



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-5720-2018 (O&M)  
Date of Decision: 25.02.2025

Kulwinder Singh (Deceased) Through LR .....Petitioner

Versus

Inderjit Singh .....Respondent

**CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.**

Present: Mr. Varun Sharma, Advocate  
for the petitioner.

Mr. B.D. Sharma, Advocate  
for the respondent.

**VIKRAM AGGARWAL, J (ORAL)**

The present revision petition is directed against the order dated 21.04.2018 (Annexure P-1) passed by the Court of learned Civil Judge (Junior Division), Jalandhar vide which the application preferred by the petitioner/defendant/JD (Kulwinder Singh through his LR) under Section 28 of the Specific Relief Act, 1963 (for short 'the Act') for rescinding the agreement to sell dated 10.02.2000 and to declare the judgment and decree dated 08.06.2006 as unexecutable was dismissed.

2. The facts, as emanating from the revision petition, are that a suit for possession by way of specific performance of agreement to sell dated 10.03.2000 was filed by the respondent/plaintiff/decree holder (Inderjit Singh). The same was decreed vide judgment and decree dated 08.06.2006 (Annexure P-2) passed by the Court of learned Civil Judge (Junior Division), Jalandhar. Notably, this was an ex parte judgment and decree. It has been averred in the revision petition that after passing of the said ex parte judgment and decree, no steps were taken by the respondent/plaintiff/decree holder to

deposit the money either in the treasury or in Court within the time period prescribed i.e. three months. No execution petition was filed after the lapse of three months though subsequently one execution petition was filed, but, was dismissed in default.

3. It has also been averred that an application under Order 9 Rule 13 was moved by the petitioner/defendant/JD for setting aside the ex parte judgment and decree dated 08.06.2006 which was dismissed on 30.08.2011. An appeal was preferred against the said order but the same was also dismissed on 14.08.2013 after which an execution petition was filed by the respondent/plaintiff/decree holder on 04.04.2016. An application under Section 28 of the Act was filed by the petitioner/defendant/JD claiming that neither after the passing of the judgment and decree dated 08.06.2006 nor after the dismissal of the appeal filed by the petitioner/defendant/JD on 14.08.2013, any steps were taken by the respondent/plaintiff/decree holder to deposit the amount for the execution of the sale deed nor any application was moved for extension of time. This application was opposed by the respondent/plaintiff/decree holder stating that they had made efforts to pay the amount to the legal heirs of the petitioner/defendant/JD but they had refused.

4. The application was dismissed by way of the impugned order dated 21.04.2018 (Annexure P-1), leading to the filing of the present revision petition.

5. I have heard learned counsel for the parties.

6. Learned counsel for the petitioner/defendant/JD has strenuously urged that the impugned order is not sustainable. Reference has been made to the judgment and decree dated 08.06.2006 (Annexure P-2). He submits that even the application under Order 9 Rule 13 was dismissed on 30.08.2011 and the appeal was dismissed on 14.08.2013 after which the execution petition

was filed on 04.04.2016. Learned counsel submits that even initially when the suit was decreed, no amount was deposited within a period of three months as had been directed by the trial Court nor any application was moved for extension of time. He further submits that even after the dismissal of the appeal on 14.08.2013, the execution petition was not filed almost for a period of two years and the same only came to be filed on 04.04.2016 and even during this time, no amount was deposited nor any application was moved for extension of time. He submits that under the circumstances, there was no option with the Court but to accept the application under Section 28 of the Act moved by the petitioner/defendant/JD but the same was erroneously rejected. In support of his contentions, learned counsel has placed reliance upon the judgments passed by the Supreme Court of India in the case of '*Prem Jeevan Vs. K.S. Venkata Raman and Another*', 2017 AIR (SC) 623 and '*Chanda (dead) Through Lrs. Vs. Rattni and Anr.*', 2007 (2) RCR (Civil) 534.

7. *Per contra*, learned counsel representing the respondent/plaintiff/decreed holder has submitted that there is no illegality or infirmity in the impugned order and, therefore, no interference is called for. On a specific query of the Court that as to whether the amount had been deposited or any application had been moved in this regard or whether any application for extension of time had been moved, learned counsel representing the respondent/plaintiff/decreed holder had no answer.

8. I have considered the submissions made by learned counsel for the parties and have perused the paper book.

9. Before advertent to the merits of the case, let us examine the law on the subject. Section 28 of the Act lays down as under:

**“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of**

**which has been decreed.-**

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court-

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.”

lays down as under:

**“12A. Decree for specific performance of contract for the sale or lease of immovable property.—**

**Where a decree for the specific performance of a contract for the sale or lease of immovable property orders that the purchase money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.”**

11. The Supreme Court of India was very recently seized of an identical question. In the case of '*Balbir Singh Vs. Baldev Singh (D) and Ors.*' 2025 (1) RCR (Civil) 771 (Law Finder Doc Id 2684378), the provisions of Section 28 of the Act and Order 22 Rule 12 A 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.

12. 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."

13. 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 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.

14. The judgment in the case of '*Prem Jeevan Vs. 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.

15. In the case of '*Prem Jeevan Vs. K.S. Venkata Raman and Another*' (supra), the Supreme Court of India took a categorical view that where the period within which the payment had to be made had been specified by the Court concerned, then, in the absence of the said time period being extended, the decree holder could execute the decree only by making payment of the decretal amount to the judgment debtor or making deposit in the Court in terms of the said decree. It was held that where neither such deposit was made within the stipulated time nor any extension was sought or granted and further no explanation was furnished for delay in making of deposit, the decree could not be executed:

**“10. In absence of the said time being extended, the decree-holder could execute the decree only by making the payment of the decretal amount to the judgment-debtor or making the deposit in the court in term of the said decree. In the present case, neither the said deposit was made within the**

stipulated time nor extension of time was sought or granted and also no explanation has been furnished for the delay in the making of the deposit. No doubt, as contended by the learned counsel for the decree-holders, relying on judgment of this Court in *Ramankutty Guptan v. Avara - (1994) 2 SCC 642*, in an appropriate case the Court which passed the decree could extend the time as envisaged in the Specific Relief, 1963. In the present case no such steps have been taken by the decree-holders.

11. In above circumstances, the contention, advanced on behalf of the decree-holders, respondents herein, that unless the judgment-debtor seeks rescission of the contract in terms of Section 28 of the Specific Relief Act, the decree remains executable in spite of expiry of period for deposit, with the only obligation on the part of the decree-holders to pay interest, cannot be accepted.”

16. A similar issue was taken by the Supreme Court of India in the case of '*Chanda (dead) Through Lrs. Vs. Rattni and Anr.*' (supra).

17. Reverting to the facts of the present case, the judgment and decree in favour of the respondent/plaintiff/decree holder was passed on 08.06.2006. The operative part of the said judgment and decree is as under:

“From the un rebutted evidence on record it is clear that the defendant entered into agreement to sell with the plaintiff regarding the suit property but he did not execute the same despite the fact that the plaintiff was always ready and willing to get the same executed. Thus the plaintiff was entitled to the relief of possession by way of specific performance of the agreement regarding the suit property. Accordingly, suit of the plaintiff for possession by specific performance of agreement to sell at 10.3.2000 regarding the property as fully detailed in the head note of the plaint stands decreed, with no order as to costs and defendant is directed to get the sale deed executed with regard to the suit property, on the basis of agreement to sell dt. 10.3.2000, on receipt of balance sale consideration, within 3 months of the judgement failing which the plaintiff will be at liberty to get the same executed in accordance with law. Defendant is also restrained from alienating or transferring the suit property measuring 2 acres as fully detailed in the head note of the plaint. to anyone else except the plaintiff. Decree sheet be prepared and

**file be consigned to the record room.”**

The aforesaid operative part clearly shows that a direction was issued to the petitioner/defendant/JD to get the sale deed executed on receipt of the balance sale consideration within a period of three months of the judgment. This essentially means that a maximum period of three months had been granted to the respondent/plaintiff/decreed holder to deposit the balance sale consideration. It cannot, by any stretch of imagination, be said that there was no time period fixed by the trial Court for payment of the amount for registration of the sale deed. Admittedly, the said amount was not paid.

18. No doubt, an application under Order 9 Rule 13 is stated to have been filed which was dismissed on 30.08.2011 and appeal filed against the said decision was also dismissed on 14.08.2013. It has also come on record that an execution petition had also been filed by the decreed holder but the same was dismissed in default on account of the pendency of the application under Order 9 Rule 13 CPC.

19. In any case, neither was any application made by the respondent/plaintiff/decreed holder to deposit the amount in terms of the judgment and decree nor was any application moved at any point of time for extension of time. Even if we ignore the period till 14.08.2013, though the entire period cannot be ignored, even after 14.08.2013, the execution petition was filed only on 04.04.2016 and even then, no application was moved for depositing the decretal amount nor was any application moved for extension of time. Merely to say that the respondent/plaintiff/decreed holder was ready and willing to pay the amount but the legal heirs of the petitioner/defendant/JD were not willing to accept it would not be sufficient. This Court has no hesitation in holding that the direction issued by the trial

Court vide judgment and decree dated 08.06.2006 was not complied with by the respondent/plaintiff/decreed holder. No doubt, the conduct of the petitioner/defendant/JD is also not up to the mark but the statutory provisions have the force of law and have to be followed as such.

20. In view of the facts and circumstances as have been discussed in the preceding paragraphs, the impugned order dated 21.04.2018 passed by the Court of learned Civil Judge (Junior Division), Jalandhar is unsustainable.

Accordingly, the revision petition is allowed. The impugned order dated 21.04.2018 (Annexure P-1) passed by the Court of learned Civil Judge (Junior Division), Jalandhar is set aside and the application filed by the petitioner/defendant/JD under Section 28 of the Act is allowed. The agreement to sell dated 10.02.2000 stands rescinded and the judgment and decree dated 08.06.2006 is rendered unexecutable. Possession of the suit land, if transferred to the respondent/plaintiff/decreed holder shall be restored to the petitioner/defendant/JD forthwith.

**(VIKRAM AGGARWAL)**  
**JUDGE**

**25.02.2025**  
Prince Chawla

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No