

203.

2024:PHHC:033134

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

Civil Revision No.3489 of 2017 (O&M)
Date of Decision: 04.03.2024

Jagtar Singh

... Petitioner

Versus

Tarlok Singh

... Respondent

2.

Civil Revision No.3490 of 2017

Jagtar Singh

... Petitioner

Versus

Tarlok Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Ankur Bansal, Advocate, for the petitioner.

Mr. Sushant Kohli, Advocate, for the respondent.

GURBIR SINGH, J.

1. By this common order, above said two revision petitions are being disposed of as the same have arisen out of the same proceedings. These revision petitions have been filed by Jagtar Singh, who is Judgment Debtor (hereinafter called, “Judgment Debtor”). In Civil Revision No.3490 of 2017, challenge is to the order dated 22.03.2017 whereby the application filed by the Decree Holder for extension of time for depositing the balance sale consideration and permission to deposit the same in the Court, has been allowed. Whereas in Civil Revision No.3489 of 2017, challenge is to the

order dated 26.04.2017 passed by learned Civil Judge (Junior Division), Jalandhar whereby the application filed by Tarlok Singh, respondent herein i.e. Decree Holder (hereinafter called, "Decree Holder") for depositing balance sale consideration, has been allowed.

2. The facts necessary for disposal of these revision petitions are that Tarlok Singh, Decree Holder, filed a suit for specific performance of an agreement to sell dated 04.07.2012 with regard to sale of the house or in the alternative, suit for recovery.

2.1 Vide judgment and decree dated 02.11.2016, said suit was decreed ex-parte. The extract of said judgment is as under:-

"12. In view of my above-said discussion on issue No.1 to 6, the present suit of the plaintiff is hereby ex-parte decreed with costs. Plaintiff is held entitled for the possession of suit property i.e. House No.78 situate at Village Ladhewali Tehsil & District Jalandhar measuring 9 marle 2 Sq. Feet (35-0"x70 = 2450 Sq. Ft marle, with all rights pertaining to the aforesaid house comprised in khasra No. 24//17, 21, 22, 23, 24, 25//16/1/2, 16/2, 17/1/1, 17/2/2, 25/2, 27//5/2, 28//1/1, 2/1, 3/1, 24//18, 19/1/2, 19/2, 20/1/2, 20/2 shown red in the site plan by way of specific Performance of the agreement to sell dated 04.07.2012. Plaintiff is directed to deposit balance sale deed in court within one month from this judgment. Defendant is directed to execute sale deed of disputed property in favour of plaintiff within two months from this judgment after receiving balance sale consideration. Decree sheet be drawn accordingly. File be consigned to the Record Room."

The Decree Holder moved an application dated 20.03.2017 for extension of time in depositing the balance sale consideration and for permission to deposit the same in the Court. Vide order dated 22.03.2017, said application was allowed and one month time was granted to the Decree Holder for depositing the sale consideration. Said order is as under:-

“Counsel for the applicant made application for extension the time of depositing the balance sale consideration. As per Hon'ble Supreme Court of India in the case title as Chanda through LRs Vs. Rattni and another reported as 2007(3) PLR 307. The time can be extending for depositing the balance sale consideration. Accordingly in view of the averments made in the application the present application is hereby allowed and one week time from today is granted to applicant to deposit balance sale consideration. Papers to be consigned to record room.”

An application dated 29.03.2017 was filed on 30.03.2017 by the Decree Holder to deposit the amount of sale consideration. Para Nos.2 and 3 of said application are as under:-

“2. That vide order dated 02-11-2016, this court directed the present applicant Tarlok Singh to deposit the sum of Rs. 25,00,000/- as the rest amount has been already been paid to the defendant. The said payment of Rs.25,00,000/- is being made to Jagtar Singh by way of cheque no.002836 dated 28/3/2017. BOI Cheru Branch.

3. That vide order dated 22-03-2017, the time has already been extended to one week by this Hon'ble court and

accordingly the applicant has applied for certified copy of the order on 23-03-2017 vide application no.33207. The said copy is not prepared.”

On the said application, the Court passed the following order on 26.04.2017:-

*“The present application has been filed by Decree Holder on 29.03.2017 along-with cheque of Rs. 25 Lakh in favour of Judgment Debtor Jagtar Singh for depositing balance sale consideration. The counsel for Judgment Debtor, Sh. Sanjiv Bansal filed power of attorney and vehemently argued that time cannot be extended for depositing balance sale consideration. Learned counsel for Judgment Debtor seeks time for filing objections. But perusal of case file shows that undersigned has already made order dated 22.03.2017 and time was already extended for depositing balance sale consideration in view of law laid down by **Supreme Court of India, in the case titled as Chanda through LR's vs. Rattani and Ors. Reported as 2007 (3) PLR 307**. Therefore, there is no scope for filing objections. Moreover, in demonetization it is difficult to collect cash amount of Rs. 25 lakh. But counsel for Decree Holder made request that he will also deposit cash amount of Rs. 25 lakh in court by depositing challan form and he has already place on record cheque of Rs. 25 lakh in favour of Judgment Debtor. The bona fide intention of Decree Holder is very much clear from cheque of Rs. 25 lakh issue in favour of Judgment Debtor. The Ld. Counsel for Judgment Debtor has already filed application under Order 9 Rule 13 of CPC for setting aside ex parte decree against Judgment Debtor. Therefore, if he has any objection he may be take the same in*

execution if filed by Decree Holder. Accordingly, papers are ordered to be attached with main suit file and consigned to record room.”

3. Learned counsel for the petitioner-Judgment Debtor has argued that as per the original decree, balance sale consideration was required to be deposited within a month, but Decree Holder failed to deposit the same. He even failed to deposit the amount of balance consideration within a week for which extension was given. The petitioner-Judgment Debtor was not even given a notice for grant of extension of time to deposit the amount, which was required to be given to him. Reliance is placed on ***Tara Singh (since deceased) through his LRs Versus Sandeep Kumar and others, 2016(1) PLR 408.***

4. Learned counsel further submits that a cheque dated 28.03.2017 was given to the Court but on that date, there was only balance of Rs.63,000/- and odd in the account of the respondent-Decree Holder. He was not having sufficient funds to even honour the cheque. Thereafter, the balance amount was not deposited within reasonable time but said amount was deposited in the government treasury vide voucher dated 26.04.2017. Since there was no order to deposit the balance sale consideration in the treasury and said amount was deposited by the respondent-Decree Holder on his own and as such, he failed to adhere to the decree, so, contract should be rescinded. Reliance is placed in case ***P.R. Yelumalai Versus N.M. Ravi, 2015(5) R.C.R. (Civil) 585.*** It is submitted that in the said case, there was a delay of one month in depositing the balance consideration

amount and suit was dismissed on account of non-payment of balance amount of sale consideration. Further reliance is placed in case *Smt. Krishna Versus Naresh Kumar and others, 2015(7) R.C.R. (Civil) 752.*

5. Learned counsel for the respondent has argued that respondent-Decree Holder appeared in the Court, filed written statement and after completion of pleadings, issues were framed, but during recording of evidence, he failed to appear and was proceeded against ex-parte. He intentionally absented from Court and did not opt to defend the suit. Decree was passed ex-parte. The court extended time by one week. Since certified copy was not ready and he was not aware how balance sale consideration was to be deposited, so, he moved an application for depositing the amount and also submitted cheque of the said amount. Decree Holder was very much ready with the amount. The Court issued treasury challan dated 26.04.2017 under its signatures and balance amount of Rs.25 lakhs was deposited without any delay. The Court has every power to extend time to deposit the balance sale consideration. Decree was passed on 02.11.2016 and strenuous efforts were made to deposit the balance sale consideration and finally, the amount of balance sale consideration was deposited as per treasury voucher dated 26.04.2017. There was no lapse on the part of the Decree Holder.

6. I have heard the submissions of learned counsel for the parties and have gone through the file.

7. In case ***Kishor Ghanshyamsa Paralikar (dead) Versus Balaji Mandir Sansthan Mangrul (Nath) and another, 2022(3) R.C.R. (Civil) 37***, it is held by the Hon'ble Supreme Court that Section 28 of the Specific Relief Act permits the Judgment Debtors to seek rescission of contract but it also permits extension of time by the Court to pay balance amount.

8. In the case in hand, although one month time was granted to the Decree Holder to deposit the balance sale consideration but there was no condition in the decree if Decree Holder failed to deposit the amount of balance consideration in a particular period, then suit would automatically be considered as dismissed. It is well settled that the suit for specific performance does not come to an end on the passing of a decree and the Court which has passed the decree for specific performance retains control over the decree even after the decree has been passed.

9. In case ***Chanda (dead) through LRs Versus Rattni and another, 2007 AIR (Supreme Court) 1514***, the Hon'ble Supreme Court held that the Court cannot ordinarily annul the decree for specific performance once passed by it. Para Nos.8 and 9 of said judgment read as under:-

“The present section corresponds to Section 35 (c) of the Specific Relief Act, 1877 (hereinafter referred to as the 'repealed Act') under which it was open to the Vendor or lessor in the circumstances mentioned in that Section to bring a separate suit for rescission; but this Section goes further and gives to the Vendor or lessor the right to seek rescission in the same suit, when after the suit for specific performance is

decreed the plaintiff fails to pay the purchase money within the period fixed. The present section, therefore, seeks to provide complete relief to both the parties in terms of a decree for specific performance in the same suit without requiring one of the parties to initiate separate proceedings. The object is to avoid multiplicity of suits. Likewise under the present provision where the purchaser or lessee has paid the money, he is entitled in the suit for specific performance to the reliefs as indicated in sub-section (3) like, partition, possession etc. A suit for specific performance does not come to an end on passing of a decree and the Court which has passed the decree for specific performance retains the control over the decree even after the decree has been passed.

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 suit to stand dismissed. The power exercisable under this Section is discretionary.”*

10. In the case in hand, the amount has been deposited within a period of six months in the government treasury under the signatures of the Court. In case ***P.R. Yelumalai (supra)***, it was a conditional decree. It was mentioned in the decree itself by the trial Court that if balance amount of sale consideration was not deposited within one month from the date of the

decree, suit would be deemed to have been dismissed. In case *Smt. Krishna (supra)*, the plaintiff, who secured the decree, had deposited the balance amount of sale consideration after 11 years and 11 months. Both these authorities are of no help to the petitioner-Judgment Debtor.

11. Moreover, the petitioner-Judgment Debtor has not even filed any application for rescinding the contract.

12. In the light of above discussion, this Court is of the view that the learned trial Court has rightly extended time and thereafter, got deposited the amount of balance sale consideration. No ground is made out for interference in the well reasoned orders. The revision petitions are without merits and are dismissed accordingly.

(GURBIR SINGH)
JUDGE

March 04, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No