

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

117

ESA-12-2019 (O&M)

Date of decision: 18.07.2024

BALBIR SINGH

..Appellant

Versus

GURNAM SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

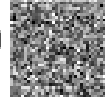
Present: Mr. Alok Mittal, Advocate for the appellant.

Mr. Vijay Kumar Jindal, Sr. Advocate
with Mr. Akshay Kumar Jindal, Advocate
and Mr. Vijayveer Singh, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. There is a final decree passed in a suit for possession by way of a specific performance of the agreement to sell in favour of the appellant (plaintiff). His suit for possession by way of specific performance of the agreement to sell was decreed on 05.12.2011 with the following observations:-

“35. In view of my findings above, the suit of the plaintiff succeeds and accordingly, the same is ordered to be decreed with costs. The plaintiff is held entitled to the possession of the property in dispute fully detailed in the head note of the plaint on the payment of remaining sale consideration. The defendant is directed to execute and register the sale deed in favour of the plaintiff after receiving the balance amount of Rs.25,58,050/- and after adjusting the amount of Rs.4,00,000/- received as earnest money within a period of two months from the date of judgment and decree failing which, the plaintiff shall be entitled to get the sale deed executed in his favour through Court. Plaintiff is further held entitled to relief of permanent injunction restraining the defendant from alienating the suit land to anybody else except the plaintiff. Decree sheet be prepared. File be consigned to the record room.”



2. The defendant (respondent herein) filed first appeal against the decree, in which interim order was passed on 14.01.2012. The appellant appears to have filed execution petition, however, keeping in view the pendency of the first appeal, he withdrew the execution petition on 21.10.2013. Ultimately, the appeal filed by the defendant was dismissed on 16.03.2015. The appellant sent a notice to the respondent while requesting him to execute the sale deed, which was not replied by him. In the meantime, defendant file regular second appeal, which was dismissed on 07.12.2015. During the pendency of the second appeal, the appellant filed fresh execution petition on 06.07.2015 along with a request to deposit the decretal amount, which was deposited on 07.07.2015.

3. In this case, the Executing Court as well as the First Appellate Court have dismissed the execution petition on the ground that the appellant has failed to deposit the amount within a period of two months as directed by the Court. In substance, the Courts have held that the appellant has failed to fulfill the conditional decree.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. The learned counsel representing the appellant while highlighting the aforesaid facts submits that there is no default on part of the appellant.

6. Per contra, the learned counsel representing the respondent submits that the appellant was required to deposit the amount within a period of two months from the date of the judgment of the trial Court, however, he failed to comply with the same. Hence, the conditional decree has become unexecutable.



7. This Court has considered the submissions of the learned counsel representing the parties.

8. On a careful reading of the operative part of the judgment passed by the trial Court, it is evident that there is no direction to the appellant to deposit the amount. In fact, the trial Court has not prepared the decree in accordance with the essentials of law. The Court was required to state that the appellant would deposit the amount in the Court if defendant fails to accept the payment, however, such direction is absent. In any case, it is the respondent who filed the first appeal, in which interim order was passed. The respondent cannot be allowed to capitalize on the appeal filed by him. Once, there was interim order in favour of the respondent, the appellant could not continue with the execution petition. Hence, he withdrew the same. Additionally, in substance, the Courts have frustrated the decree by taking a hyper technical view. In any case, the first appeal as well as second appeal filed by the respondent remained pending. In such circumstances, it is correct to hold that the appellant was at fault.

9. Keeping in view the aforesaid discussion, the appeal is allowed. The impugned orders passed by the Courts below are set aside. The amount has already been deposited. The respondent is called upon to execute the sale deed in favour of the appellant, failing which the Executing Court will depute its official to execute the sale deed in favour of the appellant.

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

July 18th, 2024

(ANIL KSHETARPAL)
JUDGE

By

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No