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

CR-7232-2015 (O&M)
Decided on : 24.03.2025

Habban Shah

...... Petitioner

Versus

Sheruddin

...... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Present : Mr. Rajinder Goel, Advocate
for the petitioner.

Mr. Mohammad Arshad, Advocate
for the respondent.

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VIKRAM AGGARWAL, J (ORAL)

The present revision petition has been preferred by the petitioner-defendant/judgment debtor (hereinafter referred to as 'the defendant-JD) assailing the order dated 07.09.2015 (Annexure P-8), passed by the Court of learned Civil Judge (Senior Division), Mewat vide which the objections raised by the defendant-JD to the execution proceedings were rejected.

2. Shorn of unnecessary details, the factual matrix of the instant bitter and long litigation is that a suit for possession by way of specific performance of the agreement to sell dated 19.10.2005 was filed by the respondent-plaintiff/Decree Holder (hereinafter referred to as 'the plaintiff-DH'). The same was decreed by the Court of learned Civil Judge (Senior Division), Nuh vide judgment and decree dated 31.10.2012 (Annexure P-1). A direction was issued to

the defendant-JD to execute the sale deed upon receipt of the balance sale consideration within a period of three months. The said judgment and decree was assailed in first appeal by the defendant-JD and an interim order was passed by the First Appellate Court restraining both the parties from alienating the suit property on 17.12.2012. However, even thereafter, an execution petition was filed by the plaintiff-DH (Annexure P-4) on 04.03.2013. An application for depositing the balance sale consideration of Rs.6,92,410/- (Annexure P-5) was moved on 05.03.2013. The first appeal came to be dismissed vide judgment and decree dated 11.11.2014 (Annexure P-2), passed by the Court of learned Additional District Judge, Mewat. A regular second appeal was preferred by the defendant-JD in which an order of *status quo* as regards possession was passed. Thereafter, the defendant-JD filed objections in the execution petition on 14.07.2015 (Annexure P-7) stating that the execution proceedings were time barred as the time line provided in the judgment and decree dated 31.10.2012 (Annexure P-1) had not been followed. The said objections were dismissed by way of the impugned order dated 07.09.2015 (Annexure P-8) leading to the filing of the present revision petition.

3. I have heard learned counsel for the parties.

4. Learned counsel for the petitioner submits that the impugned order is not sustainable since the initial time line provided by the trial Court vide judgment and decree dated 31.10.2012 (Annexure P-1) was not complied with by the plaintiff-DH and, therefore, in terms of the provisions of Section 28 of the Specific Relief Act, 1963 (for short 'the 1963 Act'), the contract stood rescinded. In support of his contentions, learned counsel has placed reliance upon the judgment of Supreme Court of India in the case of ***Prem Jeevan versus K.S.Venkata***

Raman and Another 2017 AIR (Supreme Court) 623 and the judgment of a Coordinate Bench of this Court in the case of ***Mangal Singh versus Amrik Singh 2018 (4) R.C.R. (Civil) 98*** (Law Finder Doc Id # 1137970).

5. Per contra, learned counsel for the respondent has submitted that there is no illegality or infirmity in the impugned order. He submits that though a period of three months had been granted by the trial Court vide judgment and decree dated 31.10.2012, first appeal was filed by the defendant-JD on 22.11.2012 and an interim order was passed on 17.12.2012 i.e. much prior to the expiry of three months. He submits that despite the said fact, the plaintiff-DH filed an execution petition on 04.03.2013 and also filed an application to deposit the balance sale consideration on 05.03.2013. However, the execution petition was dismissed in default on 01.08.2014 (Annexure P-6) since the appeal was still pending. He submits that the first appeal was also dismissed on 11.11.2014 and immediately thereafter another execution petition was filed despite the fact that a status quo order had been passed by the High Court. He submits that the plaintiff-DH had always been ready and willing to deposit sale consideration but it was only on account of the interim order passed by the Courts that he could not deposit the same. He further submits that now even the regular second appeal stands dismissed vide judgment dated 12.01.2017. Learned counsel submits that there is no illegality in the impugned order and the same deserves to be upheld. In support of his contentions, learned counsel has placed reliance upon the judgments of Supreme Court of India in ***Ram Lal versus Jarnail Singh (Now Deceased) through its LRs and Others (in Petition for Special Leave to Appeal (C) No.5638 of 2023, decided on 25.02.2025)*** and ***Balbir Singh & Anr. Etc. versus Baldev Singh (D) Through His Lrs & Ors. Etc. (in Petition for Special Leave to Appeal***

(C) Nos.22802-22805 of 2022, decided on 17.01.2025).

6. I have considered the submissions made by learned counsel for the parties.

7. The case has a chequered history. The agreement to sell was executed as far back as on 19.10.2005. The suit for possession by way of specific performance of the said agreement to sell was instituted on 23.03.2006 and was decreed vide judgment and decree dated 31.10.2012. While decreeing the suit, the following directions were passed:-

> ***"As a sequel to the findings on issuewise, the suit of the plaintiff is decreed with costs. The defendant is directed to execute the sale deed in favour of the plaintiff in respect to th suit land in view of the agreement to sell dated 19.10.2005 after receiving the balance sale consideration within the period of three months from the date of this judgment failing which the plaintiff will be at liberty to get execute the sale deed by approaching this court. The defendant is also directed to hand over the possession over the possession of the suit land legally and the defendant is restrained from alienating the suit land. Decree-sheet be prepared accordingly. File be consigned to the record-room after due compliance."***

8. A perusal of the aforesaid directions shows that a period of three months was granted to the defendant-JD to execute the sale deed in favour of the plaintiff-DH on receipt of the balance sale consideration. It essentially means that the balance sale consideration had to be deposited within a period of 03 months i.e. on or before 30.01.2013 (approximately). However, in the meantime, first appeal against the judgment and decree dated 31.10.2012 passed by the trial Court was filed on 22.11.2012 and a restraint order was passed by the First Appellate Court on 17.12.2012.

9. Despite the same, an execution petition was filed by the plaintiff-DH on 04.03.2013 and he also moved an application dated 05.03.2013 for depositing the balance sale consideration. In the considered opinion of this Court, this was the second step showing the bonafides of the plaintiff-DH, the first being the filing of the execution petition. Merely because the application for depositing the balance sale consideration was filed on 05.03.2013 i.e. after the expiry of three months from 31.10.2012, it would not act to the detriment of the plaintiff-DH, for, admittedly, on the said date, the first appeal was pending and stay order was operating. Be that as it may, the execution petition was dismissed in default on 01.08.2014 because in all likelihood, the plaintiff-DH did not pursue the execution petition since the first appeal was pending.

10. The first appeal was dismissed on 11.11.2014 and the second appeal was filed by the defendant-JD. In the second appeal, an order of status quo is stated to have been passed. Even in the present revision petition, order of status quo was passed on 30.10.2015. In the meantime, the plaintiff-DH had filed another execution petition in which the defendant-JD filed objections on 14.07.2015. These objections have been dismissed by way of the impugned order. In the considered opinion of this Court, there is no illegality in the said impugned order because as is apparent, the plaintiff-DH made his best efforts to deposit the balance sale consideration but on account of the interim orders passed by the Courts, the same could not be done. The execution proceedings subsequently instituted could not be said to be barred by time on account of the fact that at all points of time, interim orders were operating.

11. There is another aspect of the matter. Though the trial Court gave a

time period of three months, no such time period was fixed by the First Appellate Court and the appeal was simply dismissed. The judgment of the trial Court had merged in the judgment of the First Appellate Court and, therefore, the directions issued by the First Appellate Court would have to be seen. The Supreme Court was very recently *seized* of an identical question in the case of ***Balbir Singh & Anr. Etc. versus Baldev Singh (D) Through His Lrs & Ors. Etc.*** (supra). In this case, the provisions of Section 28 of the Act and Order 22 Rule 12 A were under consideration in special leave to appeals arising out of the decision in four revision petitions which had been dismissed by a Co-ordinate Bench of this Court on 09.09.2022. In that case, four different suits for specific performance were decreed by the trial Court on 16.08.1994 and four identical conditional decrees were passed permitting the decree holder to deposit the balance sale consideration in the Court within a period of 20 days upon which the bank would get the sale deed executed in favour of the plaintiffs. The said judgments and decrees were reversed by the First Appellate Court on 24.11.1994 which led to the filing of four regular second appeals. Three regular second appeals were allowed by the High Court on 03.05.2018, whereas, the fourth was allowed on 24.05.2018 and the decrees passed by the trial Court were restored. Four execution petitions were filed on 04.09.2018. On 07.09.2018, applications to deposit the amount were filed. An application under Section 28 of the Act was filed by the petitioner/defendant/JD for decision of the contract. The Court, however, permitted the decree holder to deposit the decretal amount and dismissed the application, leading to the filing of the revision petitions before a Co-ordinate Bench of this Court.

12. These four revision petitions were rejected by the High Court holding as under:

"12. From a careful examination of the aforesaid judgments, it is apparent that Section 28 of the 1963 Act enables the Executing Court to extend the period keeping in view the conduct of the parties. The Courts have also recognized that the decree passed by the trial Court stands merged with the decree passed by the Appellate Court. In this case, the High Court did not fix any time period for deposit of the amount. The application for execution was filed within a period of four months. Immediately, on filing the execution petition, the decree holders have filed an application seeking permission to deposit the remaining amount, which has been allowed. Undoubtedly, the judgment debtors have filed the various applications for rescission of the contract before the amount was deposited, however, in the facts of the case, this Court does not find that there was any unreasonable delay particularly when the High Court did not fix any period for deposit of the amount. The argument of learned counsel representing the petitioner that 20 days' period, as directed by the trial Court, shall revive, is to be examined in the facts of the present case. The decree passed by the trial Court stands merged with the judgment and decree passed by the High Court in the regular second appeal. The question is "whether the decree holder will fully failed to deposit the amount under the decree particularly when the High Court did not fix the time for such payment or there was, in fact, unreasonable delay on part of the decree holder to deposit the amount?

13. In view of the detailed discussion here-in-before the aforesaid question is answered in the negative.

14. Keeping in view the facts of the case, it is not considered appropriate to conclude that the decree holders failed to honour the conditional decree. The trial Court has exercised

> ***its discretion prudently while extending the time and this Court does not find any reasonable ground to interfere with the order in the exercise of its revisional jurisdiction, which has been passed in accordance with law. Consequently, all the four revision petitions are dismissed."***

13. The matter then reached the Supreme Court of India. The Supreme Court of India upheld the decision of the Co-ordinate Bench of this Court after examining the entire law on the subject and held that since there was no specific direction by the High Court while allowing the second appeal to deposit the balance sale consideration within a particular time period, there was no requirement to deposit the same within a period of 20 days from the date of the decision of the High Court which was the case set up by the other side. Accordingly, it was held that there was no illegality in the order passed by the trial Court wherein the decree holder had been permitted to deposit the amount.

14. The judgment in the case of ***Prem Jeevan Vs. K.S. Venkata Raman and Another*** (supra) was also discussed in the said judgment and it was held that the facts in the case under consideration were different and, therefore, the said judgment did not have any applicability."

15. After the decision in Balbir Singh'case (supra), the Supreme Court of India has delivered another judgment in the case of ***Ram Lal versus Jarnail Singh (Now Deceased) through its LRs and Others*** (supra) (decided on 25.02.2025). In this case also, a similar view has been taken.

16. That being so, I do not find any illegality or infirmity in the impugned order.

17. I have perused the judgments, reliance upon which has been placed upon by learned counsel for the petitioner. The judgment in the case of ***Prem***

Jeevan versus K.S.Venkata Raman and Another (supra) has been discussed by the Supreme Court of India in the aforesaid two judgments. The facts of the said judgment would not apply to the facts of the present case, though, there can never be any quarrel to the proposition laid down in the said judgment. In the case of ***Prem Jeevan Vs. K.S. Venkata Raman and Another*** (supra), the Supreme Court of India took a categoric view that where the period within which the payment had to be made had been specified by the Court concerned, then, in the absence of the said time period being extended, the decree holder could execute the decree only by making payment of the decretal amount to the judgment debtor or making deposit in the Court in terms of the said decree. It was held that where neither such deposit was made within the stipulated time nor any extension was sought or granted and further no explanation was furnished for delay in making of deposit, the decree could not be executed:

> ***"10. In absence of the said time being extended, the decree-holder could execute the decree only by making the payment of the decretal amount to the judgment-debtor or making the deposit in the court in term of the said decree. In the present case, neither the said deposit was made within the stipulated time nor extension of time was sought or granted and also no explanation has been furnished for the delay in the making of the deposit. No doubt, as contended by the learned counsel for the decree-holders, relying on judgment of this Court in Ramankutty Guptan v. Avara - (1994) 2 SCC 642, in an appropriate case the Court which passed the decree could extend the time as envisaged in the Specific Relief, 1963. In the present case no such steps have been taken by the decree-holders.***
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> ***11. In above circumstances, the contention, advanced on behalf of the decree-holders, respondents herein, that unless the judgment-***

> ***debtor seeks rescission 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-holders to pay interest, cannot be accepted."***

18. As is evident, the facts in the case of ***Prem Jeevan versus K.S.Venkata Raman and Another*** (supra) were different and would, therefore, not come to the aid of the petitioner. Similarly, the judgment of the Coordinate Bench of this Court in the case of ***Mangal Singh versus Amrik Singh*** (supra) would not be of any aid to the petitioner in view of the decision rendered by the Supreme Court in the judgments of ***Ram Lal versus Jarnail Singh (Now Deceased) through its LRs and Others*** and ***Balbir Singh & Anr. Etc. versus Baldev Singh (D) Through His Lrs & Ors. Etc.*** (supra).

In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed.

Pending application(s), if any, stand(s) disposed of accordingly.

(VIKRAM AGGARWAL)
JUDGE

24.03.2025
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No