

122.

2024:PHHC:037318

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

Civil Revision No.1134 of 2024

Date of decision: 05.03.2024

Sangram Singh (deceased) through his LRs

.... Petitioners

Versus

Munesh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Ms. Meenakshi Dogra, Advocate, for the petitioners.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the orders dated 11.12.2023 passed by learned Additional Civil Judge (Senior Division), Sohna, District Court Gurugram, whereby the application dated 28.08.2023 (Annexure P-5) filed by respondent No.1-Decree Holder for extension of time to deposit balance sale consideration has been allowed and the application dated 01.09.2023 (Annexure P-7) filed by the legal representatives of petitioner-Sangram Singh under Section 28 of the Specific Relief Act, 1963 for rescinding of contract has been dismissed.

2. In brief, the facts which are necessary for disposal of this revision petition are that respondent No.1-plaintiff (hereinafter called, “Decree Holder”) filed a suit for specific performance of the agreement to

sell dated 22.08.2007 with consequential relief of permanent injunction restraining defendant No.2 from alienating the suit land. Vide judgment dated 17.09.2015, said suit was decreed and decree for specific performance was passed. The legal representatives of petitioner-Sangram Singh and respondent No.2 herein i.e. Judgment Debtors filed appeal, which was dismissed on 14.09.2022. Thereafter, they filed Regular Second Appeal before this Court, which was also dismissed on 15.09.2023.

2.1 The Decree Holder moved Execution Petition (Annexure P-3) dated 17.11.2022. Same day i.e. 17.11.2022, an application (Annexure P-4) for depositing the remaining sale consideration was also moved by the Decree Holder. On 28.08.2023, another application was moved by the Decree Holder for extension of time for depositing the sale consideration. The JD filed reply. On 01.09.2023, the JDs moved an application (Annexure P-7) under Section 28 of the Specific Relief Act that as per law, the contract has been rescinded and execution is not maintainable and has become infructuous for want of not depositing the balance sale consideration within the prescribed time. Thereafter, Decree Holder moved an application dated 18.10.2023 (Annexure P-8) for separating the application for extension of time to deposit the balance sale consideration from the execution petition and attaching the same with the main file.

2.2 The learned Executing Court, vide impugned order dated 11.12.2023, granted time to the Decree Holder till 21.12.2023 to deposit balance sale consideration in the Court as per Rules. The application under

Section 28 of the Specific Relief Act moved by the LR's of JD was disposed of in view of the order passed on the application of the Decree Holder whereby Decree Holder was granted time till 21.12.2023 to deposit the balance sale consideration.

3. Learned counsel for the petitioners has argued that only two months' time was granted to the Decree Holder to get the sale deed executed on payment of balance sale consideration. Two months' time was again granted in appeal decided on 14.09.2022 but the amount was not deposited within a period of two months, rather execution was filed on 17.11.2022 when time to deposit the balance amount of consideration had already expired. The Decree Holder cleverly moved an application to deposit the balance sale consideration without tendering the actual payment. Since said application was moved without any prayer for extension of time, so same was not maintainable. After nine months of the filing of the execution, application for extension of time to deposit the balance sale consideration was filed on 28.08.2023. Regular Second Appeal was filed in November, 2022 whereas application for extension of time was moved on 28.08.2023 i.e. after about 10 months of filing of the Regular Second Appeal. The filing of RSA had no bearing on the application for extension of time. The application for extension of time was filed after 399 days of judgment passed by the first appellate Court. In fact, the Decree Holder was not having sufficient funds to pay as balance sale consideration. In other words, he was not ready and willing to get the decree executed and

cleverly moved application for deposit of the balance amount of sale consideration without actually tendering the same to the Court. Reliance is placed on *Prem Jeevan Versus K.S. Venkata Raman and another, 2017 AIR (Supreme Court) 623*; *P. Shyamala Versus Gundlur Masthan, 2023 (2) R.C.R. (Civil) 135*, authorities of Hon'ble Supreme Court; and case in *Kamlesh Kumari Versus Dr. Amit Arya, 2023(1) R.C.R. (Civil) 676*, an authority of this Court.

4. I have heard the submissions of learned counsel for the petitioners and have gone through the file.

5. In case *P. Shyamala (supra)*, it is held by the Hon'ble Supreme Court that power under Section 28 of the Specific Relief Act is discretionary and the Court has to pass order as the justice may require. Section 28 of said Act seeks to provide complete relief to both the parties in terms of the decree for specific performance.

6. 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.

7. 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:-

“8. 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.”

8. In the case in hand, the operative part of the judgment dated 17.09.2015 passed by learned trial Court reads as under:-

“ Relief

16. Keeping in view of my findings on issues No.1 to 3, the present suit of the plaintiff succeeds and same is hereby decreed with costs and a decree for possession by way of specific performance by directing the defendants to execute the sale deed qua the land in suit mentioned in para No.1 of the plaint in favour of plaintiff within a period of two months from today itself on payment of balance sale consideration by plaintiff along with consequential relief of permanent injunction restraining the defendants No.2 non-attending the suit land in any manner, and the sale deed in favour of defendant No.2 to the extent of share of defendant No.1 is liable to be cancelled and same is not binding on the plaintiff, is hereby passed in favour of the plaintiff and against the defendants and in case of failure of defendants to get the sale deed executed on the basis of agreement dated 22.08.2007, plaintiff would be at liberty to get the sale deed executed through the process of the court on depositing of balance sale consideration. Decree sheet be prepared accordingly. File be consigned to record, room after due compliance.”

9. In case of failure of defendants to get the sale deed executed on the basis of agreement dated 22.08.2007, the plaintiff would be at liberty to get the sale deed executed through the process of the Court on depositing the balance sale consideration.

10. The defendants-JDs filed an appeal which was dismissed on 14.09.2022. Two months time was given to the LRs of Sangram Singh, petitioner, to execute the sale deed. The extract of said judgment reads as under:-

*“The L.Rs of deceased defendant No.1 Sangram Singh, in view of the law laid down by our Hon’ble High Court in **Shri Ram Vs. Puran Mal: 1999(4) RCR (Civil) 432**, wherein it has been held that legal representatives of the proposed vendor immovable property are bound by the agreement executed by their predecessor, are hereby directed to execute sale deed in respect of the suit land as detailed above, on receipt of balance sale consideration from the plaintiff, within a period of two months from the date of passing of this judgment, failing which the performance of decree may be got enforced by the respondent-plaintiff through the Court in accordance with law.”*

11. In other words, the first duty is cast upon the LRs of defendant No.1 by the learned appellate Court to execute the sale deed within two months from the date of judgment on receipt of balance sale consideration from the plaintiff. There is nothing on the file that the LRs of defendant No.1-JD took any step to execute the sale deed. No notice was given to the

plaintiff asking for payment of the balance sale consideration for execution of the sale deed. In case the LR of defendant No.1 did not execute the sale deed on the basis of agreement to sell, then liberty was granted to the plaintiff to get the sale deed executed through the process of the Court on depositing the balance sale consideration. In other words, no time was given to the plaintiff to deposit the balance sale consideration in a particular period and thereafter to get the sale deed executed.

12. No step was taken by the LR of the JD to get the sale deed executed. Since the first duty was cast upon the LR of the JD to execute the sale deed within a period of two months and thereafter, the plaintiff-Decree Holder was entitled to get the sale deed executed through the court. Execution was filed on 17.11.2022 i.e. within 3 days of expiry of period of two months granted by the appellate Court for execution of the sale deed with application to deposit the balance sale consideration and the learned Executing Court did not pass any order on the said application. Neither said application was dismissed nor allowed but it remained pending. So, no fault can be found with the Decree Holder. Thereafter, an application was moved on 28.08.2023 for extension of time to deposit the balance sale consideration. Thus, I am of the view that the Decree Holder had made all efforts to deposit the amount of balance sale consideration and it cannot be said that there was intentional default on the part of the Decree Holder. In case ***Prem Jeevan (supra)***, the Decree Holder claimed to have given a cheque on 04.12.2008 for the amount of consideration but same was

returned and was not accepted by the Judgment Debtor and thereafter, Decree Holder applied for execution in the year 2010 after making deposit of decretal amount on 07.10.2007. The Executing Court held that there was no proof that the Decree Holder sought enlargement of time and he, without seeking extension in time, moved an application for execution. So, it was held that the execution application was not maintainable. The High Court set aside the order passed by the Executing Court but the learned Apex Court held that neither deposit was made within the stipulated time nor extension of time was sought or granted and no explanation had been furnished for delaying in making the payment for deposit and the Decree Holder took the plea that unless Judgment Debtor seeks rescinding of the contract in terms of Section 28 of the Specific Relief Act, the decree remains executable in spite of expiry of period for deposit, with the only obligation on the part of the Decree Holder to pay interest was held, cannot be accepted. In case ***Kamlesh Kumari (supra)***, the execution was filed after 87 days of the two months extended time, part payment was deposited after 138 days and balance amount was deposited after about 245 days with effect from the extended time i.e. 08.04.2016. So, it was held that the conduct of the Decree Holder was apparent that he was willing to get the sale deed executed but never ready with the money which he never deposited within two months extended time. Both authorities cited by learned counsel for the petitioners are of no help to the petitioners.

13. After passing of the decree for specific performance, a valuable right is accrued to the plaintiff-Decree Holder. Unless there are circumstances which speak that the Decree Holder is intentionally delaying/postponing the matter and is not ready with the money, then only contract can be rescinded. Since the Decree Holder has been given extension to deposit the amount, so, the contract, in question, cannot be rescinded.

14. I do not find any ground for interference in the well reasoned orders. The revision petition is without merit and is dismissed accordingly.

(GURBIR SINGH)
JUDGE

March 05, 2024
sanjeev

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