

Asha Rani Vs. Jasbir Singh

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Court : Punjab and Haryana

Decided On : Feb-29-2000

Reported in : (2000)126PLR314

Judge : M.L. Singhal, J.

Acts : [Specific Relief Act, 1963](#) - Sections 28

Appeal No. : Civil Revision No. 5567 of 1999

Appellant : Asha Rani

Respondent : Jasbir Singh

Advocate for Def. : Inderjit Malhotra, Adv.

Advocate for Pet/Ap. : M.L. Saggar, Adv.

Disposition : Petition dismissed

Judgement :

M.L. Singhal, J.

1. Jasbir Singh filed suit for possession through specific performance against Smt. Asha Rani of agreement to sell dated 18.4.91 with regard to plot No. 28-A of 15 marlas alongwith 9 shops and 7 rooms and courtyard therein and water pump and electric fitting on payment, of a sum of Rs. 2,60,000/- minus Rs. 50,000/- which

was alleged to have been paid to Asha Rani by Jasbir Singh at the date of the execution of the agreement as earnest money. It was civil suit No. 1 dated 2.8.91, which was decreed with costs by Additional Civil Judge, Senior Division, Phagwara on 26.2.96. Plaintiff was directed to deposit the balance consideration of Rs. 2,10,000/- in Court within three months and Smt. Asha Rani was to execute regular sale deed in favour of the plaintiff (Jasbir Singh) within three months from the deposit of the balance consideration by the plaintiff in Court, Rs. 4,952/- was assessed as costs incurred by plaintiff Jasbir Singh.

2. Smt. Asha Rani filed appeal against this decree on 28.4.96. In appeal, execution of the sale deed was stayed by the appellate Court on 10.5.96. Appeal was dismissed by District Judge, Kapurthala on 16.11.98. Smt. Asha Rani went in regular second appeal No. 265/99 to the High Court, which was dismissed on 11.5.1999. Thereafter, Jasbir Singh filed execution case Mo. 4 of 16.1.99 in the Court of Additional Civil Judge, Senior Division, Phagwara. Within three months of the date of the dismissal of the appeal by District Judge, Kapurthala. Jasbir Singh deposited Rs. 2,10,000/- minus Rs. 4952/- i.e. costs awarded by the trial Court to him. He deposited Rs. 2,05,048/- in the trial Court on 15.1.99 there by adjusting the remaining amount of Rs. 4952/- towards costs awarded to him by the trial Court. In the execution, Smt. Asha Rani took up objection to the executability of the decree saying that the decree-holder could not call upon her to execute the sale deed per the decree granted to him by the Court because he had defaulted on two counts; one, he had deposited amount of Rs. 2,05,048/- on 15.1.1999 whereas he had been called upon to deposit the amount of Rs. 2,10,000/-. Deposit made by him thus fell short of the amount, which he had been called upon to deposit per the terms of the decree. Two, decree holder had been enjoined to deposit a sum of Rs. 2,10,000/- within three months from the date of decree dated 26.2.96. He was, thus, required to deposit Rs. 2,10,000/- on or before 25.5.96 instead, he deposited the amount on 15.1.99, which was not in compliance with the decree. It was urged by Smt. Asha Rani that the execution of the decree, thus, could not be had.

3. Jasbir Singh decree-holder contested these objections saying that immediately after Additional Civil Judge, Senior Division, Phagwara had decreed his suit for

possession through specific performance on 26.2.96, JD Smt. Asha Rani filed appeal. In appeal, the operation of the judgment and decree dated 26.2.96 was stayed. During stay of the operation of judgment and decree deed 26.5.96, he was not supposed to deposit the amount. Appeal was decided by District Judge on 16.11.98. Decree holder was supposed to deposit the amount within three months from 16.11.98. He deposited the amount on 15.1.1999 which was in compliance with the terms of the decree. Since the plaintiff-decree-holder's suit had been decreed with costs, he could adjust Rs. 4952/- while depositing the amount and complying with the terms of the decree. Additional Civil Judge, Senior Division, Phagwara dismissed these objections vide order dated 13.8.1999. Aggrieved by this order dated 13.8.99 passed by the Additional Civil Judge, Senior Division, Phagwara (executing Court), Smt. Asha Rani has knocked the door of this Court through this revision.

4. Mr. M.L. Saggur, Learned counsel for the petitioner-defendant-debtor submitted that Additional Civil Judge, Senior Division, Phagwara had decreed the suit of the plaintiff-respondent-decree holder for possession by way of specific performance of the agreement to sell dated 18.4.91 on his depositing the balance sale consideration to the tune of Rs. 2,10,000/- within three months of 26.2.96 i.e. when the decree was passed. He deposited Rs. 2,05,048/- which was not in compliance with the terms, of the decree. It was submitted that the intention of the decree was that he should deposit Rs. 2,60,000/- minus Rs. 50,000/-, which he had already paid as earnest money within three months of the date of decree i.e. 26.2.96. It is admitted that he had no business to adjust Rs. 4952/- which was costs of the suit while depositing the amount. He could have recovered the costs of the suit through execution. He had no business to tinker with the direction given in the decree. He further submitted that he did not deposit this amount soon after the decree of District Judge, Kapurthala. He was absolved of depositing the amount by District Judge on the appeal of Smt. Asha Rani. On the appeal of Smt. Asha Rani, operation of the decree passed by Additional Civil Judge, Senior Division, Phagwara was stayed by District Judge, Kapurthala. It was submitted by him that the appellate Court just dismissed the appeal of Asha Rani but gave no direction to Jasbir Singh that he shall deposit the amount within such and such period. It was submitted that when there was no direction by the appellate Court as to the

time within which the said deposit was to be made by the plaintiff-decree, the plaintiff decree holder was bound to make the deposit soon after appeal was decided. Appeal was decided on 16.11.98. Plaintiff-decree-holder, deposited the amount on 15.1.1999. It was submitted that there were two lapses on the part of the decree holder, which stand in his way of rearing the fruit of decree and calling upon defendant-judgment debtor Asha Rani to execute the sale deed. In support of this submission that the plaintiff-decree-holder could not adjust the amount of costs towards the amount, which he was required to deposit by the terms of the decree, he drew my Attention to V.S. Palanichamy Chettiar Firm v. C. Alagappan, (1994) 4 Supreme Court Cases 702. In this case, the appellant was owner of the property being two plots of land each measuring 60' x 40', entered into two separate but similar, agreements of sale dated 16.2.1980 with the respondent decree-holders. Since the judgment-debtor failed to perform his part of the agreement, the decree-holders filed suits for specific performance of the contract of sale in the Court of the District Munsif, Pudukottai. The suits were decreed in favour of the respondents with a direction to them to deposit the balance amount of consideration and with further direction to the appellant to execute the sale deeds. The suits were decreed on 31.1.1983 and the balance consideration amount was to be deposited on or before 31.3.1983. Against the judgment and order decreeing the suits, the appellant filed appeals in the High Court which were dismissed on 28.2.1985. The High Court, while dismissing the appeals of the judgment-debtor, did not grant any extension of time to the respondents for deposit of the balance amount of consideration. Respondent decree-holders filed applications for execution of the decrees of specific performance of the contract after five years of the decrees by the trial Court and three years after dismissal of the appeals by the High Court. One of the contentions raised by the appellant judgment-debtor was that the respondent-decree holders had failed to deposit the balance amount of consideration in terms of the decrees. In one case, the balance consideration amount was deposited much after the amount of the balance consideration was at all deposited. The executing Court, by order dated 2.9.1984, dismissed the execution applications of the respondent decree-holders holding that they did not pay the amount of balance consideration within the time stipulated under the decrees. Against this order, two revisions were filed in the

High Court by the respondent decree-holders. It was not disputed, that there was a delay in complying with the terms of the decrees which the High Court, the respondent decree-holders filed separate applications seeking extension to time granted under the decrees by the trial Court to deposit the amount. When the appellant judgment-debtor objected to the filing of the applications on the ground that these could not be maintained in the High Court and no such application was filed in the trial Court, the High Court remitted the matter to the executing Court with a direction to treat the applications as interlocutory applications in the execution proceedings and to dispose of them in accordance with law. At the same time, the High Court also said that in view of the decision of this Court in *Sardar Mohar Singh through Power-of-Attorney Holder Manjit Singh v. Mangilal alias Mangtya*, (1997)9 S.C.C. 217, the lower Court has got power to extend the time. Aggrieved appellant judgment-debtor filed appeals. Hon'ble Supreme Court allowed these appeals with costs observing that under Section 28 of the Specific Relief Act, application for extension of time to deposit the amount could be made to the trial Court/Executing Court but while extending the time to deposit the amount, the Court should see whether when extension is applied for, there is still limitation for filing suit for specific performance. Learned counsel for the petitioner drew my attention to *Onkar Nath v. Basheer*, (1985-2)88 P.L.R. 432 where it was held that 'if the purchaser had made an arrangement for the money and the petitioners refused to accept the same, they could deposit the amount in the Court and apply for execution of the decree. But for the reasons best known to them they did not adopt that course. They even did not serve any notice on the petitioners that they (petitioners) had refused to accept the money and execute the sale deed. The seller has been given a right to make an application or rescission of the contract after the decree has been passed against him, if the purchaser fails to pay the purchase money as directed by the Court within the prescribed period or such further period as the Court may allow. The contract of sale cannot be rescinded on any other ground except the one provided in Section 28 of the, Specific Relief Act. As already observed, the respondents failed to pay the sale consideration within the prescribed period and they did not apply for extension of the period for doing so. Therefore, the petitioners became entitled to get the contract rescinded.'

5. In this case, however, the execution of the decree could not be refused to the decree-holder plaintiff-respondent Jasbir Singh as he deposited the amount of Rs. 2,05,048/- on 15.1.99. He was entitled to adjust the amount of Rs. 4952/- towards costs of the suit when his suit was decreed with costs. They, should he have deposited Rs. 2,10,000/- in Court and apply for realisation of the amount of Rs. 4952/- through execution, when he could defray a sum of Rs. 4952/- towards the deposit which he was to make. While dismissing the appeal on 16.11.98, the District Judge observed that judgment and decree in appeal are, accordingly, affirmed, meaning thereby that direction given by the trial Court that he amount of Rs. 2,10,000/- would be deposited within three months was kept undisturbed. The period of three months would commence on 16.11.98. When the decree of the lower Court was appealed against, it is the appellate decree that would enure and the decree of the lower Court stood merged in the appellate decree. In the appellate decree, there was no such direction that he will deposit the amount within such and such period. He could thus deposit the amount within reasonable time or he could deposit the amount with three months of the date of the appellate decree when lower Court's judgment and decree had been affirmed in appeal without any tinkering therewith. It was held in *Sikander Shah, Petitioner v. Syed Abdul Rehman, Respondent*, A.I.R. 1969 Andhra Pradesh 146 that 'costs awarded can be set off against the purchase money which the vendor is directed to deposit within a specified time in a decree for specific performance, or vice versa.' It was held in *Ramankutty Gupta, Appellant v. Avara, Respondent*, A.I.R. 1994 Supreme Court 1699 that 'an appeal is a continuation of the suit where a decree for specific performance has been dismissed by the trial Court, but decreed by the appellate Court, it should be construed to be in the same suit. When the decree specifies the time for performance of the conditions of the decree, on its failure to deposit the money, Section 28(1) itself gives power to the Court to extend the time on such terms as the Court may allow to pay the purchase money or other sum which the Court has ordered him to pay. An application for extension of time for payment of balance consideration may be filed even in the Court of first instance or in the appellate Court in the same, suit as the decree of the trial Court stands merged with that of the appellate Court which decree is under execution. It is to be seen that the procedure is the hand-maid for justice and unless the procedure touches

upon jurisdictional issue, it should be moulded to subserve substantial justice.'

6. In this case, there is inherent in the decree of the appellate Court that the appellate Court had maintained the direction of the trial Court that the deposit shall be made within three months. This three months period has to be taken from 16.11.98.

7. For the reasons given above, this revision fails and is dismissed with costs. Counsel fee Rs. 1100/-.

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