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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.7505 of 2019 (O&M)
Date of Decision: 26.11.2019

Haryana Urban Development Authority and another
.....Petitioners

Vs

Parshotam Lal Kapoor
....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Arvind Seth, Advocate
for the petitioners.

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RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred against the orders dated 30.04.2019 and 15.05.2019 passed by the Civil Judge (Junior Division) Faridabad.

[2]. The present case has some antecedent background, for which some facts are necessary to be noticed.

[3]. Brief facts are that plaintiff along with one Sh. J.L. Kapoor filed a suit for declaration with consequential relief of permanent injunction. At one point of time, initially the suit was dismissed under Order 17 Rule 3 CPC vide order dated 06.01.1992. The aforesaid order was challenged before the first Appellate Court. The appeal was accepted and the case was

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remanded back to the trial Court vide order dated 07.08.1993 passed by the Addl. District Judge, Faridabad.

[4]. Plaintiff/decree holder was allotted an industrial plot No.68 measuring 1210 sq. yds. situated in Sector 27-C, Faridabad by the defendants/judgment debtors vide allotment letter dated 24.07.1973. Price of the plot was fixed at Rs.36,300/- out of which 25% of the amount was paid by the plaintiff at the initial stage and the remaining amount was to be paid in installments. The aforesaid payment of 25% was made by the plaintiff well within time and thereafter, he got physical and actual possession of the plot in the year 1973. His possession was duly acknowledged by the defendants/judgment debtors. After taking the possession, the plaintiff installed some business establishment of cloth printing and dying by availing loan from the Bank. No amenities were provided by the defendants/judgment debtors in terms of sewerage, water pipe, road, electricity etc. and the plaintiff had to avail all these facilities from the market on payment upto December 1977. Only an amount of Rs.12,300/- was left at that time and the plaintiff approached the defendants/judgment-debtors to provide all the aforesaid amenities, but in vain. The unit of the plaintiff became sick and came under heavy debt from the market and the plaintiff was compelled to close the unit in the

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year 1979-80 due to scarcity of funds. Plaintiff locked the unit premises and left a *chowkidar* to watch the unit.

[5]. On 10.06.1988, the defendants served a notice upon the plaintiff raising an amount of Rs.60,835/- and also threatened the plaintiff that in case the amount was not paid, the penalty of Rs.6083/- will be imposed. On receipt of the aforesaid notice, the plaintiff approached the defendants expressing his inability to pay the aforesaid huge amount of Rs.60,835/- plus Rs.6083/- because only an amount of Rs.12,300/- was left to be paid to the defendants in December 1977 and the defendants could charge interest on the aforesaid amount @ 7% per annum. Plaintiff again deposited an amount of Rs.15,000/- by way of Bank drafts dated 01.11.1988 and Rs.3,000/- on 12.01.1988 and the amount of Rs.18,000/- was accepted by the defendants. Admittedly the plaintiff had deposited an amount of Rs.42,008.65 as against total amount of Rs.36,300/-.

[6]. Again a notice was issued by the defendants on 24.11.1988 raising an amount of Rs.51,918/- with a threat that in case of not depositing the aforesaid amount on or before 14.01.1989, the defendants will proceed to recover the same by way of attachment of plot machinery and would subject the same to open auction as an arrears of land revenue. The raising of demand of Rs.51,918/- in consequence of notices dated

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24.06.1988 and 24.11.1988 was illegal as no amenities were provided to the plaintiff prior to issuance of these notices. At the most the defendants could have recovered an amount of Rs.12,300/- @ 7% interest per annum. The aforesaid amount could not have been charged with any penal interest. With this background, the suit was filed.

[7]. After full fledged trial, the suit was decreed by the trial Court vide judgment and decree dated 26.11.1994.

[8]. The defendants remained unsuccessful in appeal before the lower Appellate Court, which was dismissed on 11.12.1995. The lower Appellate Court dismissed the appeal with the following observations:-

> *"This is an appeal directed against the judgment and decree dated 26.11.1994 vide which Shri Gulab Singh suit of the plaintiff seeking a declaration to the effect that notice dated 24.6.1988 and 24.11.1988 and the order of the resumption with respect to the industrial plot No.68, Sector-27C, Faridabad are ilelgal, nulls and void shall remain decreed in favour of the plaintiff and against the defendants. As a consequential relief of permanent injunction, the defendant are restrained from resuming this plot and raising a demand of Rs.51,918/-. But this judgment in appeal shall not operate as an embargo upon the rights of the defendants to raise fresh demand of the balance price of the plot in dispute after complying with the conditions laid-down in the notice and charging interest @ 7% per annum on the balance price of the plot amounting to Rs.50,644.70 P, as it existed on 31.12.1986. However, a*

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sum of Rs.18,000/- paid by the plaintiffs and received by the defendants after 31.12.1986, shall be adjusted against principal amount right from the date of such payment."

[9]. Perusal of the aforesaid would show that notice dated 24.06.1988 and 24.11.1988 issued by the defendants/ petitioners were held to be illegal. The defendants were restrained from resuming the plot and raising a demand of Rs.51,918/-. But it was observed that the judgment in appeal shall not operate as an embargo upon the rights of the defendants to raise fresh demand of the balance price of the plot in dispute after complying with the conditions laid down in the notice and charging interest @ 7% per annum on the balance price of the plot amounting to Rs.50,644.70, as it existed on 31.12.1986. An amount of Rs.18,000/- paid by the plaintiff after 31.12.1986 was to be adjusted against the principal amount from the date of its receipt.

[10]. Learned counsel for the petitioners submitted that RSA No.1839 of 1986 was filed against the judgment and decree of the lower Appellate Court, but the record of the said appeal was burnt in the fire incident occurred in the record room of the High Court. The status of the appeal could not be known, nor any stay order was brought on record.

[11]. In the execution filed by the decree holder, the defendants/petitioners had allegedly worked out figure of

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Rs.95,79,371/- as a due amount against the decree holder for obtaining occupation certificate and for registration of conveyance deed in favour of the decree holder. The decree holder was directed to make payment of Rs.32,645/- along with interest @ 7% per annum vide judgment and decree dated 11.12.1995 passed by the lower Appellate Court from 31.12.1986 till the date of its realization to the judgment debtors. The manner in which huge amount was calculated by the defendants/respondents was beyond the comprehension of the executing Court. The judgment debtors were directed to receive the aforesaid amount of Rs.32,645/- along with interest @ 7% per annum w.e.f. 31.12.1986 and execute the conveyance deed in favour of decree holder in compliance of the judgment and decree dated 11.12.1995 and the executing Court adjourned the case for 15.05.2019 for compliance. Thereafter, the executing Court passed the impugned order dated 15.05.2019, when the compliance report was not filed. The case was further adjourned for 22.05.2019 for compliance of judgment and decree dated 11.12.1995 passed by the lower Appellate Court.

[12]. During course of arguments, learned counsel for the petitioners pointed out that the salary of the Estate Officer, HSVP, Faridabad has been attached for non-compliance of the directions issued by the executing Court vide order dated

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30.04.2019 and 15.05.2019. It was also came to fore that in the year 2016, a memo No.UBA-6-2016/4666-13 dated 11.08.2016 was issued by the HUDA Department which provided one time opportunity to all the allottees, who had occupied their building without obtaining valid occupation certificate. Under the aforesaid instructions, the decree holder had also applied for issuance of occupation certificate and for waiving of extension fee. This policy was adopted for a limited time period from 15.08.2016 to 31.12.2016. The respondent/decree holder claimed that he had applied on 11.11.2016 and requested for issuance of occupation certificate and for compounding of extension fee. Receipt of the application of the decree holder has not been denied. In that very letter, the decree holder had also contended that he had already applied for occupation certificate earlier also, but the same was not adverted to because of some objections. Even in the grounds of the present revision petition, receipt of application/notice issued by the decree holder on 11.11.2016 has not been denied by the petitioners/judgment debtors. The case of the decree holder was not considered under the aforesaid policy decision dated 11.08.2016. The executing Court has also taken note of the aforesaid facts while passing the impugned order dated 30.04.2019.

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[13]. It appears from the record that the petitioners/judgment debtors have adopted indifferent attitude towards the decree holder/respondent since very inception. Such type of attitude has to be deprecated in strong words. Modified decree dated 11.12.1995 passed by the lower Appellate Court is under challenge. The said decree provided for Rs.32,644.70 along with interest @ 7% per annum from 31.12.1986 till the date of its realization to the judgment debtors. In contrast to the aforesaid, the judgment debtors have calculated an amount of Rs.95,79,371/-. The executing Court has rightly passed the order dated 30.04.2019. Non-compliance of decree dated 11.12.1995 would entail in coercive method to be adopted by the executing Court and in my considered opinion, the executing Court has not committed any error while forcing the petitioners/judgment debtors to execute the decree in pith and substance.

[14]. It is a settled principle of law that the executing Court cannot go beyond the decree particularly, when no material has come forth against the said decree. The action on behalf of the petitioners/judgment debtors has to be deprecated. The petitioners/judgment debtors have adopted indifferent attitude towards the decree holder even on the basis of their own instructions dated 11.08.2016 which provided for issuance of

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occupation certificate and waiving of extension fee, subject to certain terms and conditions. Despite receipt of application from the decree holder, no such action was taken and thereafter, the petitioners/judgment debtors proceeded to issue demand notice for recovery of Rs.95,79,371/- in an illegal manner. The petitioners being a constituent of welfare state cannot be expected to act in the aforesaid manner.

[15]. In view of foregoing reasons, this revision petition is liable to be dismissed with costs of Rs.25,000/- to be debited/deducted from the due amount towards the respondent/decree holder. Ordered accordingly.

November 26, 2019 **(RAJ MOHAN SINGH)**
Atik **JUDGE**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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