

2023:PHHC: 094482

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

CR-7310-2019
Date of Decision: 25.07.2023

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JAGBIR SINGH

.....Petitioner

Versus

RAJENDER DHAWAN

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Amit Parashar, Advocate for the petitioner.

GURBIR SINGH, J (ORAL)

The revision petition has been filed under Article 227 of Constitution of India for setting aside impugned order dated 04.05.2019 passed by learned Addl.Civil Judge (Sr.Divn) Faridabad whereby application filed by the petitioner for depositing the remaining amount of Rs.39,00,000/- for execution of the sale deed in favour of the petitioner-decree holder/plaintiff has not been accepted.

Learned counsel for the petitioner submits that the suit was decreed ex-parte and the respondent never moved any application for extension of contract. He further submitted that a decree of specific performance is in continuance and not final. The Court below is within its power to extend the time. He has referred to judgment of ***Pawan Kumar Vs. Mangal Sain Bansal, 2010(22) R.C.R.(Civil) 777*** passed by Co-ordinate Bench of this Court and ***Ramakutty Gupta Gupta Vs. Avara:1994 AIR (SC) 1699*** passed by Hon'ble Supreme Court.

Heard.

The Civil Suit No. 223 of 2017 filed by the plaintiff for specific performance of agreement dated 20.07.2017 was decreed on

28.02.2019 and the decree sheet is as under:-

“It is ordered that it is held that plaintiff is entitled to get the agreement to sell dated 20.07.2017 enforced, therefore, suit is decreed in ex-parte with costs and necessary direction is hereby issued to the defendant to execute and register sale deed in respect of suit land in terms of agreement to sell dated 20.07.2017, on receiving balance sale consideration. The expenses for execution and registration of sale deed shall be borne by the plaintiff and plaintiff is directed to deposit the amount of balance sale consideration within a period of two months from today failing which suit shall deemed to be dismissed. After deposit of balance sale consideration the defendant is directed to execute and register sale deed in favour of plaintiff within two months from the receipt of balance sale consideration failing which plaintiff shall be at liberty to get the sale deed executed and registered through the assistance of the court. Till the execution and registration of sale deed in favour of plaintiff the defendant is restrained from alienating the suit property in any manner.”

Thereafter, the petitioner moved execution petition on 04.05.2019 for extension of time to deposit the amount mentioned in the decree but the same was declined vide impugned order dated 04.05.2019. The same is reproduced as under:-

“Notice sent to JD received back unserved. At this stage learned counsel for DH moved application for depositing remaining amount and an application under Order 21 Rule 22 CPC for attachment of the suit property. Perusal of judgment dated 28.02.2019 passed by Dr. Ashok Kumar, the then learned Addl. Civil Judge (Sr. Divn.), Faridabad show that plaintiff was given two months time for depositing balance sale consideration. Said two months time started from 28.02.2019 expired on 28.04.2019 and present application for depositing balance sale consideration being moved today. To my considered view said application cannot be accepted at this juncture.

2. Let fresh notice be issued to the JD for 23.10.2019. Let notice of application under Order 21 Rule 22 CPC be also sent to the JD for the date fixed.”

Since the learned Executing Court passed the order without

considering the averments made in the application and the fact that the decree passed in suit for performance of agreement is not the final decree. The Court under Section 28 of Specific Relief Act can extend the time for deposit of purchase money or balance of purchase money. The Court after passing decree of specific performance does not become functus officio.

In view of the discussion above the impugned order is not sustainable in the eyes of law. The impugned order is hereby set aside and the learned trial Court is directed to decide the application afresh interalia keeping in view Section 28 of the Specific Relief Act.

Petition stands disposed of.

(GURBIR SINGH)
JUDGE

25.07.2023

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