



CR-1404-2024 (O&M) and connected case

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

Pronounced on: 3rd July, 2024

1. CR-1404-2024 (O&M)

Mahender Singh (since deceased) and others ...Petitioners

Versus

Rattan Singh ...Respondent

2. CR-1049-2024 (O&M)

Mahender Singh (since deceased)) through LR ...Petitioners

Versus

Rattan Singh and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Rajesh Goyal, Advocate
for the petitioners in both the cases.

Mr. Sandeep Singh, Advocate
for the respondent in CR-1404-2024 and
for respondent No. 1 in CR-1049-2024.

RITU TAGORE, J

1. This common order shall dispose of above captioned revision-petitions arising out of the same execution petition No.61 of 2022 titled as Rattan Singh Vs Mahender Singh and others.

2. Both captioned revision-petitions are directed against the order dated

19.01.2024 (Annexure P-7) passed by learned Additional Civil Judge (Senior

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Division), Safidon, District Jind, wherein objection applications (Annexure P-5) filed by Trilok Singh, Gagandeep and Mandeep Ss/oTrilok Singh and petition under Section 28 of The Specific Relief Act 1963, (hereinafter referred to as 'the Act') filed by Mahender Singh, have been dismissed and further directed the decree-holder (present respondent) to pay balance sale consideration of Rs. 4,11,875/- within two months of the order, excluding the cost of the suit for execution of the sale deed.

3. Both the parties have agreed and consented to decide the above revision- petitions together, involving similar questions of law.

4. Relevant facts necessary for adjudication are as under:

Mahender Singh through his LRs and others are the petitioners in above revision-petitions. Respondent, Rattan Singh, filed a Civil Suit No.28 dated 29.01.2004, titled Rattan Singh Vs. Mahender Singh and others for possession against petitioners, Mahender Singh (since deceased) and others. The suit, after contest, was decreed vide judgment and decree dated 17.03.2010 (Annexure P-1). The learned trial Court passed the decree in the following terms, as extracted below: -

“As a sequel of above issue-wise findings, suit of the plaintiff for possession succeeds and same is hereby decreed with costs. Defendant No. 1 is directed to execute the sale deed in favour of plaintiff within the three months of the date of order. Plaintiff has also the right to take the possession of the suit property after execution of the sale deed. Decree-sheet be prepared accordingly. File be consigned to the record-room, after due compliance.”

5. The petitioner, Mahender Singh (through LRs) and his grand children,



through their guardian mother, preferred an appeal, titled Mahender Singh (through LRs) and others Vs Rattan Singh, against judgment and decree dated 17.03.2010 (Annexure P-1). On 19.04.2011 (as pleaded in the paper-book), the operation of the judgment and decree passed by the learned trial Court was stayed till further orders. Ultimately, the First Appeal was dismissed vide judgment and decree dated 23.04.2012 (Annexure P-2), which reads as under:

“ In view of above discussion, there is no merit in appeal and same is, therefore, dismissed with costs. Decree-sheet be prepared accordingly. Trial Court record along with copy of this judgment be sent to Court concerned and appeal file be consigned to record room.”

6. Regular Second Appeal No. 3072-2012, preferred by the petitioners was also dismissed on 25.05.2022 (Annexure P-3). The operative part of the judgment passed by this Court, reads as under: -

“As a sequel to the above, the instant appeal being devoid of merits, stands dismissed. The judgments & decrees passed by both the Courts below are affirmed.”

7. During the pendency of RSA, the execution of the decree remained stayed. After finality of the judgment and decree, respondent-Rattan Singh, filed an execution petition before the learned Execution Court. The petitioners filed applications raising several objections as to the non-maintainability of the execution-petition (as detailed therein) and an application for rescission of contract under Section 28 of the Act by pleading that since decree-holder Rattan Singh (respondent in the petitions) did not deposit the amount within three months from the date of judgment and decree passed by the learned trial Court, and even after filing of the execution petition, did not deposit the

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remaining amount of sale consideration for fourteen months, in view of the provisions of Section 28 of the Act, the contract stands rescinded. The decree-holder filed the reply and opposed the applications. On hearing the parties, learned Executing Court dismissed the objection applications and application under Section 28 of the Act vide impugned order dated 19.01.2024 (Annexure P-7).

8. Learned counsel for the petitioners has challenged the order dated 19.01.2024 (Annexure P-7), urging that the learned Executing Court has failed to consider the objections taken by the petitioners in correct perspective. Learned counsel submits that respondent decree-holder did not comply with the directions contained in the decree (Annexure P-1) and did not deposit the remaining amount of sale consideration within three months of the passing of the judgment and decree for execution of the sale deed. It is stated that even after filing of the execution petition, the respondent decree-holder did not deposit or tender the remaining sale consideration. Furthermore, in the execution petition, the respondent did not raise any averment regarding the payment of remaining sale consideration, thus failing to exhibit his readiness and willingness to comply with the decree. Such readiness and willingness must persist on the part of the decree-holder throughout until the execution of the sale deed under the contract. The learned counsel submits that facts of the case demonstrate that decree-holder has not been willing and ready to perform his part of the contract, despite getting a decree of specific performance in his favour and matter is squarely covered under the provisions of Section 28 of the Act. Learned Executing Court failed to appreciate the essence of the provisions of Section 28 of the Act and the proposition of law discussed in



various judicial decisions, and thus erred in dismissing the objections and application filed by the petitioners under Section 28 of the Act.

9. Taking further his submissions, learned counsel states that learned Executing Court, on its own and beyond the decree, granted additional time to the decree-holder to deposit the remaining amount of sale consideration, which is certainly impermissible in the eyes of law. It is submitted that impugned order (Annexure P-7) is indefensible under the law and is liable to be set aside. In support of his arguments, he has referred to a judgment of this Court in the case of **Kamlesh Kumari vs. Dr. Amit Arya**, 2023 (1) RCR (Civil) 676 and a judgment of Hon'ble the Supreme Court in the case of **P. Shyamala vs. Gundlur Masthan**, 2023(2) RCR (Civil) 135.

10. Contrarily, learned counsel for the respondent (decree-holder), defending the order under challenge in these revision-petitions, stated that, in fact, judgment-debtors failed to execute the decree passed in favour of the respondent in compliance with the directions given in the decree, which has been upheld till Hon'ble the Supreme Court. The Special Leave Petition filed against the judgment passed in Regular Second Appeal was dismissed. Learned counsel for the respondent urges that, according to the decree (Annexure P-1), the judgment-debtor Mahender Singh (defendant No. 1 before the learned trial Court), was directed to execute the sale deed in favour of the respondent (decree-holder) within three months of the date of the order/judgment and the respondent (the plaintiff before the learned trial Court) was given the right to take possession of the suit property after execution of the sale deed.

11. It is submitted by the learned counsel for the respondent that the

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directions given in the decree (Annexure P-1) by the learned trial Court, were not disturbed or modified by the learned Appellate Courts, while dismissing the appeals preferred by the judgment-debtors. The decree did not direct the decree-holder to deposit the remaining sale consideration within any specified time frame; rather, it directed the judgment-debtor to execute the sale deed within a stipulated period of three months. The judgment-debtor did not move any application exhibiting his willingness to execute the sale deed as per the decree (Annexure P-1) and ask the decree-holder to deposit the remaining amount. The learned counsel contends that, rather than complying, the judgment-debtor, being dissatisfied with the decree, preferred the appeals and obtained stay orders against the execution of the decree. Given these facts, judgment-debtor cannot be permitted to state that decree-holder was not ready and willing to execute the decree; rather he has always been ready and willing to execute the agreement to sell and the decree passed in his favour and filed the execution petition after the dismissal of Regular Second Appeal. The learned counsel submits that it is the petitioners (judgment-debtors), who are unwilling to comply with the decree and have been filing frivolous objections and application/petition under Section 28 of the Act to stall the execution of the decree. Learned counsel argues that provisions of Section 28 of the Act are inapplicable in the given facts and the learned Executing Court has rightly dismissed the objections and application filed under Section 28 of the Act of the petitioners.

12. Learned counsel for the respondent, while tendering the copy of challan chit, urges that the respondent has deposited the remaining amount of sale consideration in compliance with the directions of the learned Executing



Court, this again exhibits the readiness and willingness on the part of the decree-holder to get the decree executed. Learned counsel submits that petitioners did not plead in the revision petitions about the dismissal of their SLP on 07.02.2023 and concealed the above material fact when filed the revision petitions on 15.02.2024 and 23.02.2024 respectively. Based on the above submissions, a prayer is made for dismissal of above captioned revision-petition(s), being meritless.

13. Learned counsel for the parties have been heard, paper -book and impugned orders perused, in the light of arguments and the referenced legal precedents.

14. The facts, as discussed above, are not in dispute. Since petitioners have taken recourse to the provisions of Section 28 of the Act, it is desirable to go through the provisions, which reads as follows:

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1)Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

*(2)Where a contract is rescinded under sub-section (1), the court—
(a)shall direct the purchaser or the lessee, if he has obtained*



possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or the lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.”

15. At this juncture, provisions of Order 20 Rule 12-A, CPC also required to be gone into, which are extracted as under:

“12-A. Decree for specific performance of contract for the sale or lease of immovable property.-Where a decree for the specific performance of contract for the sale or lease of immovable property orders that the purchase money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.”

16. As noticed above, the judgment and decree dated 17.03.2010



(Annexure P-1) did not provide any time for the respondent (decree-holder) to deposit the amount in the Court or tender/pay balance sale consideration to the petitioner-Mahender Singh (JD) and others, the vendors. Instead, directions were given to the petitioner-Mahender Singh (JD), to execute the sale deed in favour of the respondent, within three months from the date of passing of the judgment. Furthermore, the respondent (decree-holder) was given the right to take possession of the suit property after the execution of the sale deed. When both conditions are read together, it is explicit that the obligation is imposed upon the petitioner-Mahender Singh (JD), to get the sale deed executed. Therefore, it was incumbent upon the petitioner-Mahender Singh, now represented by his LRs, to file an application before the Executing Court, asking the respondent to pay remaining balance amount of sale consideration, and other miscellaneous charges for execution of sale deed, thereby enabling him to perform his part of the contract and comply with the directions contained in the decree (Annexure P-1), which have been affirmed by the learned Appellate Courts. Rather, the facts reveal that it was the judgment-debtors, who being not satisfied with the decree passed by the learned trial Court, preferred the appeals. As explicit from the judgments, no change or modification was made by the learned Appellate Courts, while dismissing the appeals.

17. Plain reading of the provisions of Section 28 of the Act does not impose any obligation upon the decree-holder to pay or deposit the balance amount of sale consideration. Rather, the provisions provide that the decree-holder is to pay the amount within the period, as stipulated in the decree. As discernible from the relief-issue of the judgment and decree (Annexure P-1), no direction



was given to the decree-holder to pay or deposit the balance amount of sale consideration. In contrast, the judgment-debtor was made to act in a time bound manner i.e, to get the sale deed executed within three months of the passing of the decree. In these circumstances, the provisions of Section 28 of the Act are not attractive. As evident from the facts set out in the paper-book and the documents relied upon by the petitioners from Annexure P-1 to P-7, the execution of the decree was stayed on the request of the petitioners-judgment-debtors. In face of stay order, respondent could not ask for the execution of the decree. It is after the finality of the decree, on dismissal of RSA on 25.05.2022, the respondent-decree-holder, after waiting for about three months for the petitioner (JD) to comply with directions given to him in the judgment and decree (Annexure P-1), filed the execution petition on 22.08.2022 praying for implementation of the decree. The facts reveal that petitioners filed objections and opposed the implementation of the decree as well as rescission of the contract by invoking Section 28 of the Act. It is not the case that respondent was unwilling to execute the decree; rather shoe is on the other foot.

18. The power under Section 28 of the Act is discretionary and should be exercised when there is willful default on the part of decree-holder in complying with terms of the decree. However, the Court should not ordinarily annul the decree once passed. The Court is to pass appropriate order, as the justice may require, in a given case. Section 28 of the Act provides relief to both the parties in terms of the decree.

19. In given factual matrix, the impugned orders have been gone into and learned Executing Court has dealt with all the objections including the plea of



applicability of Section 28 of the Act and cogently held the objections as meritless and further rightly concluded that provisions of Section 28 of the Act are not applicable. As per the detailed discussion made above, the findings recorded by the learned Executing Court are upheld and affirmed. No illegality or absurdity is found in the reasoning adopted by the learned Executing Court, being based on facts and law.

20. Reference to Order 20 Rule 12-A, CPC shows that in every decree of specific performance, the Court is to specify the period within which the payment is to be made. In the present case, said period is not defined. No doubt, as per normal rule, the Executing Court cannot go beyond the decree under execution. But it does not mean that it has no duty to find out the true effect of that decree, and for construing the decree and its implementation, in appropriate cases, can go and look into the proceedings leading to its implementation. To bring the decree in question to its logical end, direction given by the learned Executing Court to decree-holder to deposit the balance amount of sale consideration within three months, given facts, cannot be held as illegal. The judgments cited by counsel for the petitioners, however, on the facts are distinguishable, as in **Kamlesh Kumari (Supra)**, there was stipulation in the decree that judgment-debtor, on receiving the balance sale consideration within two months, shall execute the sale deed. In **P. Shyamala (supra)**, there were directions for the decree-holders to deposit the balance sale consideration, unlike in the present case. In view of the above factual and legal position, the petitioner(s) failed to draw any help from the cited case-laws. Furthermore, learned counsel for the petitioner(s) failed to persuade this Court by giving any reasonable explanation for not mentioning the fact of

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dismissal of SLP on 07.02.2023, preferred by the petitioners against the judgment of this Court, in these revisions filed on 15.02.2024 and 23.02.2024 respectively. This is concealment of facts on the part of the petitioners and on this score only, they do not deserve any relief.

21. Having considered the entire conspectus of the case, and for the reasons stated above, it is held that the learned Executing Court has rightly exercised the jurisdiction while answering the legal issues posed before it, warranting no interference by this Court.

22. As a result, both the above-mentioned Revision-Petition(s) are dismissed, being meritless.

23. Pending miscellaneous applications, if any, stand disposed of accordingly.

(RITU TAGORE)
JUDGE

Pronounced on : 3rd July, 2024
pj

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