

**(1995) 07 P&H CK 0019**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 7 of 1992

Balkar Singh etc.

APPELLANT

Vs

Manmohan Singh etc.

RESPONDENT

**Date of Decision:** July 31, 1995

**Acts Referred:**

- Specific Relief Act, 1963 - Section 28

**Citation:** (1995) 111 PLR 328

**Hon'ble Judges:** V.K. Jhanji, J

**Bench:** Single Bench

**Advocate:** M.L. Sarin and Hemani Sarin, for the Appellant; J.S. Chahal and S.C. Patial for Respondent Nos. 1 and 3 and V.G. Dogra and I.P.S. Doabia, for the Respondent

**Final Decision:** Allowed

**Judgement**

V.K. Jhanji, J.

This revision petition is directed against order dated 18.12.1991 whereby application of the judgment-debtors u/s 28 of the Specific Relief Act has been allowed and agreement dated 11.3.1974 has been ordered to be rescinded and in consequence thereof execution application filed by the decree-holders (petitioners herein) has been dismissed.

2. In brief, the facts are that on 17.4.1978 the trial Court passed a decree for specific performance of the agreement dated 11.3.1974 in favour of the petitioners and against the respondents. Respondents were directed to execute the sale-deed within a period of three months and in default petitioners were held entitled to get the sale-deed executed through the Court. Against the judgment and decree of the trial Court, respondents No. 1 and 3 and Jaswant Singh, predecessor-in-interest of respondents No. (ii) to (vi) filed Regular First Appeal No. 640 of 1978 along with stay application. Appeal and the stay application came up for motion hearing on 23.5.1978 when notice of the appeal was ordered to be issued and execution of the

decree was stayed. Subsequently, the stay application came up for hearing before Hon'ble Mr. Gurnam Singh, J, (as his Lordship then was) on 28.7.1978 and after hearing the arguments of counsel for the parties the following order was passed:-

"Heard. Stay is confirmed on the condition that the appellants will furnish security for mesne profits of the land in dispute to the extent of their claim to the satisfaction of the trial Court within two months from today after notice to respondents Nos. 1 to 3 and also for due performance of the decree in case their appeal is dismissed."

During the pendency of appeal, one of the appellant namely Jaswant Singh died on 12.12.1983. His legal representatives (now respondents (ii) to (vi) filed an application under Order 22, Rule 4, CPC for being impleaded as appellants in place of Jaswant Singh. Application u/s 5 of the Limitation Act was also filed for condoning the delay in filing the aforesaid application. These applications were ordered to be heard along with appeal after notice was issued to the petitioners. Hon'ble Mr. A.L. Bahri, J (as his Lordship then was) on 17.1.1991, for the reasons recorded in the order, found that no sufficient cause has been shown by the legal representatives for condoning the delay in filing the application for bringing on record the legal representatives of Jaswant Singh, deceased, and accordingly dismissed the applications. Since the appeal had abated, it was dismissed and decree thereof was passed. It is the case of the petitioners that certified copy of the judgment and decree passed in Regular First Appeal was applied on 17.1.1991 and certified copy was supplied to the counsel on 2.5.1991 which was despatched to the petitioners on 3.5.1991. On 22.5.1991 petitioners filed an execution application for a direction to the respondents to execute the sale-deed in their favour on receipt of balance sale consideration and deposit of cost of stamp-papers. On 28.5.1991 notice of the execution application was ordered to be issued for 12.8.1991. On 12.8.1991, Sh. N.M. Bhayya filed power of attorney on behalf of the respondents and the case was adjourned to 24.8.1991 for filing of objections, if any. On 24.8.1991, the case was adjourned at the request of counsel for the respondents, for 17.9.1991. However, on 16.9.1991 respondents filed an application u/s 28 of the Specific Relief Act for rescission of agreement dated 11.3.1974 and consequently for nullifying decree dated 17.4.1978 passed in civil suit No. 127 of 1973 on the ground that petitioners have failed to offer the amount of sale consideration within three months of the decision given by the High Court and resultantly agreement dated 11.3.1974 stands rescinded and petitioners have lost/forfeited their right to get the sale-deed executed through execution. This application on contest has been allowed by the trial Court. Petitioners have impugned this order in the present revision petition. 3. Learned counsel for the petitioners has contended that at no stage the petitioners were at fault. He contended that immediately after disposal of the appeal by the High Court, the petitioners applied for certified copy of judgment and decree and on receipt of the same from their counsel an execution application was filed on

22.5.1991. In that application the petitioners have specifically averred that a nominee/official of the Court be appointed to get the sale-deed executed in terms of the agreement and upon deposit of balance sale consideration and cost of stamp-paper. This conduct on the part of petitioners is indicative of the fact that they were always ready and willing to perform their part of the contract. Against this, learned counsel for the respondents has contended that decision in appeal was given on 17.1.1991 and therefore, limitation of three months for deposit of the money would start from the date of decision of Regular First Appeal. On the expiry of this period, the Court u/s 28 of the Specific Relief Act was competent to rescind the agreement and an order to this effect passed by the trial Court calls for no interference in revision.

4. Having heard the learned counsel for the parties, I am of the view that the revision petition deserves to succeed. Section 28 of the Specific Relief Act has been enacted with a view to provide remedy in case plaintiff in whose favour decree for specific performance of contract for sale or lease of Immovable property has been passed does not pay within the time specified in the decree or within such further time the Court may allow purchase money or any other sum which the Court ordered him to pay as a condition for the enforcement of the decree. It says that in such cases the vendor or the lessor will have a right to approach the Court which passed the decree and apply in the same suit, in which the decree was passed to rescind the contract so far as it related to the party in default or the whole of it, as the justice of the case requires. u/s 28 of the Specific Relief Act, 1963, at the time of passing a decree for specific performance of a contract for the sale of Immovable property the Court has undoubtedly the power to direct payment by the purchaser of the price or other sum by a fixed date. The said section, however, proceeds to lay down that, in such a case, if the purchaser fails to pay the amount within the time fixed by the decree for specific performance, the vendor could apply in the same suit to have the contract rescinded and, on such application, the Court may order rescission of that contract and proceed to give consequential directions for the restoration of any benefits received thereunder. However, before exercising discretion u/s 28 to rescind a contract the Court has to be satisfied that the purchaser has made default in making payment of the purchase money or any other sum which the Court had ordered him to pay. The Court cannot on flimsy grounds annul a decree once passed by it. It has been held by this Court in *Gurdit Singh v. Jagjit Singh* 1987 1 P.L.R. 129 that a clear case of default has to be established against the decree-holder for rescinding the contract or to nullify the decree for specific performance. Thus, it remains to be examined whether a clear case of default has been made out in this case.

5. It is not disputed that under the decree dated 17.4.1978 the respondents were directed to execute the sale-deed in favour of the petitioners in accordance with the agreement within three months and in default thereof the petitioners were to get the sale-deed executed from the Court. Before the petitioners could get the

sale-deed executed through the Court, respondents filed an appeal in this Court and on 23.5.1978 execution of the decree was stayed. On 28.7.1978 stay given on 23.5.1978 was confirmed on the condition that the respondents shall furnish security for mesne profits to the satisfaction of the trial Court within two months and also for due performance of the decree in the event of dismissal of their appeal. Appeal came to be dismissed on 17.1.1991. In view of order dated 28.7.1978, respondents who had furnished security for due performance of the decree were required to serve notice on the petitioners showing their willingness to execute sale-deed and calling upon them to pay the balance sale consideration. Admittedly, no such course was ever adopted, rather when petitioners filed an application for getting the decree executed showing their intention to deposit the sale consideration and cost of stamp-paper, the trial Court instead of directing them to deposit the same in Court ordered for issuance of notice to the respondents. Their counsel did appear on two dates of hearing, but did not ask the Court for giving a direction to the petitioners to deposit the money. He only sought time to file objections. It was only after two dates of hearing that an application u/s 28 of the Specific Relief Act came to be filed on which order under revision has been passed. The decree of the trial Court had merged into that of the appellate Court and after passing of the decree by the appellate Court, it is the decree of that Court which is to be executed. At the time of dismissing the appeal and passing of the decree this Court never fixed time to deposit the balance sale consideration. Thus, the contention that three months" period would start from the date of passing of the decree by the appellate Court is of no substance. It has also been held in Gurdit Singh's case (supra) that as per phraseology of Section 28 of the Specific Relief Act the purchaser can be deprived of the fruits of the decree passed in a suit for specific performance of a contract for the sale of immovable property if he "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". In the instant case, as already pointed out this Court never fixed the time within which decree-holders were to deposit the purchase-money or any other sum before execution of the sale-deed by the judgment-debtors. Petitioners not only in the execution application showed their willingness to deposit the purchase money but also in the reply to the application filed by respondents u/s 28 of the Specific Relief Act, have averred that "the decree-holders offered to deposit the requisite amount of balance sale consideration and costs of the execution of sale-deed but this Hon"ble Court was pleased to order the issuance of a notice of the said application to the judgment-debtors for the compliance of decree. The decree-holders have always been and even now ready and willing to pay the balance amount etc. as and when so required." The very fact that the respondents took steps to rescind the agreement by making an application after the petitioners had shown their willingness to deposit the purchase-money indicates that the respondents themselves were at fault. Thus, in the circumstances of this case, respondents have failed to establish that decree-holders have committed any default in performance

of their part of obligation under the agreement.

6. On behalf of the respondents, reliance was placed upon decision of this Court in Onkar Nath and Anr. v. Basheer and Ors. 1985 2 P.L.R. 432, In that case, contract of sale was ordered to be rescinded because the decree-holders therein did not pay the sale-consideration before the expiry of the prescribed period and also did not apply for extension of time for doing so. This judgment has no application to the facts of the present case being clearly distinguishable.

7. It deserves to be noticed that the petitioners as an abundant caution have also filed an application in R.F.A. No. 640 of 1978 on 30.9.1992 in which it has been prayed that this Court may fix time for executing the sale-deed by the appellants (respondents herein) with a further direction that in case they fail to execute the sale-deed in favour of the petitioners within the time fixed, the petitioners be allowed to get the sale-deed executed from the Court. Counsel has stated that despite the fact that no time was fixed for executing the sale-deed while disposing of the appeal, this Court even now has the jurisdiction to extend the time, i.e. after passing of the decree. Reference in this regard has been made to judgment in Shmt. Sarupi and Others Vs. Har Gian and Others, wherein it has been held that where the appellate Court dismissed the appeal against the decree but failed to make any direction regarding re-deposit of the purchase money which the respondent-vendee had deposited in the trial Court according to its direction but was allowed to be withdrawn during the pendency of the appeal, the appellate Court has discretionary powers to fix time and to extend the same. For extension of time, no notice is required as this does not amount to modification of that decree. This Court again in Amar Nath Jain v. Ram Parkash Dhakr 1987 1 P.L.R. 490, has held that Section 28 of the Specific Relief Act itself provides for extension of time and in fit cases time can be extended by the Court. Though no judgment to the contrary has been cited by counsel for the respondents, yet no order needs to be passed on this application because of setting aside of the order under revision.

8. Resultantly, the revision petition is allowed, order under revision is set aside and the petitioners are directed to deposit the balance sale consideration and cost of the stamp-paper within three months from the date of appearance of the parties through their counsel before the executing Court. On deposit of the purchase money, the executing Court shall call upon the respondents to execute the sale-deed, failing which an official of the Court shall be appointed to execute the sale-deed in favour of the petitioners.

9. Parties through their counsel are directed to appear before the Executing Court on 4.9.1995.