

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 21533 OF 2017

(ARISING OUT OF SLP(C) NO.13353/2016)

VIJAY GUPTA

PETITIONER(S)

VERSUS

POONAM & ORS.

RESPONDENT(S)

O R D E R

1. Leave granted.
2. An Agreement to Sell dated 15th December, 2006 was entered into between the appellant and the respondents, where a certain plot, which was to be allotted by the HUDA, was to be sold for a sum of Rs.66,25,000/-. Since, ultimately a Sale Deed was not drawn up between the parties, the appellant herein filed the suit for specific performance on 3rd April, 2007. This suit was decreed by the Civil Judge, Senior Division, Karnal as follows:-

"As a sequel to above findings on several issues, suit of the plaintiff is hereby decreed for possession of the SCO No.7, situated in Sector 9, Urban Estate Karnal by

way of specific performance of the contract dated 15.12.2006 with costs and the defendants no.1 to 5 are restrained from transferring the plot in question in any form or manner in favour of any other person except the plaintiff. The defendants No.1 to 5 are under direction from the court to get sale deed executed in favour of the plaintiff on payment of balance sale consideration within a period of one month from today. Defendant no.6 is under direction from the court to proceed in accordance with rules and provisions of transfer of the aforesaid SCO in favour of the plaintiff. It is made clear that plaintiff would notify his intention to the defendants no.1 to 5 in writing to get the sale deed executed and registered and would make the payment of balance sale consideration at the time of execution of sale deed, in case defendants agreed to do so. Such notice would be given by the plaintiff to the defendants within a period of one month from today, in case of failure of defendants to execute the sale deed. Plaintiff after aforesaid notice of plaintiff, he would be at liberty to get the sale deed executed through process

of the court on payment of balance sale price and registration charges etc. Decree-Sheet be drawn accordingly and file be consigned to records after due compliance."

3. The requisite notice, within the period of one month, dated 8th March, 2011, was served by the appellant on the respondents, but the respondents vide their reply dated 17.03.2011, made it clear that they were not going to execute the requisite Sale Deed. On 21st March, 2011, the appellant appeared before the Sub Registrar armed with the balance amount of Rs.55,25,000/-. However, the respondents did not appear before the Sub Registrar. Because of this, the appellant was then constrained to file an execution petition in accordance with the decree which he did on 29.03.2011. While the execution petition was pending, and despite objections to the execution petition having been filed way back on 12.12.2011, an application was suddenly made many years later on 03.10.2015 by the respondents under Section 28 of the Specific Relief Act (hereinafter referred to as 'the said Act'). This application was allowed by the learned Civil

Judge, Senior Division, Karnal by his order dated 13th January, 2016 stating that the decree-holder had not placed on file proof that he has deposited a sum of Rs.5,48,628/- with HUDA and penalty thereon, as required under the Agreement to Sell. Since this was not done, it was ultimately found that the application would be allowed, and the agreement would have to be rescinded under Section 28 (2)(b) of the said Act. A revision to the High Court, by the impugned order dated 28.01.2016, was dismissed.

4. The appellant, in appeal before us, represented by Shri Nidhesh Gupta, learned senior counsel, has submitted that everything that was required to be done by the appellant under the decree was done by him. It was completely wrong to go back to the agreement and then to say, that too in a belated application, that some term of the agreement which, does not form part of the decree, has not been complied with, as a result of which the agreement must stand superseded and cancelled.

5. Shri S.B. Upadhyay, learned senior counsel appearing on behalf of the respondents, however, supported the impugned orders stating

that it was the requirement of the Agreement to Sell that the appellant pays the aforesaid installment, which admittedly has not been paid.

6. It is unnecessary for us to go into whether the said installment has been paid and whether, as contended by the appellant before us, it was found that the respondents had in fact not paid a much larger amount owing to HUDA. It is clear that on the terms of Section 28 of the said Act itself, an agreement can only be rescinded if the lessee does not, within the period allowed by the decree or such further period as the Court may allow, pay the purchase money to the other side which the Court has ordered him to pay. The section in terms does not permit a Court to go behind the decree and thereafter state that some condition in an agreement to sell has not been complied with. On the short ground, therefore, that the application itself being *de hors* Section 28 of the said Act, (made belatedly) and the orders, both of the Civil Judge and of the High Court, being in the teeth of the clear provisions of Section 28 of the said Act, the aforesaid orders are set aside.

7. The appeal is, accordingly, allowed.

.....J.
[ROHINTON FALI NARIMAN]

.....J.
[NAVIN SINHA]

NEW DELHI;
DECEMBER 08, 2017.

ITEM NO.47

COURT NO.11

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 13353/2016

(Arising out of impugned final judgment and order dated 28-01-2016 in CR No. 549/2016 passed by the High Court of Punjab & Haryana at Chandigarh)

VIJAY GUPTA

PETITIONER(S)

VERSUS

POONAM & ORS.

RESPONDENT(S)

Date : 08-12-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s) Mr. Nidhesh Gupta, Sr. Adv.
Mr. Tarun Gupta, AOR

For Respondent(s) Mr. S.B. Upadhyay, Sr. Adv.
Mr. Sanjay Bansal, Adv.
Mr. Reepak Kansal, Adv.
Mr. G.K. Bansal, AOR
Mr. Nishant Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(NARENDRA PRASAD)
COURT MASTER

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)