

HIGH COURT OF PUNJAB AND HARYANA
Bench: Justice Karamjit Singh
Date of Decision: 30.10.2023

CR-1899-2022 (O&M)

Mohan Singh ... Petitioner(s)

Versus

Surjit Singh and Others ... Respondent(s)

Legislation:

Section 28 of the Specific Relief Act, 1963

Order 9 Rule 13 of the Code of Civil Procedure (CPC)

Subject: An application filed under Section 28 of the Specific Relief Act, 1963, seeking the rescission of an agreement to sell. The case involves the dismissal of the application by the Court of Civil Judge (Junior Division) and the subsequent legal proceedings regarding specific performance of the agreement.

Headnotes:

Specific Relief Act – Application under Section 28 to rescind the agreement to sell – Dismissal of application by the Court of Civil Judge (Junior Division) – Suit for specific performance filed by respondent – Ex-parte decree in favor of respondent – Petitioner’s contention that respondent failed to deposit the balance sale consideration within the stipulated period of 3 months – Allegation of illegal permission granted by the Court to deposit the balance sale consideration – Petitioner’s application under Section 28 filed after more than 2 years of the passing of the ex-parte decree – Delay in depositing balance sale consideration condoned by the trial Court – Petitioner’s failure to establish sufficient grounds for rescission of the agreement to sell – Revision petition dismissed for lack of merit. [Para 1-9]

Referred Cases: None.

Representing Advocates:

Mr. R.K. Choudhary, Advocate for the petitioner.

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KARAMJIT SINGH , J. (Oral)

1. The present civil revision petition has been filed by the petitioner/JD for setting aside the order dated 31.1.2020 (Annexure P-3) passed by the Court of Civil Judge (Junior Division), Ludhiana vide which the application filed by the petitioner under Section 28 of Specific Relief Act 1963 (in short 'the Act') to rescind the agreement to sell (contract) dated 17.1.2008, was dismissed.

2. The brief facts of the case are that respondent Surjit Singh filed suit for specific performance of agreement to sell dated 17.1.2008, which was executed by the petitioner in favour of the respondent Surjit Singh with regard to suit property for valuable consideration and at the time of execution of the said agreement to sell the petitioner received sum of `50,000/- as advance money from the respondent and it was agreed between the parties that the sale deed would be executed by 18.12.2008 on payment of balance sale consideration by the respondent to the petitioner. In the plaint it was also pleaded that the respondent always remained ready and willing to perform his part of the contract and even on the date fixed i.e. 18.12.2008, he appeared before Sub-Registrar Ludhiana for execution and registration of the sale deed but the petitioner did not turn up to perform his part of the contract. Consequently suit for specific performance was filed. The petitioner failed to appear in the trial Court despite his due service and consequently he was proceeded against ex-parte and finally the suit was decreed in favour of the respondent and ex-parte decree dated 12.3.2011 was passed in favour of the respondent regarding specific performance of agreement to sell and against the petitioner. The respondent was directed to deposit the remaining balance amount in the Court within 3 months of the passing of the ex-parte decree. The balance sale consideration was deposited by the respondent on 8.8.2011 after seeking necessary permission from the Court concerned. Thereafter the petitioner filed an application on 17.5.2013 under Section 28 of the Act seeking cancellation of the agreement to sell on the ground that the

respondent failed to deposit the balance sale consideration within stipulated period of 3 months as provided in ex parte decree dated 12.3.2011.

3. The said application was contested by the respondent/decreed holder and finally the same was dismissed by the Court concerned vide impugned order dated 31.1.2020.
4. Being aggrieved the petitioner has filed the present revision petition.
5. I have heard the counsel for the petitioner.
6. The counsel for the petitioner while assailing the impugned order has inter alia contended that respondent has failed to prove that he was always ready and willing to perform his part of the contract. It has been further contended that the trial Court gave 3 months time to the respondent to deposit the balance sale consideration from the date of passing of ex-parte decree dated 12.3.2011. That however, the respondent failed to comply with the said direction within stipulated period of 3 months. It is further contended that after the expiry of aforesaid period of 3 months, respondent filed an application on 6.8.2011 seeking permission to deposit the balance sale consideration, at the back of the petitioner and the same was allowed by the learned trial Court without following the proper procedure and permission was granted to the respondent to deposit the balance sale consideration, in an illegal manner without giving an opportunity of hearing to the petitioner. That in the given circumstances as the respondent failed to deposit the balance sale consideration within the stipulated period of 3 months, the agreement to sell stands cancelled automatically. The counsel for the petitioner has further submitted that when the petitioner came to know about the illegal permission being granted by the Court concerned to deposit the balance sale consideration, he immediately filed application under Section 28 of the Act on 17.5.2013, but the Court concerned without taking into consideration the factual and legal aspects, dismissed the said application in an illegal manner and the said order deserves to be set aside.

7. I have considered the submissions made by counsel for the petitioner.
8. There is no dispute regarding the fact that the suit for specific performance of agreement to sell dated 17.1.2008 was ex-parte decreed in favour of the respondent and against the petitioner vide judgment dated 12.3.2011. While passing the said ex-parte decree the learned trial Court directed the respondent to deposit the balance amount in the Court within 3 months from the date of passing of decree. Admittedly the respondent did not deposit the balance sale consideration within stipulated period of 3 months and rather the said balance amount was deposited by the respondent with the Court concerned on 6.8.2011. Undisputedly the petitioner neither filed any appeal against ex-parte judgment dated 12.3.2011 nor filed any application under Order 9 Rule 13 CPC for setting aside of ex-parte decree, meaning thereby that he accepted the ex-parte decree dated 12.3.2011. The petitioner filed an application under Section 28 of the Act after more than 2 years of the passing of the ex-parte decree and after about 1½ year of the deposit of balance sale consideration by the respondent. No doubt time to deposit balance sale consideration cannot be extended as a matter of course. However, in view of the fact that there was no inordinate delay in depositing the balance sale consideration on the part of the respondent and further it was an exparte decree which was never challenged by the petitioner even after it came into his knowledge and the petitioner filed one simple application dated 17.5.2013 under Section 28 of the Act seeking cancellation of the agreement to sell, the learned trial Court correctly permitted the respondent to deposit the balance sale consideration when the request in this regard was made by him on 6.8.2011. Thus the delay in deposit of balance sale consideration was rightly condoned by the learned trial Court. In the given circumstances, the learned trial Court rightly dismissed the application filed by the petitioner under Section 28 of the Act as the petitioner failed to establish sufficient grounds for recession of the agreement to sell dated 17.1.2008.

9. Consequently, the present revision petition is hereby dismissed being devoid of merits. Keeping in view the circumstances mentioned above, the present petition is being disposed of without issuing any notice to the opposite party.

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