

Fakria Vs. Jasmer Singh

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Court : Punjab and Haryana

Decided On : Jan-14-2005

Reported in : (2005)139PLR801

Judge : Hemant Gupta, J.

Acts : [Limitation Act, 1963](#) - Schedule - Article 136; [Specific Relief Act, 1963](#) - Sections 28; Specific Relief Act, 1877 - Sections 35

Appeal No. : Civil Revision No. 2030 of 2004

Appellant : Fakria

Respondent : Jasmer Singh

Advocate for Def. : V.B. Aggarwal, Adv.

Advocate for Pet/Ap. : R.S. Longia, Adv.

Judgement :

Hemant Gupta, J.

1. The Judgment Debtor is in revision petition aggrieved against the order passed by the learned Executing Court on 11.3.2004 whereby the objections filed by the petitioner against the execution of the decree dated 13.11.1987 were dismissed.

2. The petitioner herein filed a suit for declaration that the agreement dated 3.4.1984 and 21.4.1984 allegedly executed by the plaintiff in favour of defendant No. 1 are illegal, null and void and inoperative. In the said suit the parties entered into compromise on 13.11.1987. According to the terms of the compromise dated 12.11.1987 both the agreements dated 3.4.1984 and 21.4.1984 were superseded and the petitioner herein agreed to sell one acre of land i.e. the land comprised in Khasra No. 51/20 measuring 8 kanals to Jasmer Singh for Rs. 10,000/-. Rs. 10,000/- was to be paid at the time of the registration of the said deed. The parties agreed that the suit be decreed in terms of such compromise. The Trial Court passed the decree on 13.11.1987 incorporating such compromise as part of decree.

3. The Decree Holder sought execution of such decree vide execution application dated 11.11.1999. The petitioner herein objected to execution of such decree inter alia on the ground that there is no executable decree in favour of the Decree Holder and the execution is time barred as more than 12 years have elapsed. The Decree Holder contested such objection and asserted that the execution has been filed prior to completion of 12 years and the Judgment Debtor was served with a legal notice on 11.10.1993 to comply with the decree which was replied by the Judgment Debtor on 26.10.1993.

4. The learned Trial Court dismissed the objection and held that the compromise having thumb marked by the Judgment Debtor is valid and binding on the parties and is executable, even if it extends beyond the subject matter of the suit. Since the execution application was filed within 12 years, the decree was said to be executable being within limitation.

5. Before this Court, the learned counsel for the petitioner has vehemently argued that the decree for specific performance of the agreement passed by the learned Trial Court is in the nature of preliminary decree and the same could be executed within a reasonable time and not almost after the expiry of 12 years. It is argued that in a decree for specific performance reasonable time has to be examined not only before the passing of the decree but even at the stage of execution. Therefore, the decree passed by the learned Trial Court could not be executed

after such gross delay. Reliance is placed upon Smt. Chand Rani v. Kamal Rani, 1993(2) Recent Revenue Report 46, Parvesh Kumar Gulati v. Darshan Singh Gulati, 1998(1) R.C.R. (Civil) 119 (Delhi High Court); K.S. Vidyanadam v. Vairavan, 1997(2) Recent Civil Report 812 (S.C.).

6. On the other hand, learned counsel for the respondent Decree Holder relied upon Deep Chand and Ors. v. Mohan Lal, 2000(2) P.L.J. 197 (S.C.) and Antonysami v. Arulanandam Pillai, 2002(1) Recent Civil Report (C) 826 (S.C.) to contend that the execution having been filed within 12 years i.e. the period prescribed to seek execution of a decree in terms of Article 136 of the Limitation Act, the decree is executable. It is argued that within the period of limitation no argument can be raised that it is beyond a reasonable period.

7. I have heard the learned counsel for the parties at great length but am unable to agree with the arguments raised by the learned counsel for the petitioner. In Chand Rani's case one of the questions raised before the Hon'ble Supreme Court was whether there is a presumption against time being essence of the contract. That was a case where it was held that in the case of sale of immovable property, there is no presumption as to time being essence of the contract but even if time is not the essence of the contract, the Court may infer that it is to be performed in a reasonable time. Such inference can be raised from the express terms of the contract, from the nature of the property or from the surrounding circumstances such as to object, of making the contract. That was a case where such an argument was raised in a suit for specific performance before the passing of the decree.

8. Similarly in K.S. Vidynandam 's case, the plaintiff was found to be totally inactive for 2-3/2 years in severe violation of terms of the agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. The said case also pertained to a situation in a suit for specific performance before the passing of the decree. The learned counsel also referred to the principle of law laid down by the learned Single Judge of Delhi High Court, while interpreting Section 28 of the Specific Relief Act, that the decree in a suit for specific performance is a preliminary decree and that even if no time has

been fixed in the decree for making the payment to the defendant, the performance of the contract has to be demanded within reasonable time. In that case the plaintiff waited for more than 3 years before initiating the executing proceedings for which delay he has not furnished any explanation. In the said case the learned Single Judge of Delhi High Court has relied upon the Supreme Court judgment reported as Hunderford Investment Trust Ltd. v. Haridas Mundhra and Ors., A.I.R. 1972 S.C. 1826.

9. Before proceeding further, it would be, advantageous to discuss the nature of the decree in a suit for specific performance. Hon'ble Supreme Court in Haridas Mundhra's case was considering a decree for specific performance dated 25.2.1964. The appellant before the Hon'ble Supreme Court has filed an application for rescinding of an agreement for sale dated 30.10.1956 as well as the decree dated 25.2.1964, the Court found that under Section 28 of the [Specific Relief Act, 1963](#), an application of rescinding of a decree for specific performance is not maintainable, though under Section 35 of the Specific Relief Act, 1877 in the case of default in payment of purchase money, the decree could be rescinded. The Supreme Court held that the court which passes a decree for specific performance retains control over the decree after the decree has been passed and that decree passed in a suit for specific performance is not a final decree and the suit must be deemed to be pending even after the decree. The Court proceeded to hold that as the court retains control over the matter despite the decree, it is open to the Court, when it is alleged that the party moved against has positively refused to complete the contract to entertain an application to rescind the decree for specific performance of an agreement to sell. The Court found that the decree Holder refused to pay the purchase money therefore, there was nothing which prevented the judgment Debtor from applying from rescinding of the decree. Consequently, the Court allowed the rescinding of decree for specific performance.

10. On the other hand, the judgments referred to by the learned counsel for the Decree Holder pertains to a decree in a suit for specific performance, the execution of which was sought within the period of limitation prescribed under Article 136 of the Limitation Act. It was not disputed by the learned counsel for the

petitioner that the limitation provided to seek execution of the decree for specific performance is 12 years. In that case the execution was filed after 10 years of the decree. It was held by the Hon'ble Supreme Court in Deep Chand's case that the purpose of execution proceedings is to enable the Decree Holder to obtain the fruits of his decree. In case where the language of the decree is capable of two interpretations, one of which assist the decree holder to obtain the fruits of the decree and the other preventing him from taking the benefits of the decree, the interpretation which assists the decree holder should be accepted, it was held to the following effect:

'A perusal of the article shows that the period of limitation prescribed by it starts to run from the date when the decree becomes enforceable provided the case does not fall within the scope of the latter part of the provision in the third column. Generally a decree or order becomes enforceable from its date, but in appropriate cases the Court passing the decree may prescribe time wherefrom the decree becomes enforceable on a future date, it must, however, be remembered that the purpose' of execution proceeding is to enable the decree holder to obtain the fruits of his decree. In case where the language of the decree is capable of two interpretations, one of which assist the decree-holder to obtain the fruits of the decree and the other preventing him from taking the benefits of the decree, the interpretation which assist the decree holder should be accepted. The execution of the decree should not be made futile on mere technicalities which does not, however, mean that where a decree is incapable of being executed under any provision of law it should, in all cases, be executed notwithstanding such bar or prohibition. A rational approach is necessitated keeping in view the prolonged factum or litigation resulting in the passing of a decree in favour of a litigant. The policy of law is to give a fair and liberal and not a technical construction enabling the decree holder to reap the fruits of his decree.

11. Similarly, in Antonysami's case, the Court was again seized of the decree in a suit for specific performance. The decree was passed on 23.7.1966 wherein the defendant was to measure and demarcate the boundaries on or before 23.9.1966. The land in pursuance of the decree was measured and demarcated in the year 1973 whereas the execution was filed in the year 1980. The Court found that if the

direction given in the decree to the judgment Debtor to measure and demarcate the land by 23.9.1966 was not complied with, the Decree Holder was free to execute the decree. Since the decree holder sought execution of decree in the year 1980, the court found that the execution of the decree is beyond the period of limitation.

12. The petitioner objected to decree only after the Decree Holder sought execution within the period prescribed under Article 136 of the Limitation Act. In Haridass's case, the Hon'ble Supreme Court has quoted with approval the judgment of Calcutta High Court reported as *Haramba Chandra Maitra v. Jyotish Chandra Sinha and Ors.*, A.I.R. 1032 Calcutta 579 and *Chunilal Jamnadas v. Mulchand Harjivandas*, A.I.R. 1923 Bombay 23 that a decree for specific performance is a decree in favour of both the plaintiffs and the defendants in the suit and the decree is capable of being executed by either. It was open to the petitioner to seek execution of the decree so as to compel the respondent herein to pay Rs. 10,000/- and to execute the decree. But such course was not adopted by the petitioner. The petitioner has not called upon the defendant to execute the decree at any point of time nor ever moved an application for rescinding of the decree for the reason that the respondent herein has failed to comply with the terms of the decree. Therefore, it is not open to the petitioner to obstruct the execution of the decree when sought for by the Decree Holder within a period of limitation.

13. The argument that the petitioner entered into a contract as he required money for immediate requirement and with the passage of time, the requirement for money no longer survives and therefore, it is open to the petitioner to object the execution of the decree at this stage is again without any merit. If the petitioner was in hardship, it was open to the petitioner to seek execution of the decree calling upon the defendant to make the balance payment. Therefore, mere passage of time, when the petitioner has not taken any steps to seek performance of the agreement, cannot be a ground to decline the execution of the decree as not maintainable.

14. It is not a case where petitioner was unaware of his rights. The petitioner has earlier filed a suit challenging the agreement in favour of the respondent. It was in the said suit, a compromise was arrived at and decree passed. It only shows that the plaintiff was vigilant to seek cancellation of the agreement but has not taken any steps to avoid the decree that was passed. Thus, it is not open to the petitioner to avoid the execution of the decree at this stage.

15. Thus, I do not find any merit in the arguments raised by the learned counsel for the petitioner. Consequently, I dismiss the present revision petition leaving the parties to bear their own costs.

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