

139 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1831-2024 (O&M)

Date of decision: 21.03.2024

Babbar Bhan (since deceased) through his LR

....Petitioner

Versus

Banarasi Dass (since deceased) through his Lrs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Manoj Kumar Taya, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

1. This is the judgment debtor's revision petition to assail the correctness of the Executing Court's order dated 27.02.2024, while dismissing his application under Section 28 of the Specific Relief Act, 1963 as well as dismissing his objection petition.

2. In a suit for possession by way of the specific performance of the agreement to sell, the trial court decreed the suit on 08.04.2013.

The penultimate paragraph of the judgment reads as under:-

“25. As a sequel to afore mentioned discussion, the suit of the plaintiffs succeeds and the same is hereby decreed with costs. Decree for possession by way of specific performance of the agreement to sell dated 3.5.2008 Ex.P6 is passed in favour of the plaintiffs and as against defendant. The defendant is directed to get the sale deed executed and registered in respect of the suit property in favour of the plaintiffs as per the terms and conditions of the agreement to sell dated 3.5.2008 Ex.P6, within a period of two months from today after receiving the balance sale consideration amount. The defendant is restrained from alienating the suit property to any other person except the

plaintiffs. In case, the defendant fails to get the sale deed executed and registered within the period of two months from today, then the plaintiffs shall be liberty to get the sale deed executed and registered through process of Court. Decree-sheet be prepared accordingly. File be consigned to the record room after due compliance.”

3. The petitioner filed the first appeal, which was dismissed on 11.09.2018. On 24.04.2019, the decree-holder filed the execution petition alongwith an application for permission to deposit the amount. However, the Executing Court issued notice to the judgment debtor and thereafter, proceeded to decide the objection petition. The application filed by the judgment debtor under Section 28 was also dismissed.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. The learned counsel representing the petitioner has made the following submissions:-

- i) The execution petition has been filed after a delay of 11 years.
- ii) The decree-holder was never ready and willing to perform his part of the contract.
- iii) The First Appellate Court never granted any interim protection to the petitioners.
- iv) The decree-holder has never applied for extension of time for deposit of the amount.

6. This Court has considered the submissions made by the learned counsel representing the parties.

7. It is evident that there is an error in the directions issued by the trial court in the penultimate. There is no direction by the trial court that the decree-holder will deposit the balance sale consideration in the court within the period specified which is the requirement of the law. In a suit for the specific performance of the agreement to sell, the court is required to pass a conditional decree directing the decree-holder to deposit the remaining amount within the period specified by the court. Moreover, it is the petitioner, who filed the first appeal, which remained pending for more than 6 years. The decree-holder was issued notice in the appeal. Thereafter, the appeal was dismissed only on 11.09.2018. Thus, the judgment and decree passed by the trial court merged into the judgment and decree passed by the First Appellate Court. Some time was taken for supply of copy of the judgment and decree passed by the First Appellate Court. The execution petition alongwith an application for deposit of the amount was filed within six months from the judgment and decree passed by the First Appellate Court. Hence, the first submission of the learned counsel representing the petitioner has no basis.

8. As far as the second submission of the learned counsel representing the petitioner is concerned, it may be noted that concurrently the trial court as well as the First Appellate Court has recorded a finding that the plaintiffs/decrees-holders were always ready and willing to perform their part of the contract. The attention of the Court has not been drawn to sufficient material to prove that the decree-holder, after the judgment and decree was passed by the First Appellate

Court, neglected to pay the amount. At the cost of repetition, the decree-holders filed an application for permission to deposit the amount alongwith the execution petition, however, the court did not pass the order.

9. Learned counsel representing the petitioner’s third submission needs no further elaboration, particularly when the judgment and decree passed by the trial court has merged into the judgment and decree passed by the First Appellate Court. In this case, as already noticed, the decree passed by the trial court was not in accordance with law. Hence, the decree-holder cannot be made to suffer for the mistake of the court.

10. With reference to the last submission, it may be noticed that the Executing Court has found that the execution petition was promptly filed by the decree-holders.

11. Keeping in view the aforesaid facts, no ground to interfere is made out.

12. Hence, dismissed.

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

21.03.2024
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE