
Sneh Lata Verma Vs Baldev Raj Monga and Another

Civil Revision No. 599 of 1998

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 19, 1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 148#Specific Relief Act, 1963 â€” Section 28(2)

Citation: (1998) 119 PLR 332 : (1998) 3 RCR(Civil) 187

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: Arun Jain, for the Appellant; Ajai Lamba, for the Respondent

Judgement

Swatanter Kumar, J.

Challenge in this revision is to the order dated 13.1.1998 passed by the learned Additional Civil Judge (Senior

Division), Gurgaon. Though, the controversy arose in the present revision falls in very small compass but in order to properly appreciate the rival

contentions in that regard, it will be appropriate to refer to the necessary facts:-

2. Baldev Raj Monga has filed a suit for specific performance of the agreement to sell. This suit was decreed by the learned trial Court vide

judgment and decree dated 11.6.1997 in the following terms:

Since, 1 decided issue No. 1 to 4 in favour of the plaintiff and against the defendants, therefore, the suit of the plaintiff is decreed with costs and

defendant No. 1 is directed to get transferred the plot No. 106-P Sector 30, Gurgaon, in the record of defendant No. 2, in favour of the plaintiff

after taking the remaining sale consideration of Rs. 14,50,000/- within a period of two months.

3. Against the judgment and decree of the trial Court, no appeal was filed and consequently, the said decree of the learned trial Court has become

final between the parties. Execution of the decree was filed. Judgment-debtor filed objections in the execution on the ground that money in term of

the decree has not been deposited and stipulated period of two months has elapsed. Benefit accruing to the decree-holder under the decree stands

forfeited. The contention raised before the Executing Court was that if the Executing Court now grants extension of time, which power is not

vested in the Court, would tantamount to go behind the decree and alter the terms and conditions of the decree. On the other hand, the contention

of the decree-holder was that judgment-debtor was directed to get permission for transfer of the plot from Estate Officer, HUDA, Gurgaon and to

pay the requisite dues. Learned Executing Court after detailed discussion dismissed the objections and directed the decree-holder to deposit the

remaining sale consideration after deducting the amount payable to HUDA for which again leave was granted to the decree-holder to pay. It is this

order of the learned Executing Court which has been assailed in this revision. Similar contentions which were raised before the Executing Court

have been urged before this Court in the present revision petition. Language of the decree clearly shows that no condition has been imposed on the

decree that rights under the decree would stand forfeited in the event of default. Imposition of such a condition is well within competence of the

learned court which passed the decree. The provisions of Specific Relief Act are founded on equitable principle. Equity dominates the field of grant

of relief for specific performance or its refusal. Principle of equity and good conscious would be just and proper if certain conditions are imposed

while decreeing the suit which are considered to be necessary by the court concerned in the interest of justice and to derive balance between the

parties to an agreement. The concept of automatic forfeiture of the right accruing to the decree-holder under the decree cannot be extended in the

face of unambiguous language used in the decree. In this regard reference can be made to the judgment of this Court in the cases of Gurbachan

Singh Vs. Bachan Singh and Others, , Mohinder Singh Vs. Gurdial Singh and Another, . In the case of Mohinder Singh (supra), it was observed as

under:-

Held, that the legislature has provided powers to the Court Under Sections 148 and 151 of the Code to enable the Court to do complete justice

between the parties. The powers of the Court under these provisions are not merely declaratory or regulatory, but in fact are substantive powers

which have, been vested in the Court by the Legislature with definite intention in mind. These provisions have been worded widely by the

Legislature to enlarge the scope of powers vested in the Court under other specific provisions. The purpose of giving over-riding effect to the

powers vested in the Court u/s 151 of the Code over specific provisions of the statute is sufficient indication that keeping in view the facts and

circumstances of the case and in consonance with the settled principles of law, the court can pass such orders or directions which would be

necessary for achieving the ends of justice or to prevent the abuse of process of Court.

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Reverting back to the facts of the present, the trial Court had exercised its discretion and extended the period for deposit of money. The discretion

exercised by the learned trial Court is on well-founded principles and in no way the trial Court has acceded its jurisdiction while granting such

relief. Admittedly, there was no peremptory condition or term in the decree, which would have the effect of ousting the jurisdiction of the trial

Court in this case. However, the order allowing the application of the decree-holder has become final much before the filing of this revision petition.

The appeal preferred by the judgment-debtor against the decree has already been dismissed and the judgment-debtor did not pursue the matter

any further. The judgment of the Appellate Court confirming the decree has also become final. The objections filed by the judgment-debtor after a

considerable delay and long after deposit of entire purchase money were found to be without any merit and have rightly been dismissed by the trial

Court.

4. In the absence of specific condition to the contrary, if the Court found that there was no mala fide intention on the part of the decree-holder and

the decree-holder was not taking advantage of his mistake to the prejudice to the judgment-debtor, the Court would normally extend the period

for deposit of money. This of course, cannot be an absolute rule but it would have to be construed and determined keeping in view the facts and

circumstances of each case. In the present case, the decree for specific performance was passed on 11.6.1997. Thereafter, the judgment debtor

served noticed on 16.6.1997 and 30.8.1997 asking the decree-holder to fulfil his obligation under the decree. As there was default she claims to

have moved the present application. On the contrary, the decree-holder states that he applied for certified copy of the judgment on 31.7.1997

which he received and he filed the execution application on 6.9.1997. The need for filing such an application arises because the judgment-debtor

owed a sum of more than Rs. 1,73,885.75 paisa and without permission of HUDA the property could not be transferred in favour of the decree-

holder. After ascertaining these facts another application was filed by the decree-holder on 27.1.1998 where he deposited the entire amount and

paid the amount to HUDA after obtaining appropriate orders from the Court as contained in the impugned order dated 31.1.1998. The entire

stand taken by the decree-holder appears to be justifiable and bona fide except for the fact that the decree was passed on 11.6.1997 and there

was no justification on the part of the decree-holder in not complying with the terms of the decree forthwith while computing the period of two

months from the date of decree. Obviously, the period of two months could not be computed from 31.7.1997 when the decree-holder received

certified copy of the decree. This reason does not appear to be bona fide. Secondly, it is commonly known and accepted fact that the value of the

property increases and even money in hand of the party is bound to increase by lapse of time. The execution was filed on 6.9.1997, but the

amount has been deposited on or about 27.1.1998. For this period, the benefit of the amount which under the decree was payable to the

judgment-debtor has accrued to the decree-holder himself. In order to derive equity between the parties, the decree-holder must be directed to

pay interest on the amount for the defaulted period. Learned counsel for the decree-holder has also relied upon the case of Johri Singh Vs. Sukh

Pal Singh and Others, , where the Hon"ble Supreme Court of India held as under:-

While mere filing of an appeal does not suspend a pre-emption decree, a stay order passed by an appellate Court may suspend it in the manner

ordered therein. In Dattaraya v. Shaikh Mahbood Shaikh Ali, the preemption decree in favour of the appellant was passed with the direction to

pay the consideration of Rs. 5000/- within 8 months from the date of the decree and in case of default the suit was to be deemed to have been

dismissed. The decree was confirmed in respondent"s appeal to the District Court on January 28, 1955. The amount was deposited within the time

fixed, but was subsequently withdrawn by him under orders of the Court. While dismissing the appeal, the District Court directed the appellant to

re-deposit the sum of Rs. 5000/- on or before April 30, 1955 and directed the respondent on such deposit to deliver the possession of the

properties and on failure to deposit the suit should stand dismissed with costs. During the pendency of the respondent"s Second Appeal in the High

Court the respondent prayed for stay of execution of the decree. On March 23, 1955, the High court passed a stay order which was received by

the trial Court on April 19, 1955. The appellant deposited the purchase price on May 2, 1955, that is, 3 days after the date fixed, filing an

application stating that he could not deposit this within time as he fell ill. The respondent"s second Appeal was dismissed on October 6, 1960 and

the pre-emption decree in favour of the appellant was confirmed, and he obtained an order of possession. The respondent having applied to the

Executing Court for restitution of the properties on the ground that the appellant had defaulted in depositing the purchase money by the date fixed

by the lower appellate Court"s decree i.e. April 30, 1955, the appellant contended that he would get by necessary implication a fresh starting point

for depositing the purchase money from the date of the High Court"s decree. The Executing Court rejected the claim of the respondent for

restitution and this decision was affirmed by the District Court. But the High Court in appeal took the view that there was default on the part of the

appellant in depositing the amount and, therefore, the appellant"s suit stood dismissed automatically. While allowing the appeal therefrom this Court

held:

The decree framed under Order 20, Rule 14, CPC requires reciprocal rights and obligations between the parties. The rule says that on payment

into Court of the purchase money the defendant shall deliver possession of the property to the plaintiff. The decree holder therefore, deposits the

purchase money with the expectation that in return the possession of the property would be delivered to him. It is, therefore, clear procedure Code

imposes obligations on both sides and they are so conditioned that performance by one is conditional on performance by the other. To put it

differently, the obligations are reciprocal and are inter-linked, so that they cannot be separated. If the defendants by obtaining the stay order from

the High Court relieve themselves of the obligation to deliver possession of the properties, the plaintiff decree holder must also be deemed thereby

to be relieved of the necessity of depositing the money so long as the stay order continues. We are accordingly of the opinion that the order of stay

dated March 23, 1955, must be construed as an order staying the whole procedure of sale including delivery of possession as well as payment of

price. The effect of the stay order therefore, in the present case is to enlarge the time for payment till the decision of the appeal.

5. Another factor which must be taken into consideration for sustaining the order of the learned Executing Court is that the judgment-debtor claims

to have served notices upon the decree-holder but he remained very calm and ineffective to take any judicial proceedings and approach either the

Executing Court or the trial Court u/s 28 of the Specific Relief Act. Apparently, the reason appears to be that the judgment-debtor himself was not

sure of alleged default on the part of the decree-holder as the amounts were payable by him to HUDA which had not been paid and the

information with regard to the amount due was not brought to the notice of the trial Court as well as Executing Court. This necessitated some delay

on the part of the judgment-debtor in approaching the Court. After complying with the order passed by the learned Executing Court dated

13.1.1998, the decree-holder filed an application for leave to deposit balance amount of entire sale consideration amounting to Rs. 12,76,115.25

after paying an amount of Rs. 1,73,885.75 to HUDA on 27.1.1998. Thus permission was granted and in fact bank drafts had already been

enclosed with the application. In these circumstances, the Court is unable to find out any such default on the part of the decree-holder which would

divest the decree-holder of the right accruing in his favour from the decree dated 11.6.1997. Finding no merit in this revision which would justify

setting aside the impugned order dated 13.1.1998, I consider it in the interest of justice and to derive balance of equity between the parties that the

decree-holder is directed to pay interest on the amount of Rs. 12,76,114.25 from 1.10.1997 till 27.1.1998 at the rate of 12% per annum. To this

extent the order of the learned Executing Court is modified and the revision petition stands disposed of. There shall be no order as to costs.