

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****111****CR-3874-2025****Date of Decision: 04.07.2025****ANANT RAM (SINCE DECEASED)
THROUGH HIS LEGAL REPRESENTATIVES****.....PETITIONER****Vs.****JAGMAL SINGH (SINCE DECEASED)
THROUGH HIS LEGAL REPRESENTATIVES****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present: Mr. Munish Kumar Garg, Advocate for the petitioner.

DEEPAK GUPTA, J.

The present revision petition filed under Article 227 of the Constitution of India has been filed to assail the order dated 17.05.2025 passed by the learned Additional Civil Judge (Sr. Division), Kurukshetra, whereby the application under Section 28 of the Specific Relief Act, 1963 filed petitioner-plaintiff was dismissed.

2. Civil Suit No. 303-2008 was filed by Jagmal Singh (*respondent through his legal representatives herein*) seeking possession by way of specific performance of an agreement to sell dated 22.12.2006. The suit was decreed on 31.07.2014 (*Annexure P-1*), directing the defendant–Anant Ram (*petitioner through his legal representatives herein*) to execute and register the sale deed within two months.

3. The defendant preferred an appeal. The First Appellate Court granted stay on 11.09.2014. However, the appeal was dismissed on 06.04.2018 for non-payment of court fees. A prior revision petition (CR No. 4349 of 2016) against the order dated 27.05.2016, declining the defendant's indigency application under Order 44 Rule 1 CPC, was also dismissed by this Court on 19.02.2018 (*Annexure P-2*).



4. Post dismissal of the appeal, the decree-holder initiated execution proceedings and filed an application seeking disclosure of encumbrances on the suit property so it could be transferred free from liabilities.

5. In response, the petitioners moved an application under Section 28 of the Specific Relief Act, contending that the plaintiff had failed to deposit the balance sale consideration within two months of the decree, thereby justifying rescission of the agreement and dismissal of the suit. This application was rejected by the trial Court, leading to the present revision.

6. It is argued by learned counsel for the petitioners that a decree for specific performance is a preliminary decree and the suit is deemed to remain pending. He submits that under Section 28 of the Specific Relief Act, the Court has discretion to either the extend time or rescind the agreement. Since the decree-holder allegedly failed to deposit the sale consideration within the stipulated period, the trial Court erred in rejecting the application.

7. After hearing the submissions and perusing the record, this Court finds no merit in the contention. The trial Court, while dismissing the application, rightly observed that the decree dated 31.07.2014 did not direct the plaintiff to deposit the balance sale consideration within any fixed time. The only direction was for the defendant to execute the sale deed within two months. Relying on *Nispal Kaur v. Kulwant Singh, 2007(1) RCR (Civil) 562* and *Tara Singh v. Ravinderpal Singh, 2007(1) PLJ 486*, it was correctly held that where the decree does not stipulate time for deposit, the decree-holder cannot be debarred from executing the decree merely for not depositing the sale consideration along with the execution application.

8. The trial Court further noted that while the petitioners claimed to have issued a legal notice dated 02.08.2018 for execution of the sale deed on 16.08.2018, the decree-holder, Jagmal Singh, had already expired on 03.06.2018. The notice was returned unserved with an endorsement of the recipient's death which a fact not disputed by the petitioners.



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9. Moreover, it was the petitioners who failed to pursue their appeal due to non-payment of Court fees and had also earlier sought indigency under Order 44 Rule 1 CPC. On the other hand, the decree-holder had taken proactive steps by seeking information about existing encumbrances to facilitate execution. It is also worth noting that a substantial loan existed on the suit property, which the defendant failed to clear, despite entering into the agreement to sell.

10. The trial Court rightly relied on ***Ved Singh (since deceased) through LRs v. Rameshwar (since deceased) through LRs, 2024 (1) PLR 551***, where it was held that where the decree-holder is prompt in seeking execution of decree and permission to deposit the balance consideration amount, the decree remains executable, and delay attributable to pendency of court proceedings cannot be held against the decree-holder.

11. This Court also places reliance on ***Smt. Rajinder Kaur v. S.K. Malhotra***, Civil Revision No. 792 of 1999 decided on 19.08.1999 reported in ***(1999) 08 P&H CK 0071***, wherein it was held that once the decree is stayed by the appellate court, the time prescribed in the decree ceases to run, and resumes only upon dismissal of the appeal. Accordingly, a decree-holder cannot be faulted for not depositing the sale consideration during the period of stay.

12. In the light of the above facts and settled legal position, this Court finds no error, illegality, or perversity in the well-reasoned order passed by the trial Court dismissing the application under Section 28 of the Specific Relief Act, which appears to have been filed merely to evade the execution of a binding decree.

13. Accordingly, finding no merit in the present petition, the same is hereby dismissed.

04.07.2025

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(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No