

(2013) 07 P&H CK 0674

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 1566 of 2013 (O and M)

Balbir Singh and Another

APPELLANT

Vs

Amolak Ram

RESPONDENT

Date of Decision: July 12, 2013**Citation:** (2013) 172 PLR 176**Hon'ble Judges:** K. Kannan, J**Bench:** Single Bench**Advocate:** Pritam Saini, for the Appellant; V.B. Aggarwal, for the Respondent

Judgement

K. Kannan, J.

The revision is against the order dismissing an application filed u/s 28 of the Specific Relief Act by the judgment debtor on a plea that the decree holder had not complied with the terms of the decree as regards the deposit to be made for obtaining the sale deed and the decree is therefore required to be rescinded. In the averments in objection to the execution petition filed by decree holder, the judgment debtor also reiterated the stand taken in the application. The Executing Court rejected the objection and also dismissed the application and ordered further process in execution. It is this order against which the civil revision has been filed by the judgment debtor. In the suit filed for specific performance of agreement of sale admittedly executed by the judgment debtor, the contest was taken by the defendant-judgment debtor to the effect that he was always ready and willing to perform his part of the contract but only the plaintiff was not willing. The Court still found favour with the plaintiff and had granted a decree on 26.02.2011. The decree directed the defendant-judgment debtor to execute the sale deed on receipt of balance of sale consideration of Rs. 40 lakhs within two months and the application for deposit had been made on 13.08.2012, and after depositing the money on 14.08.2012, he had sought for execution of the sale deed pursuant to the decree. On the objection filed by the judgment debtor and in response to the application filed by him for rescission of the decree, the decree holder had a justification that he

could not have a sale deed obtained from the judgment debtor in view of a suit that had been filed by one Daljit Singh not merely against the judgment debtor but against him, as well, for an injunction on the basis of an alleged agreement executed on 09.12.2005, that is, a date anterior to the agreement which was the subject of the suit for specific performance. The judgment debtor took a defence that the agreement sued upon by Dalbir Singh was a fabricated document and the said suit had been dismissed on 19.07.2012. Significantly, it was not a plea of the judgment debtor that there had been any act of collusion of the decree holder in setting up Dalbir Singh to file a suit. During the pendency of suit, there had been admittedly an order of injunction restraining the judgment debtor, who was the defendant to the said suit from alienating the property. Since the decree holder was a party, he knew about a claim to the same property at the instance of yet another person and a subsistence of an order of injunction that had been issued against the judgment debtor in the said suit. The decree holder's contention was that he moved an application for deposit on 13.08.2012, that is, immediately within a month from the date when the decree was passed on 19.07.2012 dismissing the suit filed by Dalbir Singh and vacating the order of injunction. The contention, therefore, was that there had been no lapse on his part and he could not have secured a sale deed within time prescribed by the Court under the decree under an extraordinary circumstances of an order of injunction issued in another case.

2. The learned counsel for the judgment debtor-petitioner would contend that when there was a direction for payment of sale consideration within two months, it was irrelevant that there was any order of injunction in the suit filed by Dalbir Singh. The deposit ought to have been an independent obligation for the decree holder to have conformed to and he could not have an excuse for not complying with the terms of the decree. The counsel would rely on a judgment of this Court in [Chanda Vs. Rattni and Another](#), where in a similar situation containing similar directions in the decree that the defendants (vendors) shall execute the sale deed on payment of balance of sale price and get it registered within a period of two months and when the decree holder did not make a deposit and obtain a sale deed, an application had been filed for rescission of the decree and that application had been allowed. The Court observed that the defendant/vendor had the right to ask the Court to rescind the decree containing a direction to sell because of default committed by the plaintiff. This judgment was a subject of appeal to the Supreme Court that was disposed of under the same cause title [Chanda \(dead\) through LRs. Vs. Rattni and Another](#), which held that if the vendee was not paying the amount within time, the application by a vendor to rescind the contract was justified and the Court was not in error in allowing for such an application. According to the counsel, this decision of the Supreme Court confirming the judgment of this Court in Chanda squarely answers the situation that arises in this case.

3. One important facts must be borne in mind. The decree that granted the relief of specific performance for execution of a sale deed did not specifically give a direction

that the amount must have been deposited within any specific period. The counsel would argue that this does not really make a distinction for a similar recital was what was considered in Chanda. A decree passed by a Court on a contest could not be easily interfered with or tampered, otherwise than in the subsequent proceedings in higher forums. A decree again cannot be rendered effete by a supervening event, unless there had been a clear breach. Ideally, in a suit for specific performance, the Court shall make a positive direction for deposit or payment of amount within a particular date in Court. It may seem like mere quibbling with semantics that the direction given to the judgment debtor must also be taken as an inherent direction to the decree holder as well to deposit, for, a sale deed could not have been executed within two months without a deposit or payment within two months. At least, I am here to point out that the decree did not contain appropriate words that could have directed a deposit within a particular period even if for some reason, the decree holder could not have obtained a sale deed from the judgment debtor. In this case, the decree holder could not have obtained a sale deed and there could be precipitative action for disobedience of an order of injunction that had been granted against the judgment debtor in the suit filed by Dalbir Singh. No such contemporaneous difficulty existed in the suit in Chanda decided by the Supreme Court. If the decree holder therefore had not demanded the judgment debtor to execute a sale deed, he would not be taken as violating the terms of the decree. On the other hand, he was abiding by a restraint order which had been issued against his vendor from selling the property. A restraint against the vendor from selling the property should also be seen as his own inability to secure a sale from a person, who had been judicially restrained. The decree holder could not have secured a sale deed, so long as there was an order of injunction, or if that was the perception that the decree holder held about the order of injunction that was issued in Dalbir Singh's case, I would take the explanation given by him as perfectly tenable.

4. Even in consideration of application u/s 28, no Court shall lightly take any situation to stifle a lawful decree. There has to be a clear show of recalcitrance on the part of the decree holder before he could be denied the benefit under the decree. I cannot find a deliberate act or lapse of the decree holder as coming in the way to disentitle him to the relief of specific performance secured through the decree. Even in the judgment of the Supreme Court in Chanda, the Supreme Court has actually observed as follows:-

9.....The power u/s 28 of the Act is discretionary and the Court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree.

The Court does not cease to have the power to extend the time even though the trial Court had earlier directed in the decree that payment of balance price to be

made by certain date and on failure suit to stand dismissed. The power exercisable under this Section is discretionary.

The Supreme Court's observation that the Court is not without power to extend the time ought not to be understood as prescribing a particular procedure that is to be adopted by a decree holder to apply to the Court for extension. If the decree holder could explain the reason as to why he could not do so and if he had made a lodgment for deposit of the amount which was the balance to be paid and the Court accepted the deposit and was considering the issue of whether a decree could be executed or not by allowing for a judgment debtor to join issues on the decree holder's prayer for execution, that is surely the stage when the Court could consider whether the extension was possible or not. In this case such discretion must be taken as having been exercised when the Court was rejecting the objection taken by the judgment debtor and allowing for the decree holder to obtain the decree.

5. The counsel argues that even if the decree were to be executed, it cannot be at the same price which was specified but it should be at the present market price. The counsel refers me to the decision in [Satya Jain \(D\) Thr. L.Rs. and Others Vs. Anis Ahmed Rushdie \(D\) Thr. L.Rs. and Others](#), where the Court was providing for a relief for specific performance directing the defendants to execute a sale deed at the market price as on the date of the order of the Supreme Court in 2013. The considerations that might reside with a Court before granting a decree or while modifying the decree at an appellate forum are completely different from the Executing Court which executes the decree. An Executing Court has no power to go outside the terms of the decree and provide for additional obligations which the decree does not provide. A direction of the Supreme Court in the manner of grant of decree could have, in exercise of discretion that Section 20 of the Act, provides for the equities to be adjusted and take note of the subsequent events of long pendency and direct the market price to be paid for securing an enforcement through a decree. The same principle cannot be applied for an Execution Court to indulge in. It will result in charting out a new proposition that the decree holder will have to cope with new objections also at the stage of execution of whether he will be called upon by the Court to pay additional sale consideration or it would be the same consideration of what is mentioned in the decree. There cannot be such a ring of uncertainty thrown against a decree lawfully obtained by a Court of first instance. I, therefore, hold that the judgment in Satya Jain cannot be applied to the Executing Court at the time when it was allowing for further process in execution and rejecting the objection taken by the decree holder. The orders impugned are maintained and I find no merit in the civil revision. The civil revision is dismissed.