

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 182 of 2017.

Reserved on : 19th June, 2018.

Date of Decision: 29th June, 2018.

Shri Bhajan

.....Petitioner/Judgment Debtor.

Versus

Dharam Parkash & Ors.

.....Respondents/decreed holders.

Coram

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? Yes.

For the Petitioner: Mr. Ramakant Sharma, Senior Advocate with Mr. Basant Thakur, Advocate.

For the Respondents : Mr. R.K. Gautam, Sr. Advocate with Mr. Gaurav Gautam, Advocate.

Sureshwar Thakur, Judge.

Through the instant petition, the petitioner/judgment debtor, challenge, the orders borne in Annexure P-9, rendered on 23.08.2017 whereby, the learned executing, dismissed, the application preferred before it for recalling of orders rendered by it, on, 28.10.2016, whereunder, the learned executing Court, allowed, the

decree holders' application, for, permission being granted to them, for hence depositing the outstanding sale consideration of Rs.8,050/-, before its establishment.

2. Since, the impugned order, is, a sequel of orders, rendered, on 28.10.2016, hence, the validity, of, the order pronounced earlier, to, the pronouncement, of, the impugned order, is to be tested along with the validity, of, the impugned pronouncement. The preferment of the apt execution petition before the learned executing Court, was, a sequel to hence rendition, of, an affirmative decree, of, specific performance, of agreement to sell, upon, civil Suit No.156/1 of 1997, by the learned Sub Judge, Nalagarh. The apt operative portion, of the apposite decree, for specific performance, as, rendered upon the aforesaid civil suit, hence makes a clear and graphic display, of the JD/defendant No.2 being directed, to, execute the apt registered deed, of, conveyance, vis-a-vis, the suit property, with the plaintiffs/decree holders, subject to payment of balance sale consideration, within, a period of one month, commencing since 27th March, 2000. The affirmative pronouncement made upon Civil Suit No.156/1 of 1996, by the learned Sub Judge, Nalagarh, was, assailed by the aggrieved defendants,

by, theirs preferring Civil Appeal No. 40-NL/13 of 2000 before the learned Additional District Judge, Solan, yet, thereon also the learned First Appellate Court, rather, pronounced a verdict bearing absolute concurrence, with, the verdict pronounced, by, the learned trial Judge concerned. The aggrieved defendants, thereafter proceeded to assail, the concurrent pronouncements, made, by both the learned Court(s) below, by theirs preferring a Regular Second Appeal before this Court, whereupon, this Court also made an order of dismissal, of the second appeal, and, obviously hence the defendants, rather unsuccessfully espoused, their grievance(s), before, the learned First Appellate Court, and, thereafter before this Court. However, as aforestated, with this Court also dismissing RSA No. 201 of 2001, thereby, hence its affirming the pronouncement(s), made, by both the learned courts below, thereupon, the apt condition precedent comprised, (a) in the factum, of, the decree holders being facilitated, to, derive the benefits of the decree, only upon theirs, tendering the outstanding sale consideration, within one month, from the date of the pronouncement, as, made by this Court, on 13.07.2011 upon RSA No. 201 of 2001, was rather enjoined to be meted its

strictest compliance, and, conspicuously, within, one month commencing since 13.07.2011. The aforesaid non defeasance clause would obviously, upon, its infringement, hence beget the causality of the decree holders being deprived, of, the benefits of the apt concurrent affirmative pronouncement(s) recorded, upon, Civil Suit No. 156/1 of 1996.

3. Be that as it may, the decree holders, despite, a period of one month, elapsing, since, this Court making a pronouncement, upon, RSA No. 201 of 2001, neither begot compliance, with, the mandate of the non defeasance clause, nor they proceeded, to, before the period of one month hence elapsing, since the making, of, a pronouncement by this Court, upon, RSA No.201 of 2001, hence prefer an application, cast under the provisions of Section 148 of the CPC, provisions whereof stand extracted hereinafter, for hence seeking enlargement or extension, of, time as prescribed this Court, while, decreeing the plaintiffs' suit.

Section 148 of the CPC reads as under:-

"148. Enlargement of time.- Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the court may, in

its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired. ”

Even though the mandate, occurring, in Section 148 of the CPC, does not necessarily hence oblige the decree holders, to, espouse qua benefits thereof being meted, vis-a-vis, him/them, only, upon theirs meteing, the requisite compliance, within the apt period prescribed in the operative part, of, the decree, (a) rather the coinage “even though the period originally fixed or granted may have expired”, does bestow, a statutory leverage, in, the decree holders, to, even thereafter hence seek the indulgence, of, the executing Court or of the court of first instance, to grant extension or enlargement of time, for, theirs hence meteing compliance, with, the peremptory condition precedent. However, though, the coinage “even though the period originally fixed or granted may have expired”, does purvey, qua the decree holders the aforesaid leverage, yet the deriving, of, benefits thereof, (a) obviously enjoins, upon, the decree holders, to, even upon theirs belatedly striving to derive the benefits thereof, to explain, the good and sufficient cause, which prevented or precluded them, to earlier avail the mandate, of

Section 148 of the CPC. However, with a pronouncement, being rendered on 13.07.2011, by this Court upon RSA No. 201 of 2001, and, as aforesaid, the decree holders neither tendered the balance sale consideration, within one month thereafter, nor they along with the belatedly instituted application preferred before the executing Court, for, permission to deposit, it, hence appended therewith an application, cast under the provisions of Section 5, of, the Limitation Act, earmarking therein the good and sufficient cause, which precluded or deterred them, to, earlier avail the mandate, of, Section 148 of the CPC, (b) especially within the ambit, of, the apt coinage "even though the period originally fixed or granted may have expired" occurring in Section 148 of the CPC. Despite the aforesaid lack of appending, by the decree holder, of, an application, cast under the provisions of Section 5 of the Limitation Act, with, the extant application nor hence with theirs explicating therein the good and sufficient cause, for, theirs earlier therewith, omitting, to mete compliance, with, the imperative condition precedent, for theirs hence being facilitated, to, derive the benefits of the affirmative concurrent decrees, yet the learned executing Court, granted, the apt permission to the decree holders.

The aforesaid granting of permission to the decree holders, by the executing Court, is grossly improper for the reason (a), thereupon, the mandate of Section 148 of the CPC, being blatantly infringed, holistic purpose whereof, is, to ensure, of, the decree holders seeking leave of the Court, to, beget compliance, with, the apposite condition precedent, and, also in case the apposite scribed motion, qua, enlargement or extension of the time, for, hence begetting compliance, vis-a-vis, the apt condition precedent, is allowed, (b) thereupon, alone the apposite permission, on, a simplicitor application, for depositing the outstanding sale consideration, rather being affordable, (c) besides the affirmative order for depositing, the outstanding sale consideration before the executing Court , as, recorded upon the decree holders' application, being a sequel to or being preceded, by an apposite order, being, rendered within the domain of Section 148 of the CPC, and, upon a scribed motion made therebefore, (d) whereas, the learned executing Court being neither seized with any application, cast under Section 148, of the CPC nor with any application, cast under the provisions of Section 5 of the Limitation Act, being appended therewith, hence explicating therein the good and sufficient

cause which prevented or precluded the decree holders/plaintiffs, to, earlier within the time prescribed, in the apposite decree, beget compliance, vis-a-vis, the apt condition precedent, (e) thereupon, the mandate of the non defeasance clause, is blatantly infringed also when hence the decree holders were barred to derive the benefits, of, the apt affirmative concurrent decrees, (f) thereupon, it was insagacious, for the learned executing Court, to, relegate into the limbo, of, oblivion, the mandate of Section 148 of the CPC, and, to rather contrarily, hence untenably proceed, to make an affirmative order, upon an application preferred before it, by the decree Court, for depositing the outstanding sale consideration, (g) even when prior thereto, no affirmative orders were made, by the learned executing Court, upon, any apposite scribed motion, cast before it under Section 148 of the CPC, by the decree holders, nor when therewith stood appended, an application cast under Section 5 of the Limitation Act, explicating, therein the good and sufficient cause, which precluded or deterred the decree holders, to, earlier thereto hence beget compliance with the imperative condition precedent, as, prescribed in the apposite decrees. Conspicuously, when there is no

automatic or deemed extension, of, the apt period, rather when a verdict vis-a-vis it, is statutory enjoined to be pronounced.

4. For the foregoing reasons, the instant petition is allowed and the impugned orders are set aside. No order as to costs. All pending applications also stand disposed of . Records be sent back forthwith.

29th June, 2018
(jai)

(Sureshwar Thakur)
Judge.