

133 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7671-2023(O&M)
Date of decision : 01.05.2024

Man Mohan

...Petitioner

Vs.

Ghanshyam Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Gupta, Advocate
for the petitioner.

ANIL KSHETARPAL, J. (Oral)

1. The judgment debtor is the petitioner herein. He prays for setting aside the order dated 02.09.2023, passed by the trial court while dismissing his application under Section 28 (1) & (2) of the Specific Relief Act, 1963 for rescission of Contract.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The suit filed by the plaintiff for possession by way of specific performance of the agreement to sell was decided on 07.10.2011. He was granted an alternative relief of refund of the earnest money. He filed an appeal, which was allowed on 01.03.2014. The First Appellate Court in the penultimate para observed as under:

“19. As a sequel to my above discussion, this court is of the view that lower court has gravely erred in allowing the suit of the plaintiff in part, rather plaintiff is entitled to get executed and registered the sale deed in his favour after making payment of balance sale consideration to the defendant and accordingly, the present appeal of the appellant-

plaintiff is hereby allowed and the respondent-defendant is hereby directed to get executed and registered sale deed in favour of the plaintiff-appellant after receiving the balance sale consideration within two months from the date of this judgment, failing which the plaintiff-appellant shall be at liberty to seek the assistance of the court. Decree sheet be prepared accordingly. Trial court record alongwith a copy of this judgment be sent to the court concerned. Appeal file be consigned to record room after due compliance.

4. The regular second appeal was filed by the petitioner (defendant), which was dismissed.
5. In a suit for specific performance of the agreement to sell, the court is required to pass a conditional decree while directing the decree-holder to deposit the amount with the court within the specified period. In this case, the First Appellate Court only directed the defendant to execute the sale deed, after receiving the balance sale consideration, within a period of two months, from the date of the judgment of the First Appellate Court.
6. Hence, the decree-holder filed an execution petition. He also prayed for permission to deposit the amount, which was allowed on 01.05.2014 and the amount was deposited on 03.05.2014.
7. Hence, the trial court has come to a conclusion that there is no occasion for the Court to rescission of Contract.
8. Learned counsel representing the petitioner submits that the amount was required to be deposited within two months from the date of the judgment of the First Appellate Court, which came to an end on 30.04.2014.
9. This Court has considered the submissions made by the learned counsel representing the parties.

10. It is evident that the First Appellate Court granted opportunity to the defendants to execute the sale deed on receipt of sale consideration within a period of two months. The moment the defendant failed to comply with the same, the decree-holder on the very next day filed, an application for permission to deposit the amount, which was allowed and the amount was deposited.

11. Hence, no ground to interfere is made out.

12. Dismissed.

01.05.2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No