



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-4675-2022

Reserved on: 22.08.2025

Pronounced on :01.10.2025

Karnail Singh

...Petitioner

V/s

Randhir Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. S.K. Aggarwal, Advocate,
Mr. Ojas Bansal, Advocate and
Mr. Tejas Bansal, Advocate, for the petitioner.

Mr. Akshay Jindal, Advocate and
Mr. Aditya Sharma, Advocate, for the respondent.

VIKRAM AGGARWAL, J

The instant revision petition, preferred under Article 227 of the Constitution of India, assails order dated 30.09.2022 (Annexure P-1), passed by the Court of Addl. District Judge, Kaithal, vide which order dated 08.07.2019 (Annexure P-6) passed by the Court of Addl. Civil Judge (Sr. Divn.), Kaithal was set aside, thereby dismissing the application under Section 28 of the Specific Relief Act, 1963 (for short the "1963 Act") and the application/objection dated 13.12.2018 for dismissal of the execution petition filed by the petitioner-defendant (judgment debtor) and restoring the execution petition.

2. Shorn of unnecessary details, the facts emerging from the revision petition, are that a suit for possession by way of specific performance of agreement to sell dated 04.02.2008 was instituted by the respondent-plaintiff (Randhir Singh) (hereinafter referred to as the "plaintiff") against the petitioner-defendant (Karnail Singh) (hereinafter



referred to the as the “defendant”). The said suit was decreed vide judgment and decree dated 11.08.2014 (Annexure P-2) passed by the Court of Addl. Civil Judge (Sr. Divn.), Kaithal. The defendant was called upon to get the sale deed executed within a period of two months from the passing of the said judgment and decree, failing which the plaintiff would be entitled to get the same executed through the process of the Court.

2.1 An appeal was preferred by the defendant against the said decision, which was also dismissed vide judgment and decree dated 29.10.2016 (Annexure P-3) passed by the Court of Addl. District Judge, Kaithal and the judgment and decree dated 11.08.2014 passed by the trial Court was upheld but no time was fixed for execution of the sale deed.

2.2 An application under Section 28 of the 1963 Act was instituted by the defendant on 09.12.2016 (Annexure P-4) wherein, a prayer was made that the plaintiff-decree-holder be directed to pay the balance sale consideration so that the sale deed could be executed and in case of his failing to do so, the agreement to sell dated 04.02.2008 be rescinded.

2.3 Reply (Annexure P-5) was submitted to the said application, stating that the said application was a counter blast to the execution petition preferred by the plaintiff-decree-holder which was pending for 07.04.2018. However, it was averred that the plaintiff-decree holder was having the balance sale consideration ready and was ready to deposit the same as per the order to be passed by the Court.

2.4 It transpires that an execution petition had also been filed by the plaintiff on 19.04.2017.

3. Vide order dated 08.07.2019 (Annexure P-6), the Court of Addl. Civil Judge (Sr. Divn.), Kaithal dismissed the execution petition and allowed



the application filed by the defendant under Section 28 of the 1963 Act and rescinded the agreement to sell.

3.2 An appeal (Annexure P-7) was preferred against the said decision by the plaintiff, which was allowed by the Court of Addl. District Judge, Kaithal vide order dated 30.09.2022, leading to filing of the instant revision petition by the defendant.

4. Learned counsel for the parties were heard.

4.1 Sh. S.K. Aggarwal, learned counsel representing the defendant strenuously urged that no appeal was maintainable against the order dated 08.07.2019 and, therefore, the order dated 30.09.2022 passed by the Court of Addl. District Judge, Kaithal is a nullity in the eyes of law. He submitted that under the circumstances, the said order deserves to be set aside.

4.2 On merits, learned counsel submitted that despite the decree having been passed in favour of the plaintiff on 11.08.2014 and the appeal against that order having been dismissed on 29.10.2016, no amount of balance sale consideration was deposited till 10.12.2018, when an application was moved by the plaintiff for deposit of the said amount and the same was erroneously accepted. He submitted that under the circumstances, the executing Court had rightly invoked the provisions of Section 28 of the 1963 Act and rescinded the contract, but the first appellate Court erroneously set aside the same.

4.3 Learned counsel submitted that once the appeal of the defendant had been dismissed on 29.10.2016, the balance sale consideration should have been deposited within a period of two months whereas, the same was deposited after more than two years, meaning thereby that the plaintiff was never ready to deposit the same. It was further submitted that no application for extension of time was moved and straightaway, an application for deposit



of the balance sale consideration was moved which was wrongly accepted, but the error was rectified at a later stage by passing order dated 08.07.2019 by the Court of Addl. Civil Judge (Sr. Divn.), Kaithal.

4.4 In support of his contentions, he placed reliance in ***Prem Jeevan vs. K.S. Venkata Raman and another, 2017 SCC Online SC 179, V.S. Palanichamy Chettiar Firm vs. C. Alagappan, 1999 AIR (Supreme Court) 918, P.R. Yelumalai vs. N.M. Ravi, (2015) 9 SCC 52, Parkashwinder Singh vs. Jaswant Singh, 2020 (1) RCR (Civil) 343 Mangal Singh vs. Amrik Singh, 2018 (4) RCR (Civil) 98, Shalini Shyam Shetty and another vs. Rajendra Shankar Patil, (2010) 3 SCC (Civil) 338, Radhey Shyam and another vs. Chhabi Nath and others, 2015 SCC Online SC 170, Satyanarayan Laxminarayan Hegde and others vs. Mallikarjun Bhavanappa Tirumale, 1960 AIR (SC) 137 and Mohammed Ansari vs. Union of India and others, (2017) 3 SCC 740.***

5. *Per contra*, Sh. Akshay Jindal, learned counsel representing the plaintiff, with equal vehemence, submitted that even if, for the sake of arguments, it is accepted that no appeal was maintainable against the order dated 08.07.2019 and the remedy was to prefer a revision petition before this Court, there would be no reason to set aside the order dated 30.09.2022 passed by the Court of Addl. District Judge, Kaithal and then leave the parties to prefer another revision petition against the order dated 08.07.2019. Learned counsel submitted that exercising powers under Article 227 of the Constitution of India, this Court can very well take notice of the fact that even against the order dated 08.07.2019, a revision petition would have to be preferred under Article 227 of the Constitution of India and once the parties are already before this Court, it would not be in the interest of justice, to ask the plaintiff to file a fresh revision petition.



5.1 On the merits of the case, it was submitted that immediately after dismissal of the appeal, an execution petition was preferred and it was the defendant who was not appearing in the execution petition. It was submitted that even in response to application under Section 28 of the 1963 Act, it was submitted that the plaintiff had always been ready and willing to deposit the balance sale consideration and only the process of the Court took some time and eventually an application for depositing the amount was filed by the plaintiff, which was rightly allowed. Learned counsel submitted that once the said order had been passed permitting the plaintiff to deposit the balance sale consideration and the same had not been challenged by any side, it was not open for the executing Court to have recalled its order while passing order dated 08.07.2019.

5.2 In support of his contentions, learned counsel placed reliance in *Surya Dev Rai vs. Ram Chander Rai and others*, 2003 SCC Online SC 829, *Prem Kumar vs. Narinderjit Singh*, 2008(1) RCR (Civil) 712, *Balbir Singh and another vs. Baldev Singh (D) and others*, 2025(1) RCR (Civil) 771, *Balbir Singh and others vs. Baldev Singh (now deceased) through his LRs and others (and one connected case)*, 2023 (1) PLR 179, *Bhupinder Singh vs. Chamkaur Singh and others*, 2019 (4) RCR (Civil) 608, *Sucha Singh vs. Nand Lal*, 2015(31) RCR (Civil) 452 and *Pritam Singh and another vs. Karan Garg*, 2017 (4) Law Herald 3583.

6. I have considered the submissions made by learned counsel for the parties.

6.1 Concededly, the suit was decreed by the trial Court vide judgment and decree dated 11.08.2014;

“29. In view of my findings on the above said issues, especially on issue No.1 to 3, the suit of the plaintiff succeeds and the same is hereby decreed with costs as prayed for and the defendant is directed to



get the sale deed executed in pursuance of the agreement to sell dated 04.02.2008 within a period of two months from the passing of this judgment, failing which the plaintiff shall be entitled to get the same executed through the process of the Court. Decree-sheet be prepared accordingly and file be consigned to the record room after due compliance.”

6.2 An appeal was preferred by the defendant against the said judgment and decree, which was also dismissed vide judgment and decree dated 29.10.2016 passed by the Court of Addl. District Judge, Kaithal;

“16. In view of my aforesaid discussion, this Court is of the opinion that the learned trial Court has rightly decreed the suit of the plaintiff and no ground is made out to interfere in the aforesaid well reasoned judgment of the learned trial Court which is accordingly upheld. The appeal being devoid of merits stands dismissed with costs. Decree-sheet be prepared accordingly. Copy of this judgment along with lower Court’s record be sent back. Appeal filed be consigned to the record-room after due compliance.”

7. Now, coming first to the issue of maintainability of an appeal against the order dated 08.07.2019. Concededly, by way of the said order, the execution petition filed by the plaintiff was dismissed and the application filed by the defendant under Section 28 of the 1963 Act was allowed. Against dismissal of an application under Section 28 of the 1963 Act, a revision petition would have to be preferred and against dismissal of the execution petition, an appeal would be filed. An appeal was, therefore, filed which was decided vide order dated 30.09.2022. Even if the said order, for the sake of arguments, is stated to be a nullity, the fact remains that eventually, the plaintiff would have to prefer a revision petition against the order dated 08.07.2019. This Court is already dealing with a revision petition, though filed by the defendant, against not only the order dated 30.09.2022 but also against the order dated 08.07.2019. This Court, therefore, does not deem it appropriate, to set aside the order dated



30.09.2022 on technical grounds, leaving it to the plaintiff then to challenge order dated 08.07.2019 by way of a separate revision petition.

7.1. As held by the Supreme Court of India in the case of ***Surya Dev Rai*** (supra), Article 227 of the Constitution of India, confers supervisory jurisdiction on every High Court, which is a power of superintendence over all Courts and Tribunals throughout the territories in relation to which, a High Court exercises jurisdiction. It was held that the power of superintendence so conferred on the High Court is administrative as well as judicial and is capable of being invoked at the instance of any person being aggrieved, or may even be exercised *suo motu*. It was held that the paramount consideration behind vesting such wide power of superintendence in the High court is paving the path of justice and removing any obstacles therein. The Supreme Court of India went to the extent of holding that the power under Article 227 is wider than the one conferred on the High Court under Article 226 of the Constitution of India in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction.

7.2 It is also to be borne in mind that the instant revision petition is also pending before this Court since 2022 and to now set aside the order of the Court of Addl. District Judge and ask the plaintiff to file a fresh revision petition would defeat the ends of justice. At this stage, this Court is reminded of the maxim "*fiat justitia ruat caelum*" (let justice be done, though the heavens fall), which is the fundamental basis of administration of justice by Courts.

7.3 Here, this Court is also reminded of a judgment of the Supreme Court of India in the case of ***Union Carbide Corporation Vs. Union of***



India, (1991)4 SCC 584 (Bhopal Gas Tragedy Case), wherein it was held that justice is not to be cloistered in Ivory Towers but must respond to the needs of the people. Still further, it is well settled that procedure is the handmaid of justice and not its mistress. It should be used to facilitate justice and not to thwart it.

7.4 Under the circumstances, this Court proceeds to decide the instant petition.

7.5 An execution petition was preferred by the plaintiff on 19.04.2017. Though, an application under Section 28 of the 1963 Act is stated to have been filed on 09.12.2016, there is no order on the record of the executing Court depicting this fact and the first order in the file, which was duly summoned, is of 19.04.2017 when the execution petition was presented and notice of the same was issued to the judgment-debtor (defendant). The orders dated 15.07.2017, 04.09.2017, 02.12.2017, 19.01.2018, 06.04.2018, 20.07.2018 and 10.12.2018 show that the judgment-debtor had not been served and then on 10.12.2018, the decree-holder moved an application for permission to deposit the balance sale consideration which was allowed. On the very next date of hearing i.e. on 13.12.2018, counsel for the defendant-judgment debtor was present and moved an application for dismissal of the execution petition. Ultimately, order dated 08.07.2019 was passed. It can, therefore, be safely inferred that the judgment debtor was aware of the proceedings but did not participate initially.

7.6 It further shows that there was no inordinate delay on the part of the plaintiff to file an execution petition. Even in the reply to the application under Section 28 of the 1963 Act, he had stated that he was ready to deposit the balance sale consideration. No doubt, he did not move any application saying that the time for deposit be extended. However, at the same time,



even the executing Court did not give any direction, at any point of time, for deposit of the sale consideration. It has to be borne in mind that no specific period had been fixed by the appellate Court for execution of the sale deed. The decree of the trial Court had merged into the decree of the appellate Court. The period of two months fixed by the trial Court cannot be said to be operative once the said decree had merged into the decree of the first appellate Court.

7.7 Another aspect, which has to be kept in mind that the power under Section 28 of the 1963 Act has to be utilized very carefully. Suits for specific performance take years to decide and then to rescind the contract would be a very very harsh decision, which is to be taken only if the matter falls strictly within the parameters of Section 28 of the 1963 Act and the decree holder is found to be remiss at some stage. The said power is to be used sparingly and not at the mere asking of the judgment debtor.

7.8 The Supreme Court was very recently seized of an identical question in the case of *Balbir Singh & Anr. Etc. v. Baldev Singh (D) Through His Lrs & Ors. Etc.* (supra). In this case, the provisions of Section 28 of the Act and Order 22, Rule 12A were under consideration in special leave to appeals arising out of the decision in four revision petitions which had been dismissed by a Co-ordinate Bench of this Court on 09.09.2022. In that case, four different suits for specific performance were decreed by the trial Court on 16.08.1994 and four identical conditional decrees were passed permitting the decree holder to deposit the balance sale consideration in the Court within a period of 20 days upon which the bank would get the sale deed executed in favour of the plaintiffs. The said judgments and decrees were reversed by the First Appellate Court on 24.11.1994 which led to the filing of four regular second appeals. Three regular second appeals were



allowed by the High Court on 03.05.2018, whereas, the fourth was allowed on 24.05.2018 and the decrees passed by the trial Court were restored. Four execution petitions were filed on 04.09.2018. On 07.09.2018, applications to deposit the amount were filed. An application under Section 28 of the Act was filed by the petitioner/defendant/JD for decision of the contract. The Court, however, permitted the decree holder to deposit the decretal amount and dismissed the application, leading to the filing of the revision petitions before a Co-ordinate Bench of this Court.

7.9 These four revision petitions were rejected by the High Court holding as under:

“12. From a careful examination of the aforesaid judgments, it is apparent that Section 28 of the 1963 Act enables the Executing Court to extend the period keeping in view the conduct of the parties. The Courts have also recognized that the decree passed by the trial Court stands merged with the decree passed by the Appellate Court. In this case, the High Court did not fix any time period for deposit of the amount. The application for execution was filed within a period of four months. Immediately, on filing the execution petition, the decree holders have filed an application seeking permission to deposit the remaining amount, which has been allowed. Undoubtedly, the judgment debtors have filed the various applications for rescission of the contract before the amount was deposited, however, in the facts of the case, this Court does not find that there was any unreasonable delay particularly when the High Court did not fix any period for deposit of the amount. The argument of learned counsel representing the petitioner that 20 days' period, as directed by the trial Court, shall revive, is to be examined in the facts of the present case. The decree passed by the trial Court stands merged with the judgment and decree passed by the High Court in the regular second appeal. The question is "whether the decree holder will fully failed to deposit the amount under the decree particularly when the High Court did not fix the time for such payment or there was, in fact, unreasonable delay on part of the decree holder to deposit the amount?"

13. In view of the detailed discussion here-in-before the aforesaid question is answered in the negative.

14. Keeping in view the facts of the case, it is not considered appropriate to conclude that the decree holders failed to honour the



conditional decree. The trial Court has exercised its discretion prudently while extending the time and this Court does not find any reasonable ground to interfere with the order in the exercise of its revisional jurisdiction, which has been passed in accordance with law. Consequently, all the four revision petitions are dismissed.”

7.10 The matter then reached the Supreme Court of India. The Supreme Court of India upheld the decision of the Co-ordinate Bench of this Court after examining the entire law on the subject and held that since there was no specific direction by the High Court while allowing the second appeal to deposit the balance sale consideration within a particular time period, there was no requirement to deposit the same within a period of 20 days from the deposit the balance sale consideration within a particular time period, there date of the decision of the High Court which was the case set up by the other side. Accordingly, it was held that there was no illegality in the order passed by the trial Court wherein the decree holder had been permitted to deposit the amount.

7.11 The judgment in the case of *Prem Jeevan v. K.S. Venkata Raman and Another* (supra) was also discussed in the said judgment and it was held that the facts in the case under consideration were different and, therefore, the said judgment did not have any applicability."

7.12 After the decision in **Balbir Singh'** case (supra), the Supreme Court of India has delivered another judgment in the case of *Ram Lal v. Jarnail Singh (Now Deceased) through its LRs and Others (supra) (decided on 25.02.2025)*. In this case also, a similar view has been taken.

8. In view of the aforesaid decision of the Supreme Court of India, it is found that the order dated 08.07.2019 (Annexure P-6) vide which the execution petition was dismissed and the application under Section 28 of the 1963 Act was allowed, is not sustainable.



8.1 It has to be borne in mind that the executing Court had itself permitted the plaintiff to deposit the balance sale consideration and vide order dated 08.07.2019, it recalled the said order by stating that the Court had been misled. No details were given as to how and under what circumstances, the Court had been misled. The said order had never been challenged by anyone at any stage, though, an application for dismissal of the execution petition had been filed.

9. I have gone through the judgments relied upon by the learned counsel for the petitioner. In view of the latest judgment of the Supreme Court of India in in **Balbir Singh'** case (supra), the other judgments would not come to the aid of the petitioner, for, they were passed in particular facts of those cases.

10. Concededly, the balance sale consideration stands deposited before the executing Court and draft sale deed has also been prepared.

11. That being so, exercising powers under Article 227 of the Constitution of India, the order dated 08.07.2019 passed by the Court Addl. Civil Judge (Sr. Divn.), Kaithal is set aside. Consequently, the application under Section 28 of the 1963 Act and that for dismissal of the execution petition are dismissed. The execution petition is restored and the executing Court is directed to proceed qua registration of the sale deed. The necessary exercise be concluded as expeditiously as possible.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: October 01, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No