

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 23986-23987/2017

SUSHIL KUMAR

..APPELLANT(S)

VERSUS

TAPTESH KAUR @ TAAPTESH KAUR & ANR. ..RESPONDENT(S)

O R D E R

The dispute *inter se* the parties arose from a suit filed for specific performance by the appellant which was partly decreed by judgment and decree dated 26.08.2011 of the Additional Civil Judge (Senior Division) Bhatinda. The respondent also filed an appeal against the order dated 26.08.2011. During the pendency of the cross appeals, a compromise was arrived at *inter se* the parties on 12.10.2012. In terms thereof, the appellant had to pay to the owner, i.e. respondent No.1 a sum of Rs. 1 crore out of which Rs.10 lakh was recorded as already having been received and the balance had to be paid on or before 30.11.2012.

The appellate Court vide judgment and decree dated 29.10.2012, modified the judgment and decree dated 26.08.2011 requiring the sale deed to be executed on payment of the balance consideration of Rs. 90 lakh on or before

30.11.2012, or before the lower Court latest by 15.12.2012 in case of default by respondent No.1

It is the case of the appellant that he remained present before the office of the Sub-Registrar on 30.11.2012 and was ready and willing to perform his part but respondent No. 1 did not remain present in the office of the Sub-Registrar, Bhatinda. In fact, on the issue of registration of sale deed some messages were exchanged whereby the appellant sought deferment.

The appellant faced with the aforesaid position moved an application for depositing the balance sale consideration on 11.12.2012 after having got recorded the factum of visit to the Sub-Registrar's office. The execution application filed by the appellant was registered after deposit of the amounts and the respondent(s) sought rejection of that application. The executing Court, however, allowed the execution which was assailed by respondent No. 1 before the High Court which resulted in the impugned judgment dated 04.09.2015.

The High Court has opined that in view of the dispute regarding the affidavit of presence, in order to know which was the party who was at fault and who backed out, on a date fixed on 30.11.2012, it was obligatory on part of the

executing Court to frame issues and decide the controversy of readiness and willingness in the objections. This was despite the fact that the sale deed had already been executed on 16.12.2014 and possession was with the appellant. What appears to have weighed with the High Court is that the actual deposit in December, 2012 was permissible only if there was default on the part of the respondent(s) and there was an initial obligation to pay the amount by 30.11.2012.

We have perused the record before us in the matter and also heard learned counsel for the appellant. Learned counsel for respondents remained absent today.

We may note at the threshold that after issuance of notice, leave was granted on 15.12.2017 and an interim order was passed that without prejudice to the contentions available to the respondents and subject to the result of the appeals, the respondents were permitted to withdraw the deposit made by the appellant in Court. Learned counsel for the appellant states that in pursuance to the said order, the amount already stands withdrawn. That may be the reason that no one appears on behalf of the respondents today.

We are thus of the view that there was

really no case made out for re-determination in the execution petition on the principle of availability and willingness of the appellant to pay the amount in terms of the compromise. We have to keep in mind that the suit was for specific performance which was also partly decreed. In the appeal(s), a settlement was arrived at fixing a date for making the balance payment. The factum of the appellant having attended to the office of the sub-Registrar is recorded. It is not as if respondent No. 1 attended to the office of the Sub-Registrar. Immediately thereafter, the appellant faced with the scenario, deposited the balance consideration within a span of about 15 days after having moved the application for the said purpose. Such a conduct would be deemed to be natural in the given scenario and the time periods involved.

We are thus of the view that the order passed by the executing Court rejecting the objections vide order dated 20.11.2014 as also rejecting the application for rejection of execution application are in accordance with law in the given factual scenario and did not call for any interference by the High Court vide the impugned judgment. The impugned judgment is thus set aside.

The appeals are allowed, leaving the parties to bear their own costs.

The amount withdrawn by the respondents be now treated as a full and final satisfaction of the compromise.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[MANOJ MISRA]

.....J.
[ARAVIND KUMAR]

NEW DELHI,
MARCH 02, 2023.

ITEM NO.103

COURT NO.2

SECTION IV

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

Civil Appeal No(s). 23986-23987/2017

SUSHIL KUMAR

Appellant(s)

VERSUS

TAPTESH KAUR @ TAAPTESH KAUR & ANR.

Respondent(s)

Date : 02-03-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s) Mr. Ajay Kumar Singh, AOR

For Respondent(s) Mr. Shiv Sagar Tiwari, AOR (NP)

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

The appeals are allowed, leaving the parties to bear their own costs.

The amount withdrawn by the respondents be now treated as a full and final satisfaction of the compromise.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS[POONAM VAID]
COURT MASTER (NSH)

[Signed order is placed on the file]