IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

153 **CR-5834-2026 (O&M)**
Date of decision: 11.09.2026

Leelawati

....Petitioner

Vs.

Rameshwar

....Respondent

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Surinder Dagar, Advocate
for the petitioner.

*****

HARSH BUNGER J.

1. The present revision petition has been filed, under Article 227 of the Constitution of India, for setting aside the order dated 21.05.2026 (Annexure P-13) passed by the learned Additional Civil Judge (Senior Division), Palwal, in the execution petition bearing No. EXE-134-2024, whereby the application filed by the respondent, seeking permission to deposit the outstanding loan amount of Rs.14,90,515/- (out of total balance sale consideration of Rs.20,00,000/-) in respect of the suit property with the Faridabad District Primary Co-operative Agriculture and Rural Development Bank Limited, Palwal, and to further allow the decree holder to deposit the balance sale consideration of Rs. 3,10,685/- (after adjusting the costs of Rs.1,98,800/-), has been allowed.

2. Briefly, the respondent/plaintiff (Rameshwar) filed a suit for specific performance of an agreement to sell dated 20.01.2015 against the

present petitioner/defendant (Smt. Leelawati) on the plea that the present petitioner had entered into the aforesaid agreement to sell in respect of the suit property i.e. a residential house measuring 200 square yards, situated at Panchwati Colony in Mauja Palwal; for a total sale consideration of Rs. 60 lakhs, out of which Rs. 40 lakhs was given, and the balance sale consideration was to be paid at the time of execution of the sale deed, wherein the target date was fixed as 19.12.2015.

2.1 Concededly, the suit for specific performance filed by the respondent/plaintiff came to be decreed by the learned Additional Civil Judge (Senior Division), Palwal, vide judgment and decree dated 08.05.2024 (Annexure P-2). Further, an appeal filed by the petitioner against the Trial Court judgment and decree dated 08.05.2024 has also been dismissed by the learned District Judge, Palwal, vide judgment and decree dated 24.04.2026 (Annexure P-11). Even a further regular second appeal (RSA No. 1855 of 2026) filed by the petitioner stands dismissed by this Court vide judgment dated 13.05.2026 (Annexure P-12).

2.2 It transpires that during the pendency of the appeal before the learned First Appellate Court, the respondent/plaintiff (decree holder) initiated proceedings for execution of the judgment and decree dated 08.05.2024 (Annexure P-2). In the said execution petition, the present petitioner filed his objections, which were dismissed vide order dated 04.09.2025 (Annexure P-5).

2.3 On the other hand, the respondent-plaintiff (decree holder) filed an application dated 04.09.2025 (Annexure P-6) before the learned Executing Court seeking permission to deposit the balance sale consideration after adjusting the requisite costs. Subsequently, the decree holder filed another application on 16.10.2025 (Annexure P-7), seeking permission to deposit the outstanding loan amount of Rs.14,90,515/- (out of the total sale consideration of Rs.20,00,000/-) in respect of the property in question with the Faridabad District Primary Co-operative Agriculture and Rural Development Bank Limited, and to further allow the decree holder to deposit remaining sale consideration of Rs.3,10,685/- (after deducting outstanding loan amount of Rs.14,90,515/-) and also adjusting the costs of Rs.1,98,800/-.

2.4 It transpires that on 04.12.2025, the decree holder withdrew his application dated 04.09.2025 (Annexure P-6) and pressed his application dated 16.10.2025 (Annexure P-7), which has been allowed vide impugned order dated 21.05.2026 (Annexure P-13).

3. Feeling aggrieved, the present civil revision petition has been filed before this Court.

4. I have heard the learned counsel for the petitioner and perused the paperbook with his able assistance.

5. The aforementioned factual position is not disputed.

6. Concededly, the suit for specific performance filed by the respondent/plaintiff was decreed by the learned Trial court, which has been further affirmed by the learned First Appellate Court as well as this Court vide judgment dated 13.05.2026 (Annexure P-12).

7. In the execution proceedings initiated by the respondent/plaintiff, an application (Annexure P-7) has been filed by the

respondent-plaintiff (decree holder), the relevant extract whereof reads as under:-

> *"2. That now after verifying the revenue record in respect of property in question, the applicant/decree holder came to know that on 08.11.2010 the son of JD namely Sh. Pratap Singh son of Sh. Prasadi Lal has availed loan facility of Rs.6,00,000/- from The Faridabad Distt. Primary Co-Op. Agri. & Rural Development Bank Ltd., B.O. Palwal by mortgaging the property in question of JD and the original sale deed in respect of property in question is also held with the concern bank, Entry to this effect was also made in the record of jamabandi in respect of property in question. As on 09.09.2025 an amount of Rs. 14,90,515/- is outstanding towards the above said loan account. Regarding outstanding of loan the concern bank has issued a certificate dated 09.09.2025.*
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> *3. That without paying the remaining loan amount to the concern bank, the above said bank cannot issue the NOC in respect of the property in question and entry cannot be deleted from the revenue record also. Without obtaining NOC it is not possible to get execute and register the sale deed in respect of the property in question.*
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> *4. That the applicant be allowed to deposit the outstanding loan amount of Rs. 14,90,515/- out of the agreed sale consideration with concern bank i.e. The Faridabad Distt. Primary Co-Op. Agri. & Rural Development Bank Ltd., B.O. Palwal.*
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> *5. That the applicant be also allowed to deposit the remaining sale consideration amount of Rs.3,10,685/- (after adjusting cost of Rs.1,98,800/-+14,90,515/- outstanding loan amount)*
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> *It is, therefore, prayed that the application may kindly be allowed by granting permission to the applicant to deposit the*

outstanding loan amount of Rs.14,90,515/- (out of agreed sale consideration) with The Faridabad Distt. Primary Co-Op. Agri. & Rural Development Bank Ltd., B.O. Palwal and to deposit the remaining sale consideration of Rs.3,10,685/- after adjusting cost of Rs.1,98,800/-, in the interest of justice."

7.1 Although the present petitioner/defendant has opposed the aforesaid application (Annexure P-7) by filing his reply (Annexure P-9), however, the learned Executing Court has allowed the application (Annexure P-7) filed by the respondent/plaintiff vide impugned order dated 21.05.2026 (Annexure P-13), the relevant extract of which reads as under:-

"7. Therefore, the decree dated 08.05.2024 passed by the Trial Court and as affirmed by the Appellate Court, is now sought to be executed through the present execution proceedings. <u>However</u>, during the course of execution proceedings, it has transpired, as informed by the DH/plaintiff, that the suit property is under financial encumbrance/loan liability with the concerned bank i.e. The Faridabad District Primary Co-op. Agri. & Rural Development Bank Ltd., as the son of the JD namely Pratap Singh had availed loan facility to the tune of Rs. 6,00,000/- on 08.11.2010 against the suit property.

Certificate to that effect issued by the concerned Bank, has been arinexed by the DH/plaintiff with the present application.

8. It is true that the Agreement to Sell dated 20.01.2015 does not contain any specific recital regarding the subsisting loan liability or encumbrance over the suit property. <u>However</u>, that circumstance does not dilute the binding effect of the Judgment and Decree dated 08.05.2024. which have since attained finality upon dismissal of the appeal preferred by the JD. The decree is required to be implemented in its true letter and spirit. The DH/plaintiff, having successfully established his *rights before both the Trial Court and the Appellate Court, cannot be deprived of the fruits of the decree on account of an encumbrance which presently Impedes its effective execution.*

Unless the loan amount of Rs. 14,90,515/- outstanding against the suit property as on 09.09.2025. is cleared and the said liability is discharged, the charge/lien of the concerned Bank shall continue to be reflected in the revenue records, thereby creating a substantial impediment. in execution and registration of the Sale Deed. Therefore, permitting the DH/plaintiff to clear the outstanding liability would facilitate effective Implementation of the decree and advance, the ends of justice.

9. The objection raised by the JD that the DH failed to deposit the balance sale consideration within the period of three months stipulated in the Judgment dated 08.05.2024 is devoid of merit.

In this regard, reference may be made to ***Section 28 of the Specific Relief Act****, which vests the Court with ample discretion to extend. the time for payment of the balance sale consideration in appropriate cases.*

10. ***Furthermore****, a perusal of the Judgment and Decree dated 08.05.2024 reveals that although the DH was directed to pay the balance sale consideration within three months, but no consequence, much less automatic rescission of the contract or forfeiture of rights under the decree, was prescribed by the Court in the event of non-compliance within the said period.*

*11. Moreso, recently in cases titled as "****Dr. Amit Arya Versus Kamlesh Kumari", 2025 live law (SC) 1240, and "Ram Lal Versus Jarnail Singh", 2025 SCC Online (SC) 103, and, "Anand Narayan Shukla Versus Jagat Dhari" Civil Appeal No. 7355/2026 decided on 08.05.2026****, it has been emphasized by the Hon'ble Supreme Court that mere delay by the plaintiff in depositing balance sale consideration will not automatically* *render the specific performance decree as inexecutable, unless the conduct of the DH demonstrates a clear abandonment or refusal to perform his obligations. The real test is to see if the conduct of the plaintiff will amount to a positive refusal to complete his part of the contract.*

In the present case*, admittedly out of the total sale consideration of Rs. 60,00,000/-, a substantial amount of Rs. 40,00,000/- had already been paid by the plaintiff to the defendant as earnest money/part consideration. Further, the present execution petition was instituted on 17.08.2024 i.e. shortly after the passing of the decree dated 08.05.2024. The DH thereafter contested the appeal preferred by the JD, which ultimately, culminated in affirmation of the decree. Further, it has been consistently asserted on behalf of the DH that despite repeated requests, the JD failed to cooperate in completion of the transaction and declined to accept the balance sale consideration.*

These circumstances demonstrate that the delay in completion of the transaction is attributable to the conduct of the JD and not to any lack of readiness or willingness on the part of the DH

12. In addition to the above, it is worth noting that the suit property was admittedly subject to a subsisting mortgage/loan liability with the concerned Bank since the year 2010. However, neither was this material fact disclosed by the JD/defendant in the Agreement to Sell dated 20.01.2015, nor was any disclosure made during the course of the trial proceedings. Even during the appellate proceedings, the JD/defendant did not bring the existence of the said encumbrance to the notice of the Court.

The conduct of the JD, therefore, does not appear to be bona fide. Rather, it reflects a conscious suppression of material facts and an attempt to withhold information essential for complete and effective adjudicator of the dispute. A party who *has remained silent regarding a material encumbrance throughout the contractual and judicial proceedings cannot subsequently be permitted to derive advantage from the complications arising out of its own concealment.*

Viewed from this perspective, the present impediment in execution is substantially attributable to the conduct of the JD himself. Consequently, the objection regarding non-deposit of the balance sale consideration cannot be examined in isolation, detached from the fact that the suit property remained encumbered by a prior mortgage, a material information withheld by the JD/defendant throughout Court proceedings.

Equity does not permit a party to take advantage of its own wrong. and the JD cannot be allowed to frustrate the execution of a decree by relying upon circumstances brought about, at least in part, by his own suppression of material facts.

13. ***Accordingly, the present application is hereby allowed****. The DH is permitted to deposit/pay the outstanding loan amount directly to the concerned Bank after obtaining an authenticated statement of account regarding the dues currently outstanding against the suit property. Any amount so deposited by the DH towards liquidation of the said liability, shall be duly accounted for and adjusted towards the balance sale consideration, which the DH/plaintiff is permitted to pay in the Treasury as per rules.*

14. Now, to come up on ***16.07.2026*** *for awaiting report of DH regarding the deposit of the above-referred amounts i.e. pending loan amount, as well as, balance sale consideration (after adjusting the cost and loan amourit paid), in the concerned Bank and Treasury, respectively."*

8. I have carefully gone through the impugned order dated 21.05.2026 (Annexure P-13). Concededly, the decree dated 08.05.2024 (Annexure P-2) for specific performance of agreement to sell dated

20.01.2015 in favour of the present respondent/plaintiff (as affirmed by the learned First Appellate Court as well as this Court) is required to be implemented in its true letter and spirit.

8.1 It has come on record that the suit property is under financial encumbrance/loan liability with the Faridabad District Primary Co-operative Agriculture and Rural Development Bank Limited by the son of the petitioner namely Pratap Singh, by availing loan facility to the tune of Rs.6,00,000/- on 08.11.2010. The said loan liability was outstanding on the date when the execution proceedings had been initiated by the present respondent/plaintiff.

9. In my considered view, unless and until the outstanding loan amount is cleared and the liability is discharged, the lien of the concerned Bank would continue, thereby creating an impediment in the execution of decree dated 08.05.2024 (Annexure P-2), as affirmed upto this Court and also the registration of the sale deed of the suit property in favor of the plaintiff/decree holder. Further, since the petitioner (judgment debtor) has failed to discharge the loan liability existing on suit property, therefore, permitting the plaintiff/decree holder to clear the outstanding loan liability would facilitate effective implementation of the decree and advancing the ends of justice.

9.1 The petitioner cannot be permitted to frustrate the decree dated 08.05.2024 (Annexure P-2) which has been affirmed by this Court, on account of an encumbrance created by petitioner herself, moreso when the petitioner has failed to disclose the said encumbrance in the agreement to sell dated 20.01.2015, nor the said fact has been disclosed during the course of the trial or during the appellate proceedings. Evidently, the conduct of the petitioner is not above board.

10. Considering the totality of circumstances, I see no cogent reason which may call for any interference by this Court in the impugned order dated 21.05.2026 (Annexure P-13). In the attending circumstances, learned Trial Court was justified in passing order dated 21.05.2026 (Annexure P-13).

11. Resultantly, the present civil revision petition fails and the same is accordingly, ***dismissed***.

12. All the pending application(s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

11.09.2026
Ankit

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No