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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of Decision: 12.07.2013**

+ EX.P. 118/2012

KARAN LUTHRA

..... Decree Holder

Through: Mr. Subhiksh Vasudev, Advocate

versus

GOPAL KAMRA

..... Judgement Debtor

Through: Mr. Lokesh Kumar, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**JUDGMENT**

**VIPIN SANGHI, J. (ORAL)**

**E.A. No. 440/2012 (U/s 151 CPC preferred by the decree holder)**

This application has become infructuous since the execution petition and the objections preferred by the judgment debtor have been heard today.

The application stands disposed of.

**Ex.P. No. 118/2012 & E.A. No. 276/2012 (Under Order 26 Rule 9 CPC) and E.A. No. 675/2012(objections)**

By this order, I propose to dispose of the objections preferred by the judgment debtor to the present execution petition, which have been registered as E.A. No. 675/2012; and the decree holder's application under Order 26 Rule 9 CPC i.e. E.A. No. 276/2012 for appointment of a Local Commissioner for the purpose of execution of a sale deed in terms of the compromise decree in question dated 16.04.1998.

I have heard learned counsels for the decree holder as well as the judgment debtor.

CS(OS) No. 1507/1989 was preferred by one Shri Deepak Talwar against the defendant – Shri Satish Chand Kalra to seek specific performance of an Agreement to Sell dated 31.08.1986 in respect of property bearing No. D-82, Malviya Nagar Extension (Saket), New Delhi, constructed on a plot of land measuring 358 sq. yds. It appears that under the Agreement, the purchaser-plaintiff had the power to nominate his nominee in whose favour the sale transaction could be completed. During the pendency of the suit, the parties entered into a compromise and moved two interim applications. I.A. No. 3138/1998 was moved under Order 23 Rule 3 CPC read with Section 151 CPC. I.A. No. 3139/1998 was moved under Order 1 Rule 10 CPC for impleadment of Shri Karan Luthra-the present decree holder. The compromise arrived at between the parties was that the plaintiff Shri Deepak Talwar nominated Shri Karan Luthra as his nominee under the Agreement to Sell. The said application for impleadment was not opposed by the defendant, and was accordingly allowed on 16.04.1998. The decree holder came to be impleaded as a Plaintiff No. 2. Thereafter, the Court proceeded to record the compromise as contained in I.A. No. 3138/1998. Under the said compromise, the defendant received an amount of Rs. 21 lacs by pay order, in full and final settlement of the sale price of the suit property. It has come out during the arguments that earnest money of Rs. 11 lacs had already been received by the defendant. Consequently, the total sale consideration was Rs. 32 lacs. The defendant, who entered into the said compromise through his attorney Shri Gopal Kamra-the present Judgment Debtor, undertook to take all permissions which were required to be obtained for execution of the sale deed, and to execute the sale deed

within three months from the date of grant of permission, or within six months from the date of the compromise. It was agreed that in case he fails to do so, the plaintiff No. 2 i.e. Shri Karan Luthra-the Decree Holder shall have the right to get the sale deed executed through the Registrar of this Court. Para 4 of the compromise application recorded that the defendant had placed plaintiff No. 2 i.e. Shri Karan Luthra in possession of the suit property in part performance of the Agreement to Sell dated 31.10.1986, and had also handed over all the available original documents of title of the property. Para 7 of the application recorded that the compromise had been signed by Shri Gopal Kamra son of Shri Madan Lal Kamra, who was the duly constituted attorney of the defendant, and that he had the right to enter into the Agreement and to hand over the possession of the property to plaintiff No. 2.

After the recording of the compromise, the suit was disposed of in terms of the said compromise, which was directed to form a part of the decree.

On 29.03.2000, the judgment debtor Shri Gopal Kamra executed a General Power of Attorney in favour of the decree holder appointing the decree holder Shri Karan Luthra as his General Attorney in respect of the aforesaid property. The said General Power of Attorney was duly registered in the office of the Sub Registrar. This General Power of Attorney gave comprehensive powers to the decree holder to act on behalf of the judgment debtor in respect of the suit property, including the power to get the suit property converted from leasehold to freehold, and to sell the said property.

On 11.05.2000, Shri Gopal Kamra executed a possession letter in favour of the decree holder, wherein he recited that he had already

executed a General Power of Attorney dated 29.03.2000 in favour of the decree holder Shri Karan Luthra. He stated that in furtherance of the said General Power of Attorney, he had handed over the physical vacant possession of property No. D-82, Malviya Nagar Extension (Saket), New Delhi to the decree holder on 11.05.2005 i.e. the date of the execution of the said letter. He further stated that full and final settlement of the sale price of the said property had already been made between the decree holder and Shri Satish Chand Kalra, the original owner, as per the decree passed by this Court in CS(OS) No. 1507/1989. He stated that he has handed over the vacant possession of the property to the decree holder and that the decree holder shall be at liberty to use the same in whatever manner he likes, and he i.e. the judgment debtor will have no objection thereto.

The decree holder preferred the present execution petition on 09.04.2012. The Court issued notice to the judgment debtor vide order dated 13.04.2012, in consequence whereof, the judgment debtor has filed his objections registered as E.A. No.675/2012. The judgment debtor has raised an objection to the maintainability of the present execution petition on the ground of the same being barred by limitation. The submission of the judgment debtor is that the limitation prescribed for execution of any decree (other than a decree granting a mandatory injunction) or order of any civil Court is 12 years, and the time from which the said period begins to run is when the decree or order becomes enforceable. Reliance is placed on Article 136 of the Schedule to the Limitation Act in this regard. The submission of learned counsel for the judgment debtor is that under the terms of a compromise dated 15.04.1998, the judgment debtor was obliged to execute the sale deed in favour of the decree holder at the latest within six months i.e. by 15.10.1998. Since that was not

done, the decree became enforceable on 15.10.1998 and, consequently, the period of limitation expired on 14.10.2000. Since the present execution petition has been preferred only on 09.04.2012, the same is barred by limitation. In support of submissions, learned counsel for the judgment debtor has placed reliance on the decisions of the Supreme Court in *Antony sami Vs. Arulanandam Pillai (D) by LRs & Anr.* 2001 IX AD (S.C.) 71 and *Ratansingh Vs. Vijaysingh & Ors.* 2000 IX AD (SC) 451. The further submission of learned counsel for the judgment debtor is that the compromise agreement stood novated under Sections 62 and 63 of the Contract Act- the decree holder having accepted the execution of the General Power of Attorney dated 29.03.2000 in satisfaction of the obligations of the judgment debtor, thereby relieving the judgment debtor from the obligation of executing the sale deed in favour of the decree holder. The decree holder could not, therefore, seek execution of the compromise decree and require the judgment debtor to execute the sale deed in favour of the decree holder.

On the other hand, the submission of learned counsel for the decree holder is that the fact that the decree in question is a compromise decree, and the subsequent conduct of the parties shows that time was not of the essence, and that the prescription of the period of six months within which the judgment debtor was obliged to transfer the property to the decree holder was not of essence. The submission is that the judgment debtor by his own conduct had set the time at large inasmuch, as, he first executed a General Power of Attorney in favour of the decree holder on 29.03.2000 i.e. well beyond the period of six months prescribed in the compromise decree, and thereafter executed a letter of possession on 11.05.2000 formally tendering possession of the suit property to the decree holder. These steps were taken mutually and voluntarily by the

parties without resort to legal proceedings, including execution. The parties did not consider time to be of the essence in respect of the compromise agreement. Learned counsel submits that in these circumstances, it could not be said that the limitation for preferring the present execution petition expired on 14.10.2000. Learned counsel places strong reliance on the decision of the Division Bench of this Court in ***Shri M.R.Malhotra (since deceased) through LRs & Ors. Vs. Competent Builders Pvt. Ltd.*** 192(2012) DLT 295 in support of his submission.

Learned counsel for the judgment debtor, in his rejoinder, has argued that the execution of the General Power of Attorney or the possession letter does not extend to the period of limitation which started to run when the decree became enforceable. He further submits that the decree holder did not require the judgment debtor to agree to, and the judgment debtor did not agree to extension of time.

Having heard learned counsels for the parties, I find no merit in the objection preferred by the judgment debtor with regard to limitation or novation, and reject the same. ***Antonysami (supra)*** was a case where the plaintiff-decree holder had obtained a decree for specific performance of the contract of sale. There is nothing to suggest that it was a compromise decree. The decree dated 23.07.1966 read as follows:

*“(1) The defendant do measure and demarcate the boundaries for 13 grounds and 491 sq. ft. In the property described hereunder on or before 23.9.1966.*

*(2) That the plaintiff do deposit into court on or before 23.9.1966 the balance of the sale price for 13 grounds and 491 sq. Ft. On measurement and demarcation.*

*(3) That on such measurement and demarcation and fixation of the price and on deposit the defendant do execute the sale deed in respect of the suit house-sites in favour of the plaintiff at her costs as agreed and in default the court*

*do execute the sale deed on application of the plaintiff and the cost of the execution of such sale deed be recovered from the defendant.*

*(4) That the defendant do pay to the plaintiff the sum of Rs. 1,423/- being costs of this suit and do bear his own costs of Rs. 507.50.*

The decree-holder deposited the balance sale price by the date fixed. However, the measurement and demarcation of the land was not done by the judgment debtor on or before that date. The same was done more than six years later in the year 1973. The decree holder preferred the execution petition only on 19.04.1980. In this background, the issue arose whether the execution had been preferred within limitation under Article 136 in the Schedule to the Limitation Act. Whereas, the Judgment Debtor contended that the decree became enforceable on and from 23.09.1966 and the period of limitation had to be reckoned from that date, on the other hand, the decree holder argued that since the land had been demarcated only in 1973, the period of 12 years is to be computed from the date of demarcation and, therefore, the execution filed on 19.04.1980 was within time. The plea of the decree holder was accepted by the executing court. On appeal, the Additional District Judge allowed the same and set aside the order passed by the executing court. The Madras High Court in the Revision Petition preferred by the decree holder confirmed the order passed by the appellate court.

The Supreme Court examined the question as to when did the decree become enforceable. Was it from 23.9.1966-when the period for measurement and demarcation of the land by the judgment debtor fixed under the decree expired, or was it from the date when, according to the decree holder, the judgment debtor measured and demarcated the land in

1973. The Supreme Court examined the terms and conditions of the decree in that case and observed in para 18 as follows:

*“In the case in hand a specified date was mentioned in the decree for the judgment-debtor to carry out the aforementioned direction i.e. 23.9.1966 and if he failed to carry out the direction it was open to the decree-holder to seek help of the executing court for measurement and demarcation of the land, and thereafter, to get the sale deed executed by the judgment-debtor if possible or by the Court if necessary. The decree-holder for reasons best known to him did not choose to execute the decree till April 1980. In the facts and circumstances of the case and on a fair reading of the decree in the context of the provisions of Article 136 of the Limitation Act the conclusion is inescapable that the execution petition was filed after expiry of the period of limitation prescribed under the Act. The Appellate Court was right in dismissing the execution petition as time barred and the High Court committed no illegality in confirming the said order.”*

The Supreme Court referred to the decision in ***West Bengal Essential Commodities Supply Corpn. Vs. Swadesh Agro Farming & Storage Pvt. Ltd. and Another*** (1999) 8 SCC 315, which-I may observe, was also not a case of a compromise decree.

***Ratansingh*** (*supra*) was a case where a decree for possession of the suit property had been passed by the Court on 14.12.1970. The first appeal was dismissed by the appellate court on 01.08.1973. The execution was filed only on 24.03.1988 which was obviously beyond the time fixed under the Limitation Act. The decree holder sought to rely upon the order dated 31.03.1976-whereby the High Court rejected the second appeal preferred by the judgment debtor. The Supreme Court negatived the reliance placed on the dismissal of the second appeal, on the ground that the said dismissal was not on merits, but on the ground of

delay in filing the second appeal which was not properly explained. The Supreme Court observed that normally the decree or order becomes enforceable from its date, but cases are not unknown when the decrees become enforceable on some future date on the happening of certain specified events. The expression, “enforceable” has been used to cover such decrees or orders also which become enforceable subsequently.

The distinguishing feature in the present case is that the same deals with a compromise decree unlike in the case of *Antonysami* (supra) and *Ratansingh* (supra). In neither of these cases, the Supreme Court was dealing with execution of a compromise decree. The issue whether the time agreed to by the parties in the compromise, on which the decree was based, was of the essence or not, did not come up for consideration in these cases, since they were not dealing with compromise decrees.

In *Shri M.R.Malhotra (since deceased) through LRs & Ors.* (supra), a Division Bench of this Court dealt with a similar situation as in the present case. The Court was dealing with the same issue of limitation in respect of the execution petition preferred by the decree holder. The appellant had preferred a civil suit in this Court praying for permanent and mandatory injunction against the respondent and also seeking to recover possession of the land on the basis of an Agreement to Sell dated 25.11.1980. Under that Agreement, Rs. 11 lacs had been received by the appellant towards part consideration, out of the total consideration of Rs. 34.50 lacs, possession had been delivered to the defendant. The plaintiff had preferred the suit to avoid the agreement. On 08.03.1991, a compromise was arrived at between the parties. They moved an application under Order 23 Rule 3 CPC. On 21.03.1991, the learned Single Judge recorded the statements of the parties and decreed the suit in terms of the compromise. The terms of the compromise were that the

plaintiff shall return the sum of Rs. 11 lacs to the defendant, and simultaneously the defendant shall deliver back the possession of 6525 sq. yds. of land to the plaintiffs. It was agreed that defendant shall not have any interest in the remaining 2175 sq. yds. of land which was with the tenant running Chandralok cinema. The parties agreed to complete the transaction within one week, whereafter neither party was to have any claim against the other in regard to the Agreement to Sell dated 25.11.1980, and the Agreement was to be treated as a dead letter. The appellant filed the execution petition in February, 2003, seeking dispossession of the judgment debtor/respondent from the property in question. The appellant/decreed holder sought possession of the said property. The appellant stated that the amount of Rs. 11 lacs shall be paid as and when possession is delivered by the judgment debtor/respondents. In the objections preferred by the respondents/judgment debtor, it was pleaded that the transaction had to be completed within one week which started to run from the date of recording of the compromise i.e. 21.03.1991 and ended on 28.03.1991. It was also pleaded that time was of the essence of the agreement. Since the appellant had not shown its readiness and willingness to pay the said amount of Rs. 11 lacs to the respondent within the time granted by the Court, they were not entitled to enforce the decree. Other objections were also raised by the judgment debtor.

The appellant placed reliance, inter alia, on the Supreme Court judgment in *Smt. Periyakkal Vs. Smt. Dakshyani* AIR 1983 SC 428. In this case, the Court had held that time can be extended, but in rare cases, to avoid manifest injustice. It was also argued that time was not of the essence of the compromise agreement, and that the compromise agreement had to be read and understood to find out the intention of the

parties. Only in cases, where it was found that the time was of essence, the same has to be respected and not in all other cases. If the parties never understood the time as of essence of the contract, and continued to operate under the Agreement even after the expiry of the time, then it could not be said that the time was intended to be of the essence of the contract in such an agreement.

The Division Bench considered the question whether time was of essence of the compromise agreement. The Court, inter alia, observed as follows:

*“25. It is trite law that the compromise decree is an imprimatur of the court on what has been agreed by the parties in the agreement. The court has to thus see decree as an agreement entered into by the parties and has to find out the intention of the parties from the agreement or otherwise.*

*26. No doubt, it is true that the compromise agreement provided that the petitioner would pay `11 lac and simultaneously the respondent shall hand over the possession of the land. The said transaction was also agreed to be completed within a week.*

*27. Upon reading of the terms of the agreement, it is apparent that what has been said to be completed with in one week is the "transaction" and there was no unilateral obligation of payment of Rs.11 lac on the plaintiffs only but, the said transaction was intended to be completed with in a week.*

*28. The said terms in the agreement nowhere provided the consequences for non completion of the said transaction in the event the same is not completed within a stipulated time frame. Thus, it is not easy to assume on a priori basis that by mere specification of time in the agreement, the parties agreed and intended to have time as an essence to the contract.*

*29. It is noteworthy to mention that the compromise agreement is binding on both the parties. The said obligations of the payment of money as well as the*

*simultaneous handing over of the possession of the land by the respondents were reciprocal promises in the agreement.*

*30. One cannot brush aside this important fact in view of Section [51](#) of the Indian Contract Act, 1872 if promises which reciprocals each one has always the option to perform his part of the contract but one party cannot insist on the other performing his promise without himself performing what he has agreed to do under the contract.*

*31. Therefore, when the learned counsel for the respondent complains that there is lack of the endeavors for more than 10 years by the appellants to pay the money within a stipulated time and take back the possession, the same equally holds good for the respondent as well.”*

The Court also observed that there was no document on record to show that the respondent had required the appellant to perform its obligations within the time stipulated in the compromise agreement. No document had been brought on record to suggest that the compromise agreement or decree had become unworkable, or that the same had been repudiated by the respondents. After examining the correspondences which had taken place between the parties, the Court observed as follows:

*36. Therefore, the subsequent conduct of the parties after the passing of the decree reveal that the parties never understood the agreement in the sense that the time should be essence of the contract. The parties under the agreement never called upon each other to comply with the obligations under the terms of agreement timely. On the contrary, in the year 2001, when the appellants sought the return of the possession of land, the respondent replied that the succession certificate must be obtained before any further action is taken in the matter. The respondent never denied the existence of the agreement and nor the respondent repudiated or avoided the agreement on the count that the promise of payment of sum was not complied by the petitioner timely and thus the appellant could not have insisted for return of possession. The respondent rather only asked the appellant to furnish the Succession*

*Certificate by stating that it is necessary that before possession of land in question is handed over to legal heirs.*

*37. All the events subsequent to passing of the decree especially in the year 2001 are indicative of the intention of the parties, which was not to treat the time as essence of the contract or agreement. It is altogether different matter that the time was mentioned in the agreement to comply the obligation under the agreement. The communication exchanged between the parties in the year 2001 reflects that till the year 2001, the intention of the parties was to comply with the agreement and not to repudiate the agreement on the ground of time as essence. What follows from the same is that the parties never understood the compromise agreement or decree as time bound till 2001, which is prior to appellant's approaching this court in the year 2003.*

***38. It is well settled law that whether time is intended to be an essence of the contract can be discerned by examining the intent of the parties at the time of entering the agreement, contents of the agreement and events subsequent thereto the agreement. The subsequent conduct of the parties is relevant to infer the intent of the parties as to whether the parties intended to treat the time as an essence or not. Sometimes, in the contract or the agreement where initially time was not of much importance can become essence of the agreement later on the basis of the subsequent conduct of the parties. Similar are the cases wherein the time is stipulated under the agreement, but the later conduct of the parties may reveal that the time was never understood to be the essence of the agreement. Thus, subsequent conduct plays a significant role in evaluating as to whether the time was treated to be an essence of the contract.***

*39. In the decision of [MANU/SC/0561/2004](#) : (2004) 6 SCC 649 P. D'Souza vs. Shondrilo Naidu the Supreme Court discussed the similar proposition wherein the time as an essence of the contract was waived by the party by way of the subsequent conduct. The Supreme Court observed thus:*

*The contention raised on behalf of the appellant to the effect that the plaintiff had failed to show*

*her readiness and willingness to perform her part of contract by 5.12.1978 i.e. Time stipulated for performance of contract is rejected inasmuch as the defendant himself had revived the contract at a later stage. He, as would appear from the findings recorded by the High Court, even sought for extension of time for registering the sale deed till 31.12.1981. It is, therefore, too late in the day for the defendant now to contend that it was obligatory on the part of the plaintiff to show readiness and willingness as far back as 5.12.1978. Time, having regard to the fact situation obtaining herein, cannot, thus, be said to be of the essence of the contract. In any event, the defendant consciously waived his right. He, therefore, now cannot turn around and contend that the time was of the essence of the contract and the plaintiff was not ready and willing to perform her part of contract in December 1978.*

40. In the case of [MANU/AP/0098/1968](#) : AIR 1968 AP 190 T.Venkata Subrahmanayam vs. V. Viswanatharaju and Another the court has held that the mere stipulation of the time is not sufficient and the court has to see the real intent of the parties. The court observed thus:

*The mere fact that the notice gave a certain time to perform the contract would not necessarily lead to the conclusion that the time prescribed was the essence of the contract. In all such cases, the Court has to look to the pith and substance of the notice and not at the letter of the notice and decide as to whether time was or was not essential to the subsistence of the contract. The real intention of the party who gives notice must be clear from the notice itself..... According to Section [55](#) of the Contract Act, it is no doubt true that in case the first defendant makes time the essence of contract and if the contract is not performed by the other side, the contract*

*becomes voidable. It must however be remembered that the only right which the first defendant gets in such a case is to avoid the contract. The contract does not automatically get determined. He has to further expressly or in unambiguous words determine the contract under S.64 of the Contract Act. It is not in dispute that subsequent to Exhibit A-5, the first defendant did not issue any notice cancelling the contract. His previous as well as subsequent conduct brings out prominently the fact that he had never any intention to make time the essence of contract. The irresistible conclusion therefore is that Exhibit A-5 neither makes time the essence of contract nor does it conditionally or otherwise put an end to the contract. The assertion that he will sell the property to others need not necessarily in all cases mean that he wanted to put an end to the contract & quot; Learned counsel submitted, therefore, if the plaintiff wanted possession, he ought to have issued notice. He should have been willing to part with the advance that he had derived from the agreement, viz., a receipt of Rs. 4000/-. He cannot take the benefit under the agreement and also take possession from the appellants who are in legal possession.*

*(Emphasis Supplied)*

***41. From the reading of the aforementioned observations of the Supreme Court and other courts, it is seen that the subsequent conduct of the parties may bring out the intent of the parties which may show whether the time was actually intended to be of essence or not which depends on case to case basis.***

***42. This question has been examined by the Supreme Court in the cases relating to compromise decree containing obligation to pay the sum within a stipulated time frame where the Supreme Court applied the same***

***principle that for time to be essence of the contract, the parties should have understood said contract in such spirit.*** (emphasis supplied)

The Division bench then proceeded to consider the aspect, whether the Court has the power to grant extension of time which is prescribed under the terms of the settlement. It appears that the learned Single Judge had relied upon the judgment in ***Pioneer Engineering Co. Vs. DH Machine Tools*** AIR 1986 Delhi 165 and ***M/s Somani Marketing Pvt. Ltd. and another Vs. Subhash C. Raswant*** AIR 2001 Delhi 152. The Division Bench did not agree with the conclusions drawn by the learned Single Judge-that time could not be extended by the Court, by observing as follows:

*“48. We have examined the position in law of the said judgments passed by this court. Firstly, Pioneer Engineer (supra) indeed no doubt has held that this court cannot extend time where the time is prescribed for the performance of obligations under the compromise decree. However, the said judgment was rendered in the context of cases where the application was made to extend the said time period before the Judge pursuant to the passing of the decree and not in the cases of execution. The said judgment nowhere addresses the aspect in the context of the executing court granting such extension by looking into the agreement and future events in the matter. Furthermore, thereafter there is a Supreme Court judgment in the case of Smt. Periyakkal (supra) directly dealing with the aspect of executing court having powers to overlook the time period in order to avoid injustice. The said judgment was passed on 18th November, 1992. The learned Single Judge did not rely upon the said judgment and also did not address the question in the light of the judgment passed by the apex court.*

*49. It is also noteworthy that the learned Single Judge records that Somani Marketing (supra) affirms the decision of the Pioneer's case (supra). We have gone through the judgment and we find that Somani Marketing (supra) does*

*not affirm the judgment of Pioneer (supra) and rather noticed the judgment of the Supreme Court in the case of Smt. Periyakkal (supra) and proceeded to observe that leaving the question open as to whether the court would have jurisdiction to extend time or not and the Division Bench in the case of Somani (supra) did not feel that it was a rare case where manifest injustice would be caused as in the case of Supreme Court in Periyakkal (supra). In the words of Learned Division Bench in Somani's case (supra), it was observed thus:*

*10. In this case without going into the question as to the applicability of the decision in Smt. Periyakkal's case ([MANU/SC/0024/1983](#) : AIR 1983 SC 428) (supra) that whether the Court will or will not have jurisdiction to entertain an application and pass orders thereon for extension of time and assuming that such power do exist in Court, we are of the view that this case would not fall within the criteria of rare case as laid down in Smt. Periyakkal's case ([MANU/SC/0024/1983](#) : AIR 1983 SC 428) (supra). It is not a rare case where manifest injustice would be caused to the appellants.*

*50. Therefore, the learned Single Judge's finding that the decision of Pioneer Engineer (supra) has been upheld in the Somani (supra) is not correct position in law as the judgment leaves the question open and proceeds to observe that the case in hand does not fall fit in the observations of the Supreme Court in Periyakkal (supra). Therefore, the finding of the learned Single Judge is not correct.*

*51. In a way Division Bench in law followed the Supreme Court in Periyakkal (supra) but on facts found that the case in hand did not warrant grant of extension of the time as no injustice would be caused to the appellant. The said case of Somani (supra) was the case involving the time period fixed for the appellant tenant in the compromise decree which as per the Division Bench was proper and nothing prevented the tenants to find out alternative accommodation and vacate the premises.*

*52. The Supreme Court however, in the case of Periyakkal*

*(supra)* has observed that the time fixed in the agreement or compromise decree is no different from the time allowed by the court once the parties invited the compromise decree where the court is also the party. Thus, the court can extend the time to avoid injustice. The Hon'ble Apex Court observed thus:

*The parties, however, entered into a compromise and invited the court to make an order in terms of the compromise, which the court did. The time for deposit stipulated by the parties became the time allowed by the court and this gave the court the jurisdiction to extend time in appropriate cases. Of course, time would not be extended ordinarily, nor for the mere asking. It would be granted in rare cases to prevent manifest injustice. **True the court would not rewrite a contract between the parties but the court would relieve against a forfeiture clause; And, where the contract of the parties has merged in the order of the court, the court's freedom to act to further the ends of justice would surely not stand curtailed.** Nothing said in Hukamchand's case militates against this view. We are, therefore, of the view that the High Court was in error in; thinking that they had no power to extend time.*

*(Emphasis Supplied)*

*53. Once we find the preceding paragraphs of this judgment that time was not understood to be the essence of the contract by parties especially noticing the subsequent conduct of the parties till the year 2001 and also read alongside the observations of the Supreme Court in Periyakkal's case (supra) where the Court's power to extend the time is not curtailed to prevent manifest injustice, we think that the facts of the present case are such, where grave injustice would be caused to the appellants if they are not allowed to take back the possession of the property solely on the count of payment of money by the respondent which was also the part payment in the agreement to sell entered way back in the year 1980."*

I find that the situation in the present case is very similar to the one dealt with in M. R. Malhotra (since deceased) through LRs & Ors. (Supra). The decree in question is a compromise decree. It is not, as if the court had prescribed the time within which the parties were obliged to act under the decree. Even though the time prescribed in the agreement was six months for execution of the sale deed in favour of the decree holder, the judgment debtor, admittedly, executed a General Power of Attorney and got the same registered in favour of the decree holder on 29.03.2000. This was much after the period of six months which, as noticed above, had expired on 15.10.1998. Pertinently, the judgment debtor never repudiated the compromise. In fact, learned counsel for the judgment debtor even now stands by the said compromise, but opposes the execution only on the grounds of limitation and novation. The judgment debtor also issued the letter of possession – a step in furtherance of the compromise on 11.05.2000. It is, therefore, clear that the parties did not consider time to be of the essence of the compromise, since they continued to act under the compromise even beyond the time prescribed in the compromise. The compromise does not say that if the time fixed thereunder is not adhered to, the compromise would not bind the non-defaulting party. It is extremely pertinent to note that so far as the decree holder is concerned, he had discharged his liability under the compromise towards the judgment debtor, by making payment of the entire consideration. It is not that the delay on the part of the decree holder in getting the sale deed executed and registered, or in filing the execution petition has, in any manner deprived the judgment debtor, of his rights or prejudiced him in any manner.

Learned counsel for the judgment debtor has submitted that under

the compromise decree itself, possession had been delivered to the decree holder and, therefore, re-affirmation of the said fact in the possession letter dated 11.05.2000 would make no difference. This submission is misplaced, for the reason that this letter does not extend the period of limitation under Article 136 of the Schedule to the Limitation Act. The significance of this Letter is that the parties did not consider time to be of the essence in the compromise decree. Consequently, it cannot be said that the execution petition was barred by limitation when it was filed on 09.04.2012.

Moreover, as held by the Division Bench in ***Shri M.R.Malhotra (since deceased) through LRs & Ors.*** (supra), by placing reliance on ***Smt. Periyakkal's case*** (supra), the executing court has the power to overlook the time period in order to avoid injustice. It would be manifestly unjust and inequitable, if the decree holder is prevented from perfecting his title. He would be deprived of the opportunity to perfect his title in terms of the compromise decree, even though he has paid the entire sale consideration to the vendor and he has been enjoying the peaceful possession of the suit property, admittedly, for many years. It appears to me that the judgment debtor is only seeking to intract his pound of flesh by raising the aforesaid objection.

I may also observe that the decree holder may have been somewhat laid back in its approach, and was shaken into action after the Supreme Court rendered its decision in ***Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.*** AIR 2012 Supreme Court 206. In this decision, the Supreme Court observed that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of “General Power of Attorney Sales” or “Sale Agreements/General Power of Attorney/Will Transfers” do not convey

title, and do not amount to transfer, nor can they be recognised or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. This rule applies not only to deeds of conveyance in regard to freehold property, but also to transfer of leasehold property.

There can be no quarrel with the position laid down by the Supreme Court in *Suraj Lamp & Industries Pvt. Ltd.*(supra). However, this decision does not preclude the decree holder from acting in terms thereof to perfect its title even now.

The submission of learned counsel for the judgment debtor with regard to novation of the compromise agreement also has no merit. This is for the reason that the grant of powers as an attorney does not, firstly, divest the grantor of the powers vested in him and the obligations owed by him, and does not tantamount to transfer of title in favour of the grantee/attorney. It has not been shown to the Court that when the said power of attorney dated 29.03.2000 was executed by the judgment debtor in favour of the decree holder, the decree holder had relieved the judgment debtor of his obligation to execute the sale deed in favour of the decree holder. The execution of the said General Power of Attorney could, at best be treated as a mode devised to enable the judgment debtor to fulfil his obligations under the compromise decree. If, for any reason, the said mode is not found to be workable, or the decree holder desires that the sale deed be executed by the judgment debtor, the judgment debtor cannot seek to wash away his obligations and responsibility by

claiming that he had already executed the General Power of Attorney in favour of the decree holder. Sections 62 & 63 of the Contract Act have no application, since there is no substitution of the compromise agreement on account of execution of the General Power of Attorney by the judgment debtor on 29.03.2000. There is nothing to show that the decree holder dispensed with, or remitted either in whole or any part of the performance of the terms of compromise by the judgment debtor, merely because the decree holder was appointed as the General Attorney in respect of the suit property.

The decisions relied upon by the judgment debtor, as aforesaid, do not deal with the compromise decrees and do not dwell upon the aspect-whether time prescribed in the decree was of the essence. It is well settled that it is the ratio of a judgment of the Superior Court which is treated as a binding precedent. It is also well settled that even a minor difference in the factual matrix, may render an earlier decision inapplicable in a later case. The Supreme Court, in ***Uttarakhand Road Transport Corporation v. Mansaram Nainwal***, AIR 2006 SC 2840) has observed as follows:

*“A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. .... A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors.*

MANU/SC/0047/1967 : (1970)ILLJ662SC and Union of India and Ors. v. Dhanwanti Devi and Ors.  
MANU/SC/1272/1996 : (1996)6SCC44 . A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn v. Leathem* (1901) AC 495 (H.L.) Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.”

I, therefore, reject the reliance placed by the objector on ***Antonysami*** (supra) and ***Ratansingh*** (supra).

For the aforesaid reasons, I reject the objections preferred by the judgment debtor with costs quantified at Rs. 10,000/-.

The judgment debtor is directed to proceed to complete the transaction by executing the sale deed in favour of the decree-holder, in terms of the compromise decree. The judgement debtor shall, within two weeks of the decree holder calling upon him to execute and register the sale deed, do so. In case the judgement debtor does not comply with this direction upon being asked by the decree holder to do so, the same shall be done by a Local Commissioner appointed by this Court. To meet that eventually, I appoint Shri Babu Ram, an official of this Court (Mobile No.9910390858) as the Local Commissioner, with the authority and mandate to execute the sale deed in respect of the suit property in favour of the decree holder on behalf of the owner/judgement debtor. The fee of the Local Commissioner is fixed at Rs. 35,000/-, to be paid by the decree holder. It shall be the obligation of the decree holder to obtain all the

requisite permissions from the DDA in advance, since the property is a leasehold property and to bear all the expenses in that respect.

The execution petition and the pending applications, accordingly, stand disposed of.

**VIPIN SANGHI, J**

**JULY 12, 2013**

**sl**