executed in his favour as per the agreement. The plaintiff-petitioner did not take any step for depositing the sale consideration amount and there is nothing on the file

to show that the plaintiff-petitioner ever gave notice to the defendants-respondents for execution of the decree. There is only oral version that the plaintiff-petitioner approached the defendants-respondents to come before the office of Sub-Registrar and to receive the balance sale consideration and to execute and get the sale deed registered. During pendency of the application, defendants-respondents made statement that they were ready to get the sale deed registered but the plaintiff-petitioner was not ready. On 23.01.2019, the respondent made a statement that he had paid Rs.45,000/- to respondent Jai Chand and he will pay the balance consideration amount to get the sale deed registered. The case was adjourned. The plaintiff-petitioner failed to pay the balance sale consideration amount and the matter was dragged and ultimately, counsel for the plaintiff-petitioner made statement that plaintiff-petitioner was ready to dispose of the property and would make payment in December. The relevant extract of the impugned order reads as under :-

“Now the present application has been moved on 17.07.2018. Furthermore, perusal of case file shows that on filing of the application dated 02.01.2019 the applicant had made a statement that he is ready to get the sale deed registered but the plaintiff is not ready for registry. On 23.01.2019 the respondent has made a statement that he has paid Rs.45,000/- as per payment to respondent Jai Chand and by 20th May he will pay balance sale consideration and will get the sale deed registered. The matter was adjourned for 05.02.2019. However, no payment was made by the respondent on 05.02.2019, 12.02.2019,

26.02.2019, 27.02.2019, 07.03.2019, 20.05.2019, 30.05.2019, 31.05.2019, 17.07.2019 and even on 17.08.2019 including last opportunity. The counsel for the respondent had stated that respondent-plaintiff is ready for disposing of their property and they shall make payment in December. However, Ld. Counsel for the applicant vehemently submitted that no further time be given to the respondent as they are not in a position to pay balance sale consideration and are only lingering on the matter.”

12. Since the plaintiff-petitioner failed to pay the balance consideration amount within a reasonable time even after making the statement in the Court and further time was sought till December, in such circumstances, it can be safely concluded that plaintiff-petitioner was not ready to pay the balance sale consideration amount and to get the sale deed executed and registered. In case **Sardar Mohar Singh** (*supra*), relied upon by learned counsel for the plaintiff-petitioner, it is held that the Court can grant extension of time to the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree. In this case, the Trial Court has directed the respondent to refund the earnest money and also to pay the quantified damages, as agreed in the contract, within a period of three months and in default, to execute the sale deed. No doubt, the Court can grant extension of time after passing decree for specific performance of agreement and the Trial Court has its power and jurisdiction to deal with such matters till the decree is fully satisfied. In the case in hand, the petitioner did not give notice to the judgment-debtor to receive the balance

sale consideration. He did not move any application for permission to deposit the balance sale consideration. The petitioner failed to pay the balance sale consideration despite getting so many adjournments, as is clear from the impugned order. Although order of rescinding the contract for sale of immovable property, the specific performance of which has been decreed, is a harsh order but decree-holder intentionally failed to pay the balance amount of consideration. So, this Court is of the view that the learned Court below is justified to rescind the agreement dated 02.11.2011.

13. Accordingly, I do not find any illegality, perversity or infirmity in the impugned order dated 17.08.2019 passed by the Court below. The present revision petition is without any merit and is accordingly dismissed.

14. Pending applications, if any, shall stand disposed of along with this judgment.

December 13, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.