

137. 2024:PHHC:038750
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.1572 of 2024
Reserved on 14.03.2024
Pronounced on: 16.04.2024

M/s Victor Cycles Private Limited, 409, Industrial Area-A, Ludhiana,
through its Managing Director Vinay Gupta
.... Petitioner

Versus

Sarvesh Kumar Jindal
.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aashna Aggarwal, Advocate, for the petitioner.

Mr. Puneet Jindal, Senior Advocate with
Ms. Malvi Aggarwal, Advocate, for the respondent/caveator.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 14.02.2024 (Annexure P-18) passed by learned Civil Judge (Senior Division), Ludhiana, whereby the application moved by the petitioner-Judgment Debtor under Section 28 of the Specific Relief Act, 1963, has been dismissed.
2. In brief, the facts which are necessary for the decision of this revision petition are that the respondent-plaintiff Decree Holder filed a suit for specific performance of agreement to sell dated 07.01.2006 in respect of suit property bearing No.409 situated at Industrial Area-A, Ludhiana. Vide judgment and decree dated 30.11.2012, the suit of the plaintiff was decreed

and the petitioner-defendant-Judgment Debtor was directed to execute sale deed in favour of plaintiff within a period of two months and the plaintiff was also directed to deposit the balance sale consideration within a period of two months. The Judgment Debtor filed appeal, which was dismissed vide judgment and decree dated 26.03.2019. Regular Second Appeal No.3921 of 2019 was also dismissed vide judgment dated 01.09.2023. Even SLP (C) No.49868 of 2023 was also dismissed vide order dated 29.01.2024.

2.1 The Decree Holder filed execution application. He also filed application dated 07.10.2023 for permission to deposit the balance sale consideration of Rs.96 lakhs. The petitioner-Judgment Debtor filed reply/objection to execution application that balance sale consideration was Rs.98,32,000/- and not Rs.96 lakhs, but the Decree Holder deposited only Rs.96 lakhs instead of Rs.98,32,000/-.

2.2 The petitioner-Judgment Debtor moved an application dated 30.08.2019 under Section 28 of the Specific Relief Act for recession of the contract and same was dismissed vide impugned order dated 14.02.2024.

2.3 Learned senior counsel appearing on behalf of the petitioner-Judgment Debtor has argued that the provisions of Section 28 of the Specific Relief Act are mandatory and if there is a default by the Decree Holder in the payment of balance sale consideration as per the directions given by the trial Court, then the contract between the parties stands rescinded. There had been a specific direction to the Decree Holder to deposit the balance sale consideration within two months but instead of depositing the balance sale consideration of Rs.98,32,000/-, only Rs.96

lakhs were deposited. It has been further argued that total amount of consideration was Rs.1,31,00,000/-. Out of said amount, a sum of Rs.2 lakhs was paid by way of cheque dated 08.12.2005 to the Decree Holder and Rs.18 lakhs by way of cash. Sum of Rs.10 lakhs was paid on 15.02.2006 and Rs.5 lakhs on 01.08.2006. Thus, the total earnest money paid was to the tune of Rs.35 lakhs. Sum of Rs.2 lakhs which was received by way of cheque dated 08.12.2005 was returned vide cheque No.6050331, dated 13.04.2007 of Rs.2,32,000/- (Rs.32,000/- as interest and Rs.3,570/- as TDS). Said cheque was admittedly encashed by the respondent-Decree Holder, which fact is apparent from the replication (Annexure P-3) and statement of Decree Holder-PW2 (Annexure P-5). Even in the Income Tax Return for the financial year 2007-08, the amount of Rs.2,32,000/- has been shown credited in the account of the Firm of the respondent-Decree Holder and the respondent-Decree Holder also in his application dated 18.04.2007 (Annexure P-4) filed in the Central Bank of India acknowledged the receipt of said amount. Said objection has been raised by the petitioner-Judgment Debtor since the very inception in the execution petition. There was non-compliance of the decree passed by the trial Court. Sum of Rs.2 lakhs was paid vide cheque dated 08.12.2005 whereas agreement to sell was dated 07.01.2006 and the said amount already stood returned to M/s Serve Overseas, the firm of the respondent. Even no application for extension of time to deposit balance sale consideration was moved.

2.4 Learned senior counsel has further argued that even delay of one day was not condoned by the Hon'ble Supreme Court in case ***P.R.***

Yelumalai Versus N.M. Ravi, (2015) 9 Supreme Court Cases 52. Reliance is also placed upon case *P. Shyamala Versus Gundlur Masthan, 2023(2) R.C.R. (Civil) 135* and *Prem Jeevan Versus K.S. Venkata Raman and another, (2017) 11 Supreme Court Cases 57.*

3. Learned senior counsel appearing on behalf of the respondent-caveator-Decree Holder has argued that the Decree Holder complied with the judgment and decree passed by the learned trial Court and affirmed by the higher courts. The plea of payment of Rs.2,32,000/- including TDS of Rs.3,750/- was also raised before the trial Court as well as before the learned appellate Court by the Judgment Debtor and the same was rejected. Even in the balance-sheet, the petitioner-Judgment Debtor had shown Rs.35 lakhs as advance against the sale of property and amount of Rs.2,32,000/- was found to be having no connection with the agreement to sell or sale consideration. Said amount has been shown as advance to M/s Serve Overseas in the balance-sheet maintained by the Judgment Debtor. The suit was filed on 10.04.2007 and notice was served upon Judgment Debtor on 13.04.2007 and the cheque, in question, in favour of M/s Serve Overseas was issued 16.04.2007. Any amount deposited in the account of firm cannot be taken as paid to Decree Holder. It has been further submitted that the firm is itself a juristic person. On noticing by the firm that some amount was credited wrongly in its account, the Bank was immediately informed. The Decree Holder never received said amount in his personal capacity and is not liable to account for the same in his personal capacity.

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

5. Section 28 of Specific Relief Act reads as under:-

“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) to (5)”

5.1 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 Debtor to seek rescission of contract but it also permits extension of time by the Court to pay balance amount.

5.2 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.”

5.3 In the instant case, suit was filed on 10.04.2007 for specific performance of agreement to sell dated 07.01.2006 with the averments that agreement to sell was executed for a total sale consideration of Rs.1,31,00,000/-, out of which, Rs.2 lakhs was paid vide cheque dated 08.12.2005 drawn from Central Bank of India, Focal Point, Ludhiana and Rs.33 lakhs was paid by way of cheque on different dates. A total amount of Rs.35 lakhs was paid as earnest money. Even the Judgment Debtor took the plea that the so-called agreement to sell propounded between the parties with a view to provide a collateral security to the amount of loan advanced by the plaintiff to the defendant. The defendant/petitioner-Judgment Debtor received the amount of loan on different dates. The amount of Rs.2 lakhs was earlier also received by the defendant-Judgment Debtor by way of cheque of Rs.2 lakhs dated 08.12.2005 of M/s Serve Overseas. An amount of Rs.2 lakhs has already been returned through cheque to M/s Serve Overseas along with interest of Rs.32,000/- and Rs.3,570/- as TDS. M/s Serve Overseas wrote a letter dated 18.04.2007 to the Manager, Central Bank of India, Focal Point, Ludhiana (Annexure P-4, Ex.P-34 in the trial Court) and the plaintiff-Decree Holder as partner of M/s Serve Overseas that as on 18.04.2007, an amount of Rs.2,32,000/- has been credited in their account on 17.04.2007 through clearing cheque No.6050331, but no such cheque was got deposited by them in their account and said amount was wrongly credited in their account and needful be done in the matter so as to

rectify the statement of account. There is no dispute that the plaintiff-Decree Holder was partner of M/s Serve Overseas and a sum of Rs.2,32,000/- was received in the account of the said firm by way of cheque. Learned trial Court on the basis of evidence led on the file and also considering the said plea, decreed the suit of the plaintiff vide judgment and decree dated 30.11.2012. The operative part of relief clause reads as under:-

“In view of my above discussion, suit of the plaintiff is decreed with costs. The defendant is directed to execute the sale deed in favour of the plaintiff within a period of two months and the plaintiff is also directed to deposit the balance sale consideration within a period of two months. However it is made clear that if the defendant would not execute the sale deed of the suit property, the plaintiff would be at liberty to get the sale deed executed through the court. Decree sheet be drawn and file be consigned to record.”

5.4 The petitioner-Judgment Debtor filed appeal and along with appeal, an application for staying the judgment and decree dated 30.11.2012 was also moved. Learned counsel for the Decree Holder made statement, the extract of which reads as under:-

“..... that he had no objection if execution of judgment and decree dated 30.11.2012 passed by the learned trial court is stayed subject to furnishing bank guarantee and further staying the deposit of the remaining amount of consideration of Rs. 96 lacs in terms of judgment dated 30.11.2012.”

Accordingly, application under Order 41 Rule 5 CPC was allowed subject to furnishing bank guarantee by the Judgment Debtor before the trial Court

for a sum of Rs.35 lakhs and further, the period to deposit remaining sale consideration was also extended till further orders vide order dated 28.01.2013. Vide judgment and decree dated 26.03.2019, the appeal filed by the petitioner-Judgment Debtor was dismissed. Regular Second Appeal No.3921 of 2019 filed was also dismissed. During the pendency of said RSA, the plaintiff-Decree Holder moved an application for execution of the decree in which Judgment Debtor filed objections. Special Leave Petition was also dismissed by the Hon'ble Supreme Court.

5.5 The respondent-Decree Holder moved an application dated 07.10.2023 for permission to deposit balance sale consideration of Rs.96 lakhs. The petitioner-Judgment Debtor filed objections that a sum of Rs.2,32,000/- had already been received in the account of the Decree Holder and the Decree Holder-plaintiff deposited only Rs.96 lakhs. A right has been accrued to the Judgment Debtor for recession of contract and the application to that effect has also been filed.

5.6 Application under Section 28 of Specific Relief Act was filed on 30.08.2019. Reply to said application was also filed. Said application was dismissed vide impugned order dated 14.02.2024.

5.7 In case ***P.R. Yelumalai Versus N.M. Ravi (supra)***, the decree was conditional. 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. It was held that a conditional decree is self-operative, therefore, non-compliance with the condition(s) led to automatic dismissal of suit. 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 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. In that case, balance sale consideration of Rs.15 lakh was directed to be deposited by the plaintiff within two weeks, but there was nothing on record that any steps were taken by the plaintiff to deposit said balance sale consideration. Application under Section 148 CPC and Section 28 of the Specific Relief Act was filed after delay of 853 days. It was held that in the absence of any sufficient explanation, such a huge delay of 853 days ought not to have been condoned by the trial Court. In case *Prem Jeevan (supra)*, it is held by the Hon'ble Supreme Court that unless Decree Holder seeks extension of time to pay the decretal amount and the same is granted by the Court, there can be no automatic extension of time. All these authorities cited by the learned counsel for the petitioner are of no help for the decision of the case.

5.8 The matter in issue between the parties is as under:-

Whether amount of Rs.2,32,000/- including Rs.32,000/- as interest and Rs.3,570/- as TDS, deposited on 17.04.2007 in the account of M/s Serve Overseas in which Decree Holder is a partner is to be counted as return of amount of Rs.2 lakhs from the amount of earnest money received by the Judgment Debtor.

Said plea was also taken in the written statement filed by the Judgment Debtor, the extract of para 3 of said written statement reads as under:-

“3. Rather out of total loan amount Rs.2,00,000/- has already been returned through cheque to M/s Serve Overseas, alongwith interest Rs.32,000/- plus 3570 as TDS.”

It was further plea in the written statement that defendant received a sum of Rs.2 lakhs as cheque of M/s Serve Overseas on 08.12.2005 prior to the date of agreement to sell. Even otherwise also it was not the case of petitioner-defendant-Judgment Debtor that said amount was deposited in the account of firm as per instruction of respondent-Decree Holder-plaintiff. Any amount can be deposited in the account of other. There are many ways including e-transfer. If such a plea is accepted then in order to defeat the right, a person may deposit the amount without the knowledge of other party and lateron would take such type of defence. The Court is not meant to legalize the illegality. At the time of staying the operation of the impugned order, the Decree Holder specifically made a statement that balance amount of Rs.96 lakhs was due. At that time also, the Judgment Debtor did not raise any objection that balance amount was not Rs.96 lakhs but it was Rs.98 lakhs. Since agreement was executed in personal capacity and no amount of earnest money was returned to the Decree Holder in personal capacity, the learned trial Court has very well considered the same in order dated 14.02.2024, the extract of said order reads as under:-

“So far as plea with respect to deficiency in the amount tendered by Decree Holder is concerned, it would be apposite

to refer to the relevant portion by learned trial court, which could be reproduced as follows:-

“With regard to payment of Rs. 2 lacs, the plaintiff categorically stated that it was given as token money and cheque was got issued by him not from his account but from his firm Serve Overseas and he is one of the partner of the said firm and there are two partners of the said firm i.e. himself and his father Gopi Chand. He had taken consent of Gopi Chand at the time of issuance of cheque for a sum of Rs.2 lacs which was verbal. Plaintiff in cross-examination properly explained the fact that although the amount of Rs.2 lac was paid by cheque from the account of firm Serve Overseas but the same was paid by him in connection with the present transaction as token money. At this stage cross examination of PW5 Raman Kumar Jain is also necessary to be discussed in which he stated that there was no business transaction between the defendant and M/s Serve Overseas. Meaning thereby there was no question of depositing the said amount in the account of M/s Serve Overseas. Although the defendant deposited the amount of Rs. 2,32,000/- in the account of M/s Serve Overseas regarding which the defendant send letter to the bank regarding making of wrong entry of Rs. 2,32,000/- in the account of Serve Overseas.”

Further, it would be apposite to refer to relevant excerpt of Judgment and decree dated 26.03.2019 passed by learned First Appellate Court, which could be reproduced as follows:-

"The defendant further pleaded that out of the total loan amount Rs.2 Lacs has already been returned through

cheque to M/s Serve Overseas alongwith interest of Rs. 32,000/- and Rs.3570/-as TDS".

Aforementioned paragraphs of the Judgments passed by learned trial court as well as learned first appellate court clearly establish that the plea raised by applicant/Judgment Debtor in the application in hand with respect to the deficiency in the amount tendered by respondent/Decree Holder was raised by Judgment Debtor at the time of trial, as well as at the time of filing of first appeal in order to assail the readiness and willingness of the respondent/Decree Holder/plaintiff. However, learned trial court as well as learned first appellate court repelled the plea of the applicant/Judgment Debtor. Further perusal of order dated 1 September 2023 passed by Hon'ble Punjab and Haryana High Court in RSA no.3921 of 2019, preferred by applicant/Judgment Debtor again reveals that applicant/Judgment Debtor assailed the readiness and willingness of the respondent/Decree Holder while asserting that deficient balance consideration was being tendered by respondent/Decree Holder, but again aforesaid RSA moved by applicant/Judgment Debtor came to be dismissed and plea of the applicant/Judgment Debtor was repelled. Further learned counsel for respondent/Decree Holder has placed on record the copy of the Paper Book filed by the applicant/Judgment Debtor while moving SLP before Hon'ble Apex Court. Perusal of para no. 'g' of the written Synopsis filed alongwith SLP, para no.5-A of the Grounds filed alongwith SLP and para no. M of page 32 of SLP moved by applicant/Judgment Debtor clearly reveals that plea of deficiency in the balance sale consideration amount proposed to be tendered by the respondent/Decree Holder was again raised before Hon'ble Apex Court. However it is an admitted fact between the parties

that SLP preferred by applicant/Judgment Debtor has already been dismissed. Meaning thereby that the plea of the deficiency in the balance consideration, which is now being raised by applicant/Judgment Debtor under the provisions envisaged in Section 28 of the Specific Relief Act has already been raised by him before learned trial court, learned first appellate court, before Hon'ble Punjab and Haryana High Court as well as before Hon'ble Supreme Court of India under the pretext of assailing the readiness and willingness of respondent/Decree Holder. However, on all the four occasions, plea of the applicant/Judgment Debtor has been repelled. Now, the question which arises for the consideration of this court that whether the plea, which has been directly and substantially in issue before learned trial court, learned first appellate court, Hon'ble Punjab and Haryana High Court as well as before Hon'ble Supreme Court of India and it has been repelled by all the courts, could the applicant/Judgment Debtor be allowed to agitate the same plea before the executing court, the answer would obviously be in an emphatic 'no'. In this regard, my views are further fortified by the observations given by Hon'ble Tripura High Court in judgment reported as Smt. Rosna Begam W/o Late Safi Ullah Vs. Smt. Jasmin Begam W/o Shri Jaynal Abedin 2017 AIR CC 1255, by Hon'ble Punjab and Haryana High Court in judgment reported as Medical Supdt. E.S.I. Hospital, Amritsar Vs. Prem Lala and another 2004(2) R.C.R. (Civil) 693, by Hon'ble Supreme Court of India in judgment reported as P.V. Jose V. Kanichkammal, AIR 2000 SC 2688."

6. There is no dispute that there was no delay in depositing amount of Rs.96 lakhs. Since the balance amount of consideration was

Rs.96 lacs and the same was deposited well in time, the learned trial Court has passed a reasoned order dismissing the application under Section 28 of Specific Relief Act. I do not find any ground to interfere in the lawful order passed by the court. The revision petition is without any merit and same is dismissed accordingly.

(GURBIR SINGH)
JUDGE

April 16, 2024

sanjeev

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