

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **EFA(OS) 15/2013**

GOPAL KAMRA

..... Appellant

Through: Mr. Lokesh Kumar, Advocate.

versus

KARAN LUTHRA

..... Respondent

Through: Mr. Subhiksh Vasudev,  
Advocate.

% Date of Decision : August 14, 2013

**CORAM:**  
**HON'BLE MS. JUSTICE REVA KHETRAPAL**  
**HON'BLE MS. JUSTICE PRATIBHA RANI**

## JUDGMENT

**: REVA KHETRAPAL, J.**

**1.** The present Appeal seeks to assail the judgment of the learned Single Judge dated 12.7.2013 dismissing the objections of the Judgment Debtor registered as E.A. No.675/2012 to the Execution Petition filed by the Decree Holder on 9.4.2012.

**2.** The facts necessary for adjudicating upon the present Appeal are briefly delineated below. A suit for specific performance, being CS(OS) No.1507/1989 was preferred by one Deepak Talwar against the Defendant - Shri Satish Chand Kalra in respect of an Agreement

to Sell dated 31.8.1986 pertaining to property bearing No.D-82, Malviya Nagar Extension (Saket), New Delhi constructed on a plot of land measuring 358 sq. yds. During the pendency of the suit, the parties entered into a compromise and the suit was disposed of in terms of the said compromise. The compromise arrived at between the parties was that in terms of the Agreement to Sell Shri Deepak Talwar nominated Shri Karan Luthra (the Respondent herein) as his nominee under the Agreement to Sell. Shri Karan Luthra was, therefore, impleaded on the Plaintiff's filing IA No.3139/1998 under Order I Rule 10 CPC with no opposition to his impleadment as Plaintiff No.2. Further, under the compromise, the Agreement to Sell was to be given effect to and a joint application was accordingly moved by the parties, being IA No.3138/1998 under Order XXIII Rule 3 read with Section 151 CPC for recording of the terms of the compromise, the relevant portion of which is as under:-

- “1. That the suit of the plaintiff be decreed and decree for specific performance directing the defendant to execute a Sale Deed in respect of property No.D-82, Malviya Nagar Extension (Saket), New Delhi, constructed on a plot of land measuring 358 Sq. Yards, in favour of the plaintiff No.2 as the plaintiff No.1 has appointed Plaintiff No.2 to be his nominee in terms of the Agreement to Sell dt. 31.8.86.*
- 2. That the defendant has received today before this Hon'ble Court a sum of Rs.21 lacs (Rupees Twenty-one lacs only) by means of a Pay Order bearing No.012587 dated 15.4.98 issued by Jammu & Kashmir Bank Ltd. in favour of*

*defendant in full and final settlement of the sale price of the suit property.*

3. *That the defendant undertakes to take all permissions which are required to be obtained for execution of the Sale Deed and the defendant shall execute the Sale Deed within three months from the date of grant of the permission or within 6 months from today and in case he fails to do so, then the plaintiff No.2 shall have the right to get the Sale Deed executed through the Registrar of this Hon'ble Court.*
4. *That the defendant has placed the plaintiff No.2 in possession of the property in suit, i.e. property No.D-82, Malviya Nagar Extension (Saket), New Delhi, situated in Saket, constructed on a plot of land measuring 358 sq. yards of land in part performance of the Agreement to Sell dated 31<sup>st</sup> August, 1986, and have also handed over available original documents of title of the property i.e. (i) Original Sanctioned Plan (ii) Auction letter dated \_\_\_\_\_ (iii) Possession Letter dated 14.6.1976 (iv) Form 'C' (v) Receipts of the payment made to D.D.A. and (vi) Certified copy of the perpetual lease dated 19.4.1977."*

3. Pursuant to the disposal of the suit in terms of the compromise, the Judgment Debtor (the Appellant herein) executed a General Power of Attorney in favour of the Decree Holder on 29.3.2000 appointing the Decree Holder Shri Karan Luthra (the Plaintiff No.2) as his General Attorney in respect of the suit property. The said General Power of Attorney was duly registered in the office of the Sub-Registrar. On 11.5.2000, the Judgment Debtor executed a possession letter in favour of the Decree Holder acknowledging the

receipt of the entire sale price of the property and handing over the vacant possession of the property to the Decree Holder with liberty to the Decree Holder to use the same in whatever manner he liked.

4. After 11.5.2005, there was a complete lull and admittedly no effort was made by the Decree Holder to have the Sale Deed executed nor the Judgment Debtor took any steps in that direction. On 9.4.2012, the Decree Holder preferred an Execution Petition, to which the Judgment Debtor filed objections, registered as EA No.675/2012 which were dismissed by the learned Single Judge as stated hereinabove. The learned Single Judge after rejecting the objections preferred by the Judgment Debtor passed the following directions:-

*“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 eventuality, 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.”*

5. Aggrieved from the rejection of the objections filed by him, the Appellant/Judgment Debtor has preferred the present Appeal wherein a two-fold submission is sought to be put forth. The first limb of the argument of learned counsel for the Appellant is that the Execution Petition was not maintainable on the ground of the same being barred by limitation. It was contended that Article 136 of the Schedule to the Limitation Act prescribed a period of 12 years to be the period within which execution of any decree or order of any Civil Court could be sought by the Decree Holder, and the time from which the said period begins to run is when the decree or order becomes enforceable. It was submitted that under the terms of the compromise between the parties dated 15.4.1998, the Judgment Debtor was obliged to execute the Sale Deed in favour of the Decree Holder latest within six months, i.e., by 15.10.1998 (Clause 3). Hence, the decree became enforceable on the said date and the period of limitation consequently expired on 14.10.2010. The present Execution Petition was preferred on 9.4.2012, much after the lapse of the statutory period of limitation and was, therefore, barred by limitation. In support of this submission, learned counsel for the Appellant has placed reliance on the decisions of the Supreme Court in *Antonysami vs. Arulanandam Pillai(D) by LRs & Anr.*, (2001) 9 SCC 658, *Ratansingh vs. Vijaysingh & Ors.*, (2001) 1 SCC 469 and *Raghunath Rai Bareja and Anr. vs. Punjab National Bank and Ors.*, (2007) 2 SCC 230. He also relied upon the decision of the Supreme Court in the case of *Smt. Periyakkal vs. Smt. Dakshyani*, (1983) 2 SCC 127 to urge that time beyond 30 days could not be

extended by the Court even under the provisions of Section 148 of the Code of Civil Procedure. The second limb of the argument of learned counsel for the Appellant is that by virtue of provisions of Sections 62 and 63 of the Contract Act the agreement between the parties stood novated, the Respondent having accepted the execution of the General Power of Attorney dated 29.3.2000 in satisfaction of the obligations of the Appellant, thereby relieving the Appellant from the obligation of executing the Sale Deed in favour of the Respondent.

6. *Per contra*, learned counsel for the Respondent contended that the aforesaid decisions rendered by the Supreme Court had no application to the facts of the present case and were clearly distinguishable. The decree in question is a compromise decree bearing the imprimatur of the Court and as is borne out by the subsequent conduct of the parties, the parties did not consider time to be of the essence for the execution of the Sale Deed. As a matter of fact, the Judgment Debtor had himself set the time at large since he executed a General Power of Attorney in favour of the Decree Holder not within the stipulated period of six months, but on 29.3.2000 and thereafter executed a letter of possession in favour of the Respondent on 11.5.2000. Placing reliance upon a decision of the Division Bench of this Court in ***Shri M.R. Malhotra (since Deceased) Thr. LRs & Ors. vs. Competent Builders Pvt. Ltd., 192 (2012) DLT 295*** in support of his aforesaid submission, learned counsel for the Respondent contended that in such circumstances it could not be said that the limitation for preferring the present Execution Petition expired on 14.10.2010.

7. Adverting to the second limb of the argument of the Appellant's counsel, it was submitted by the Respondent's counsel that no question of novation of the contract had arisen or possibly could have arisen at any point of time merely because the General Power of Attorney in favour of the Respondent was executed by the Appellant beyond the period prescribed by the Compromise Agreement, i.e., on 29.3.2000, and the letter of possession was issued on 11.5.2000 does not mean that the agreement between the parties stood novated. He contended that at no point of time did the Respondent waive the Appellant's obligation to execute the Sale Deed in his favour. The entire sale consideration had been paid by the Respondent who was in possession of the suit property at the time of the Compromise Agreement and had also been handed over the available original documents of title and as such the Appellant was not left with even a vestige of right, title or interest in the suit property. The Appellant himself had set time at large by executing the General Power of Attorney on 29.3.2000 well beyond the period of six months prescribed in the compromise decree. This was done voluntarily by the Appellant without resort to legal proceedings including execution and clearly showed that the Appellant never understood time to be of the essence in respect of the Compromise Agreement. Had it not been so, the Appellant would have raised objection to the execution of the Power of Attorney in the year 2000 itself by refusing to execute the same.

8. Learned counsel for the Respondent further contended that the reliance placed by the Appellant upon the judgment of the Supreme

Court in the case of **Smt. Periyakkal (supra)** was also misplaced. In the said case, the Court in fact accepted the argument raised on behalf of the Appellant that there was no limitation on the power of the Court to extend time, more so in a case where the parties had entered into a compromise and invited the Court to make an order in terms of the compromise, which the Court did.

9. Learned counsel for the Respondent heavily relied upon the judgment of the Division Bench of this Court in **Shri M.R. Malhotra (since Deceased) Thr. LRs & Ors. (supra)**. The relevant extracts from the said judgment which were referred to by learned counsel for the Respondent are for the sake of ready reference extracted hereinbelow:-

*“26. 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.*

*29. 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.*

*38. 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.*

*39. 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.*

*40. In the decision of (2004) 6 SCC 649 P. D'Souza vs. Shondriilo 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.”*

53. 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)*

10. We may note that the facts in the case of ***Shri M.R. Malhotra (since Deceased) Thr. LRs & Ors. (supra)*** are *pari materia* to the facts in the present case. The parties in the said case arrived at a Compromise Agreement in a pending suit and moved an application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908. The said application came up before the Court on 21<sup>st</sup> March, 1991 when the learned Single Judge decreed the suit in terms of the compromise by allowing the application. The Appellants filed an Execution Petition in February, 2003 seeking relief from the Court to dispossess the Judgment Debtor/Respondent from the property in question and to put the Decree Holder/Appellant in possession of the property to satisfy the decree, i.e., after a lapse of 12 years. It was in such circumstances that it was held that it was not possible to assume on a priori basis that by mere specification of time in the agreement parties had agreed and intended to have time as an essence of the contract.

Moreover, subsequent conduct of the parties revealed that the parties never understood the agreement in the sense that time should be the essence. The Respondent by not repudiating the agreement in the year 2001 itself and rather insisting on succession certificate for handing over possession implicitly waived the right to urge that time was an essence of contract.

**11.** Applying the ratio of the aforesaid case to the present case, it can safely be said that the Appellant in the instant case implicitly waived the right to urge that time was the essence of the contract when it issued the General Power of Attorney on 29.3.2000 without demur or protest and subsequently even issued a possession letter on 11.5.2000. Moreover, we find that there is nothing on the record to suggest nor is it even the assertion of the Appellant that the Respondent at any point of time had by his conduct waived the obligation of the Appellant to execute the Sale Deed or in any manner relieved him from the said obligation.

**12.** So far as the reliance placed by the Appellant on the judgment of the Supreme Court in the case of *Smt. Periyakkal (supra)* is concerned, the said decision in fact clearly states that where a compromise has been arrived at between the parties which bears the imprimatur of the Court, it is always open to the Court to extend the time to avoid manifest injustice. This decision has in fact been heavily relied upon by the Division Bench of this Court in the case of *Shri M.R. Malhotra (since Deceased) Thr. LRs & Ors. (supra)* in arriving at the conclusion that there would be manifest injustice to the Appellant if the compromise decree as it stood and was understood by

the parties was not allowed to be executed by the Court. The present case, in our opinion, stands on a better footing than the case of *Shri M.R. Malhotra (since Deceased) Thr. LRs & Ors. (supra)* and we may safely state that to allow the Appellant in the present case to wriggle out of the compromise decree arrived at before this Court would be manifestly unjust. We may also note that the learned Single Judge has rightly observed that the Respondent may have been somewhat laid back in his approach but was shaken into action after the Supreme Court rendered its decision in *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr., AIR 2012 SC 206*. In this decision, the Supreme Court held that all transactions of the nature of General Power of Attorney or sales do not amount to transfer of property nor can they be recognized as a valid mode of conveyance, except to the limited extent of Section 53A of the Transfer of Property Act. That the Respondent in the light of this judgment rendered by the Supreme Court now wants to perfect its title, therefore, in our view, is perfectly understandable. However, the fact that the Appellant at this juncture is trying to wriggle out of a commitment made by him before this Court by signing the Compromise Agreement, which has the imprimatur of this Court appears to us to be both inequitable and unjust, to say the least.

13. Adverting to the decisions relied upon by learned counsel for the Appellant in the cases of *Antonysami, Ratansingh* and *Raghunath Rai Bareja (supra)*, none of the aforesaid was a case dealing with the compromise decree. *Antonysami (supra)* was a case where the decree holder had obtained a decree for specific

performance of the contract of sale, which was not arrived at by compromise. A question arose as to whether the execution petition had been preferred within the period of limitation prescribed under Article 136 in the Schedule to the Limitation Act, 1913. The judgment debtor contended that the decree became enforceable on 23.9.1966 (which was the date on or before which date the judgment debtor was required to measure and demarcate the boundaries of the property in question) and the period of limitation had to be reckoned from that date. The contention of the decree holder, on the other hand, was that since the land had been demarcated only in 1973, the period of limitation was to be computed from the said date. The Supreme Court, on examination of the terms and conditions of the decree, upheld the contention of the judgment debtor in para 18 of its judgment, which is extracted below:-

*“18. 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.”*

**14.** The second case sought to be relied upon by the Respondent is the case of ***Ratansingh (supra)***. This was a case where a decree of possession of the suit property had been passed by the Court on 14.12.1970. An execution petition filed on 24.3.1998 by the decree holder was held to be beyond the time fixed under the Limitation Act, and the reliance of the decree holder upon an order dated 31.3.1976 whereby the High Court rejected the second Appeal preferred by the judgment debtor was held by the Supreme Court to be misplaced. Suffice it to state that in this case also the Supreme Court was not dealing with the execution of a compromise decree.

**15.** ***Raghunath Rai Bareja (supra)*** relied upon by the Appellant’s counsel was also not a case in which a compromise decree was passed. The Supreme Court in the said case was dealing with a case where a decree was passed in favour of the Bank for recovery of money advanced by it. The said decree became enforceable on 15.1.1987. The Bank filed the first execution petition, which was dismissed on technical grounds on 8.11.1990. A second execution petition filed by the Bank in 1994 met with a similar fate and was dismissed by a learned Single Judge of the High Court on 18.8.1994. The decree holder - Bank then filed a third Execution Petition dated 11.1.1999, which too was dismissed on the statement made by the Official Liquidator that no assets of the Company, movable or immovable, were available with the Official Liquidator and as such there could be no execution against the Company. Thereafter, on

7.4.1999, the decree holder Bank instead of filing a petition as directed by the High Court against the other judgment debtors in accordance with law, since they had not been impleaded as parties, filed an application for restoration of the execution petition. The High Court after restoring the execution petition transferred the same to the Debts Recovery Tribunal, Chandigarh by an order dated 26.5.2005 passed on an application filed by the decree holder - Bank. The Supreme Court on Appeal held that the execution petition had been wrongly transferred by the High Court to the Debts Recovery Tribunal and on the bar of limitation to the execution of the decree made the following observations:-

*“29. Learned counsel for the respondent Bank submitted that it will be very unfair if the appellant who is a guarantor of the loan, and Director of the Company which took the loan, avoids paying the debt. While we fully agree with the learned counsel that equity is wholly in favour of the respondent Bank, since obviously a bank should be allowed to recover its debts, we must, however, state that it is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim “dura lex sed lex”, which means “the law is hard, but it is the law”. Equity can only supplement the law, but it cannot supplant or override it.*

*36. In India House v. Kishan N. Lalwani [(2003) 9 SCC 393] (vide SCC p. 398, para 7) this Court held that:*

*“The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations.”*

*37. In the present case, while equity is in favour of the respondent Bank, the law is in favour of the appellant, since we are of the opinion that the impugned order of the High Court is clearly in violation of Section 31 of the RDB Act, and moreover the claim is time-barred in view of Article 136 of the Limitation Act read with Section 24 of the RDB Act. We cannot but comment that it is the Bank itself which is to blame because after its first execution petition was dismissed on 23-8-1990 it should have immediately thereafter filed a second execution petition, but instead it filed the second execution petition only in 1994 which was dismissed on 18-8-1994. Thereafter, again the Bank waited for 5 years and it was only on 1-4-1999 (sic 11-1-1999) that it filed its third execution petition. We fail to understand why the Bank waited from 1990 to 1994 and again from 1994 to 1999 in filing its execution petitions. Hence, it is the Bank which is responsible for not getting the decree executed well in time.”*

**16.** The Supreme Court concluded by saying that the recovery in question was time barred and the impugned order of the High Court was accordingly set aside. We are, however, unable to see as to how this decision comes to the aid of the Appellant. This was not a case where any compromise was arrived at between the parties and recorded by the Court. It was a suit simplicitor for the recovery of a debt due to the Bank and we do not see how the Appellant can derive any advantage from the findings recorded in this judgment, which, we may note was not even cited before the learned Single Judge.

**17.** The only other aspect of the matter which remains to be considered is the submission of learned counsel for the Appellant with regard to novation of the Compromise Agreement. As already

noted by us, no material has been shown to this Court that when the General Power of Attorney dated 29.3.2000 was executed by the Appellant in favour of the Respondent, the Respondent had relieved the Appellant of his obligation to execute the Sale Deed. There is also no material on record suggestive of the fact that at any point of time even thereafter the Respondent had by his conduct, expressly or impliedly, represented to the Appellant that the Appellant on account of his having executed the General Power of Attorney was no longer under an obligation to execute the Sale Deed. We, therefore, do not see any merit in the contention of the Appellant that the Compromise Agreement stood novated on the execution of the General Power of Attorney by the Appellant.

**18.** For the aforesaid reasons, we find no merit in the present Appeal, which is accordingly dismissed with the direction to the Appellant to comply with its obligation of executing the Sale Deed in terms of the judgment and order of the learned Single Judge.

**REVA KHETRAPAL  
JUDGE**

**PRATIBHA RANI  
JUDGE**

**August 14, 2013**  
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