



C.R.P.(MD)No.943 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
17.03.2023	13.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.943 of 2017

- 1.Basheer Ahamed (Died)
- 2.B.Mumtaj Begum
- 3.Sathick Batcha
- 3.Mohamed Hithayathullah
- 5.Praveen Banu
- 6.Mohamed Shafiullah

... Petitioners

[Petitioners 2 and 6 are brought on record as LR.s. of the deceased sole petitioner, vide Court order dated 24.11.2021, made in C.M.P.(MD)No.12063 of 2019 in C.R.P.(MD)No.943/2017]

VS.

- 1.Uthirapathy
- 2.Thirunavukarasu
- 3.Banumathi
- 4.Rajeswari

... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of C.P.C., against the fair order and decretal order, dated 10.01.2017, made in I.A.No.346 of 2015 in O.S.No.25 of 2002, on the file of the Principal Sub-Court, Thanjavur.

For Petitioners

: Mr.K.Guhan

For R2 and R4

: Mr.Suruli Raja
for Mr.S.Deenadhayalan

For R3

: Ms.A.Banumathy



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ORDER

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This Civil Revision Petition has been filed against the impugned order dated 10.01.2017, passed by the learned Principal Sub Judge, Thanjavur, in I.A.No. 346 of 2015 in O.S.No.25 of 2002.

2.By the impugned Order, the learned Principal Sub Judge, Thanjavur, has dismissed I.A.No.346 of 2015 with the following observations:

"5.தீர்வு: இரு தரப்பு வாதமும் கேட்கப்பட்டது. மனுதாரர்/வாதி இம்மனுவில் 22.08.2003-ல் தான் பெற்ற ஏற்றதை ஆற்றுக பரிகார தீர்ப்பாணையின்படி பாக்கிக் கிரயத்தொகை ரூ.30,000/-த்தை நீதிமன்றத்தில் வைப்பீடு செய்ய அனுமதி வேண்டி இம்மனுவை தாக்கல் செய்துள்ளார். எதிர் மனுதாரர்கள் தரப்பில் தாக்கல் செய்யப்பட்டுள்ள எதிருரையில், மனுதாரர் வாதி ஒருதலைபட்சமாக தீர்ப்பாணை 22.08.2003 தேதியில் பெற்றுள்ளார் என்றும், அதன்படி கிரய பாக்கித் தொகையை செலுத்தி கிரயப்பத்திரத்தை பதிவு செய்து பெற்றுக் கொள்ள இரண்டு மாத கால அவகாசம் வழங்கப்பட்டுள்ளது என்றும் ஆனால் மனுதாரர்/வாதி 11 ஆண்டுகளுக்கும் மேலாக காலம் கடந்த பின்பு இம்மனுவை தாக்கல் செய்துள்ளார் என்றும், அதனால் இம்மனுவை செலவுத் தொகையுடன் தள்ளுபடி செய்ய வேண்டும் என்றும் கூறியுள்ளார்.

6.இரு தரப்பு வாதங்களின் அடிப்படையில் வழக்குக் கோப்பை பரிசீலித்ததில் இவ்வழக்கில் கடந்த 22.08.2003 அன்று 1 முதல் 4 பிரதிவாதிகள் நீதிமன்றத்தில் ஆஜராகாமல் தோன்றா தரப்பினர்களாக்கப்பட்டு ஒருதலைபட்ச தீர்ப்பாணை பிறப்பிக்கப்பட்டுள்ளது. அந்த தீர்ப்பாணையின்படி பிரதிவாதிகள், வாதியிடம் வழக்கிடைச் சொத்தினுடைய ஒப்பந்தத்தில் கண்டுள்ள கிரய பாக்கித் தொகையான ரூ.30,000/-த்தை வாதியிடம் பெற்றுக்கொண்டு வாதியின் பெயருக்கு கிரய சாசனம் எழுதிக் கொடுத்து தாவா சொத்தில் அனுபோகத்தையும் வாதியிடம் ஒப்படைக்க வேண்டும் என்று தீர்ப்பாணை செய்யப்படுகிறது என்றும் இதற்கு இரண்டு மாத கால அவகாசம் வழங்கப்படுகிறது என்றும் தீர்ப்பாணை வழங்கப்பட்டுள்ளது.



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முனதாரர் - வாதி இம்மனுவில் பஞ்சாயத்தார்கள் மூலம் கேட்டதில் எதிர் மனுதாரர்கள் கிரய பாக்கித் தொகை பெற்றுக் கொண்டு கிரயசாசனம் எழுதிக் கொடுப்பதாக சொன்னதால் நடவடிக்கை எடுக்காமல் இருந்ததாக கூறியுள்ளார். அதை எதிர் மனுதாரர்கள் - பிரதிவாதிகள் தங்கள் எதிருரையில் மறுத்துள்ளார். 22.03.2003-ல் பிறப்பிக்கப்பட்ட தீர்ப்பாணையின் பேரில் பாக்கிக் கிரயத்தொகையை வைப்பீடு செய்து கிரயப் பத்திரம் எழுதிக் கொள்ள 12 ஆண்டுகள் காலாவதி முடிவதற்கு 30 நாட்கள் எஞ்சியுள்ள நிலையில் மனுதாரர் - வாதி இம்மனுவை தாக்கல் செய்துள்ளார். சுமார் 12 ஆண்டு காலத்திற்கு மனுதாரர் - வாதி தனது பிரமாண வாக்குமூலத்தில் சொல்லியுள்ள காரணம் ஏற்றுக் கொள்ளக்கூடியதல்ல. எதிர் மனுதாரர்கள் - பிரதிவாதிகள் பஞ்சாயத்தார்கள் மூலம் கிரயப்பத்திரம் எழுதித் தருவதாக சொன்னதாகவும், அதனால் நடவடிக்கை எடுக்காமல் இருந்து விட்டதாகவும், தனது பிரமாண வாக்குமூலத்தில் மனுதாரர்/வாதி கூறியுள்ள சுமார் 12 ஆண்டுகள் கால தாமதத்தை மன்னித்து மனுதாரர்/வாதிக்கு பாக்கி கிரயத்தொகையை வைப்பீடு செய்ய அனுமதி அளிக்க தகுந்த மற்றும் ஏற்றுக் கொள்ளக்கூடிய காரணங்கள் எதுவும் இல்லை என இந்த நீதிமன்றம் முடிவு செய்கிறது. நிறைவேற்று மனு தாக்கல் செய்வதற்கு உரிய கால அவகாசம் முடிவாகும் நிலையில் மனுதாரர்/வாதி தாக்கல் செய்திருக்கும் இம்மனு ஏற்றுக் கொள்ளக்கூடியதல்ல என இந்த பிரச்சினைக்கு தீர்வு காண்கிறது.

முடிவாக, இம்மனு தள்ளுபடி செய்யப்படுகிறது. செலவுத் தொகை இல்லை.□

3.I.A.No.346 of 2015 was filed by the first petitioner to permit him to deposit the decree amount. The prayer reads as under:

ஆகையால், சமூகம் கோர்ட்டார் அவர்கள் தயவு செய்து மேலே கண்ட காரணங்களை கொண்டு மேற்படி தீர்ப்பாணையில் கண்டுள்ளபடி கிரைய பாக்கி தொகையான ரூ.30,000/-யும் (ரூபாய் முப்பது ஆயிரம் மட்டும்) சமூகம் கோர்ட்டில் டெபாசிட் செய்து கொள்ள அனுமதி வழங்கிட தகுந்த உத்தரவு செய்ய வேண்டியது அவசியமும், நியாயமுமாக இருக்கிறது.	For the above reasons, the Court is pleased to make a suitable order allowing to deposit the purchase balance amount of Rs.30,000/- (Rupees Thirty Thousand only) as found in the decree in the Court.
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4.I have heard the learned counsel for the petitioners, learned counsel for the



third respondent and the learned counsel for the respondents 2 and 4. I have also perused the impugned order and considered the arguments advanced by the learned counsels and the provisions of Specific Relief Act, 1963, Limitation Act, 1962 and the provisions of Civil Procedure Code.

5.The first petitioner was the plaintiff in O.S.No.25 of 2002 before the Principal Sub-Court, Thanjavur. The said suit was filed by the first petitioner against the respondents for a specific performance under a sale agreement dated 08.01.1997. The respondents failed to appear before the Trial Court and were therefore set *ex parte*. Under these circumstances, an *ex parte* decree came to be passed on 22.08.2003.

6.As per the *ex parte* decree dated 22.08.2003, the first petitioner was required to deposit Rs.30,000/- within a period of two months. Thereafter, the respondents were directed to execute a sale deed in favour of the first petitioner. The first petitioner, however, failed to deposit the amount within the time stipulated by the Principal Sub-Court, Thanjavur.

7.Just 30 days before the expiry of 12 years limitation under Article 136 of the Limitation Act 1963, the first petitioner filed I.A.No.346 of 2015 under Section 151 of C.P.C, for depositing the amount of Rs.30,000 as was decreed by the Trial Court in the suit for specific performance filed by the first petitioner against the respondents



in O.S.No.25 of 2002 after the respondents purportedly declined to receive the amount.

8.The point for consideration in the present Civil Revision Petition is whether the first petitioner was entitled to the relief as was prayed for in I.A.No.346 of 2015 under Section 151 of C.P.C. which has been refused vide the impugned order?

9.In this connection, it will be useful to refer to Section 28 of the Specific Relief Act, 1963. It reads as under:

"Section 28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—
(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor; and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or the lessee as earnest money or deposit in connection with the contract.



(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court."

10. The vendor or lessor as the case may file an application before the Court which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require. However, if the purchaser or lessee pays the purchase money as was ordered to be paid under the decree within the period referred to in sub section(1), the Court can award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

11. Relief in a suit for specific performance is a discretionary relief. It can be



granted to the plaintiff based on sound judicial principle. A suit for specific performance has to be filed within three years as per Art.54 of the Limitation Act, 1993.

12. There are well established line of judgements of the Courts wherein it has been held that the provisions of Section 28 of the Specific Relief Act, 1963 are not to be interpreted in a technical or pedantic manner, ignoring the relief granted or refused under the provisions of the Specific Relief Act, 1963. However, while granting such relief, the court has to be guided by sound and reasonable grounds of judicial principles, equity, good conscience and conduct of the parties.

13. The Court may by an order rescind a contract for the sale or lease of immovable property made and if the purchaser or lessee fails to pay the purchase money or other sum which the court had ordered to pay, within the period allowed by the decree or such further period as the court may have allowed.

14. On the other hand, the court may award to the purchaser or lessee such further relief as he may be entitled to on application made in his behalf, if the purchaser or lessee had paid the purchase money or other sum as was ordered to be paid as per the decree within the period referred to in sub-section (1).



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15. The Hon'ble Supreme Court in **Chanda Vs. Rattni and another** (AIR 2007 SC 1514) has held that where there is a decree for specific performance specifically directing the defendant to execute the sale deed on payment of the remaining balance amount of consideration and get it registered within a period of two months from the date of the decree, the plea of the decree holder raised for the first time before the court that there was no direction to pay within a particular time was clearly unsustainable.

16. In **Sudarshan Paul Vs. Pradip Kumar Roy** [2016 (2) Gau LT 1243], it was held as under:

"Section 28 vests power on the Court to rescind a contract even after passing of the decree of specific performance on the grounds mentioned in section."

17. In **Onkar Nath v. Basheer**, [AIR 1986 P&H 152 (153)], it was held as under:

"11. From a bare reading of the section it is clear that the seller has been given a right to make an application for rescission of the contract after the decree has been passed against him, if the purchaser fails to pay the purchase money as directed by the Court within the prescribed period or such further period as the Court may allow. The contract of sale cannot be rescinded on any other ground except the one provided in the section. As already observed above, the respondents failed to pay the sale consideration within the prescribed period and they did not apply for extension of the period for doing so. Therefore, the petitioners became entitled to get the contract rescinded."

18. In **P. Shyamala Vs. Gundlur Masthan** [Civil Appeal Nos. 1363, 1364 of



2023], it was held as under:

"The explanation which was given by the plaintiff, narrated hereinabove, can hardly be said to be a sufficient explanation as to why the plaintiff did not pay the balance sale consideration as per the judgment and decree or even did not make an application within a reasonable time under Section 148 CPC and Section 28 of the Specific Relief Act seeking extension of time for making payment. If the plaintiff 9 was ready with the money payable towards the balance sale consideration, he could have got the sale deed executed through power of attorney after effecting deposit/payment. In absence of any sufficient explanation, such a huge delay of 853 days ought not to have been condoned by the trial Court."

19. In Ali Jaffar S/o R.A. Mahmood Vs. Venkat Reddy Narasimha Reddy

(AIR 2012 AP 102), it was held as under:

"The ratio that could be culled out from the above noted Judgments of the Apex Court is that the power to extend the time for payment of balance sale consideration is vested in the Court under Section 28 of the Act. A fortiori, an application filed for extension of time is traceable to the said provision. The language of Section 148 of the Code would reveal that it enables the Court to enlarge the period prescribed or allowed by the Code for doing any act. In my opinion, in the present case, the obligation of the petitioner to pay the balance sale consideration arose under the decree. The petitioner is not required to do any act within the time stipulated by the Code. Therefore, ex facie, Section 148 of the Code is not attracted to an application filed by a decree-holder for extension of time for deposit of balance consideration stipulated in a decree for specific performance of agreement of sale. As Section 28 of the Act being the substantive provision, any such application for extension of time for deposit of balance sale consideration is traceable to the said provision. It, therefore, necessarily follows that the maximum time limit of 30 days stipulated under Section 148 of the Act does not bar the Court from extending time beyond the period of 30 days. If the Court is satisfied that the applicant has made out a case for enlargement of time, it can enlarge the time in exercise of its power under Section 28 of the Act, regardless of the provisions of Section 148 of the Code. As such the finding of the lower Court that it has no power to extend the time beyond 30 days for deposit of balance sale consideration, in view of



Section 148 of the Code, cannot be sustained."

20. In my view, the relief sought for by the first petitioner in I.A.No.346 of 2015 has been correctly rejected by the Trial Court. It does not call for any interference.

21. The Trial Court ought not have decreed the suit for specific performance on 22.08.2003. The Trial Court should have exercised its discretion properly.

22. The Trial Court ought to have noted that the suit for specific performance instituted on 07.01.2002 in respect of a sale agreement dated 08.01.1997 was time barred. Therefore, discretion should have been properly exercised before granting the *ex parte* relief to the first petitioner on 22.08.2003.

23. The above mistake occurred because the respondent remained *ex parte*. The Trial Court also did not have the benefit of an alternate view of the case as no written statement was filed.

24. The first petitioner had the advantage of the *ex parte* decree dated 22.08.2003. The *ex parte* decree was clearly not executable. Be that as it may, it was incumbent on the part of the first petitioner to have complied with the requirements of the *ex parte* decree dated 22.08.2003 to execute the decree. However, the first petitioner failed to do so.



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25. That apart, in this case, there is also no proper explanation forthcoming from the petitioners as to why the application was filed directly for depositing the above said amount as decreed without getting leave of the Court for extending the time for depositing the amount under Section 148 of C.P.C. pursuant to the *ex parte* judgment and decree dated 22.08.2003 of the Trial Court.

26. Even otherwise, the first petitioner had a period of only 12 years to initiate execution proceedings under Article 136 of the Limitation Act, 1963. Article 136 of the Limitation Act, 1963 reads as under:-

Art.	Description of suit	Period of limitation	Time from which period begins to run
136	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court	Twelve years	[When] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

27. The limitation for executing the *ex parte* decree dated 22.08.2003 to



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execute a sale deed would be time barred. A second Execution Petition for delivery of the property would also be time barred. Thus, no useful purpose would be served even if I.A.No.346 of 2015 was allowed by the Trial Court.

28.Whichever way one looks at, there is no case made out for grant of relief. I.A.No.346 of 2015 filed by the first petitioner, which has been rejected by the Trial Court does not call for any interference.

29.There is no merit in the present Civil Revision Petition. Therefore, this Civil Revision Petition is liable to be dismissed. It is accordingly dismissed. No costs.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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13.04.2023

To

The Principal Subordinate Judge,
Thanjavur.



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C.R.P.(MD)No.943 of 2017

C.SARAVANAN, J.

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PRE-DELIVERY ORDER MADE IN
C.R.P.(MD)No.943 of 2017

DATED : 13.04.2023