



CNR: KAHC010344872022

NC: 2026:KHC:44054
W.P. No.15349/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 18TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.15349/2022 (GM-CPC)

BETWEEN:

1. SMT. SHASHIREKHA
@ SHASHIKALA
W/O LATE T. NAGENDRA
AGED 44 YEARS.
2. SRI. PAVAN KUMAR
S/O LATE T. NAGENDRA
AGED 19 YEARS.
3. SRI. CHETHAN KUMAR
S/O LATE T. NAGENDRA
AGED 18 YEARS.

ALL ARE R/AT BANNUR TOWN
T. NARASIPURA, MYSURU 571101.

...PETITIONERS

(BY SMT. ANUSHA NANDISH, ADV.,)

AND:

SRI. B. BASAVARAJU
S/O LATE B. BASAVEGOWDA
AGED 64 YEARS
HORAKERI MOHALLA
BANNUR TOWN
T. NARASIPURA TALUK
MYSURU 571101.

...RESPONDENT

(BY SMT. APPOORVA H, ADV., FOR
SRI. PRAKASH T. HEBBAR, ADV.,)

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DTD 11.07.2022 ON I.A.NO.V PASSED BY THE COURT OF CIVIL JUDGE AND JMFC, T NARSIPURA, MYSURU IN EX.NO.47/2018 ANNEXURE-A. ALLOW THE I.A.NO.V FILED BY THE PETITIONERS/DECREE HOLDER IN EX.NO.47/2018 BEFORE THE COURT OF CIVIL JUDGE AND JMFC, T NARSIPURA, MYSURU ANNEXURE-F & ETC.

THIS W.P. HAVING BEEN HEARD AND RESERVED ON 13.08.2026, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV ORDER

This writ petition is filed challenging the order dated 11.07.2022 passed on I.A.No.V in Ex.No.47/2018 by the Civil Judge and JMFC, T.Narsipura, Mysuru (for short, 'the Executing Court').

2. Smt.Anusha Nandish, learned counsel appearing for the petitioners submits that the respondent had filed a suit in O.S No.217/2009 seeking the relief of specific performance against the petitioners. The said suit came to be decreed *ex parte* in the year 2010. However, the execution petition was filed in the year 2018 and as



per the decree, the balance amount was neither deposited immediately after 3 months nor at the time of filing the execution petition or during the pendency of execution petition. It is submitted that the petitioners-judgment debtors filed an application to rescind the agreement of sale by annulling the decree on the aforesaid ground, however, the Executing Court rejected the said application on erroneous reasons. It is further submitted that even to this day, the balance amount is not deposited by the decree holder and hence, the agreement of sale is required to be rescinded by annulling the decree. In support of her contentions, she placed reliance on the following decisions:

- (1) *PREM JEEVAN Vs. K.S. VENKATA RAMAN AND ANOTHER*¹**
- (2) *T.L RAJAGOPAL Vs. S.N.SHIVAKUMAR*²**
- (3) *NARASIMHAN Vs. BALAMMAL*³**

Hence, she seeks to allow the petition.

¹ (2017) 11 SCC 57

² ILR 2014 KAR 4035

³ C.R.P.No.4106/1987 Madras High Court dt. 12.10.1988



3. *Per contra*, Smt.Appoorva H., learned counsel appearing on behalf of Sri.Prakash T. Hebbar, learned counsel for the respondents-defendants supports the impugned order of the Executing Court and submits that the decree holder could not deposit the amount immediately as there was another suit in O.S.No.161/2006 seeking for declaration and permanent injunction with regard to the very same property, which was partly decreed by declaring the plaintiffs therein as the owners of the land to an extent of 6 guntas out of 12 guntas. The said suit was decreed in the year 2019 and therefore, there is a delay in deposit of the amount, which is unintentional and the respondent-decree holder is ready to pay simple interest on the balance amount. Hence, she seeks to dismiss the petition.

4. I have heard the arguments of the learned counsel for the petitioners, learned counsel for the respondents and meticulously perused the material



available on record. I have given my anxious consideration to the submissions advanced on both sides.

5. The respondent had filed a suit in O.S. No.217/2019 against the petitioners seeking the relief of specific performance of contract. The said suit came to be decreed *ex parte* vide judgment dated 05.10.2010. The said judgment and decree has attained finality. The operative portion of the judgment reads as under:

"The suit of the plaintiff is hereby decreed with cost.

It is hereby directed that the defendant has to execute a registered sale deed in favour of plaintiff within 3 months, by receiving balance sale consideration from the plaintiff.

If the defendant is failed to comply this order, the plaintiff is at liberty to depositing balance consideration before the court and by appointing the Court Commissioner to get sale deed at the cost of the defendant."

6. The respondent-decree holder filed the execution petition in Ex.P.No.47/2018 seeking to execute



the judgment and decree. In the said execution petition, the petitioners-judgment debtors filed an application under Section 28 of the Specific Relief Act, 1963, seeking prayer to rescind the agreement of sale by annulling the decree of specific performance and to dismiss the execution petition. The decree holder filed the statement of objections to the said application. The Trial Court, under the impugned order, rejected the application.

7. The application of the judgment debtors is mainly on the ground that immediately after 3 months fixed under the judgment, the decree holder is expected to deposit the balance sale consideration before the Court. However, he has failed to deposit the same even after a lapse of 8 years and after the death of T.Nagendra, the execution petition is filed and even in the execution petition, till date, the decree holder has failed to deposit the balance sale consideration. Therefore, the decree is



unenforceable under law and the agreement of sale is required to be rescinded.

8. The decision relied on by the learned counsel for the petitioners in the case of ***PREM JEEVAN***, referred *supra*, has no application to the facts and circumstances of the case. In the said case, at paragraph 2 of the judgment, the Hon'ble Supreme Court extracted the operative portion of the judgment of the Trial Court. In the case of ***T.RAJAGOPAL***, referred *supra*, the operative portion of the judgment of the Trial Court is extracted at paragraph 19 and at paragraphs 20 and 21, it is observed that after expiry of the appeal period, the plaintiff issued legal notice calling upon the defendant to receive the balance sale consideration and to execute the sale deed but the defendant did not reply to the notice, then the execution proceedings came to be initiated and the balance amount was deposited in the execution petition. Under such circumstances, the application for rescinding



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was allowed. The said case is also distinguishable in facts. In the decision of the Madras High Court, in the case of **NARASIMHAN**, referred *supra*, it was held that if the time is not stipulated for making the payment, the reasonable time has to be considered. The aforesaid decision is of the learned Single Judge of the Madras High Court which has a persuasive value. The later decision of the Hon'ble Supreme Court answers the contention raised by the petitioners. Hence, the said decision cannot be relied upon.

9. It would be useful to refer to the decision of the Hon'ble Supreme Court in the case of **RAM LAL Vs. JARNAIL SINGH (NOW DECEASED) THROUGH ITS LRS AND OTHERS⁴** in paragraphs 49 to 55 which is extracted hereinbelow:

"49. In the considered view of this Court, the Appellate Court, after deciding the appeal on merits, could have called upon the plaintiff to

⁴ 2025 SCC Online 584



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deposit the balance sale consideration by fixing a time limit. This would have at least given an opportunity to the plaintiff to fulfil his obligation. The non-payment of the balance sale consideration within the time period fixed by the Trial Court does not amount to abandonment of the contract and consequent rescinding of the same. The real test must be to see if the conduct of the plaintiff will amount to a positive refusal to complete his part of the contract. There must be an element of wilful negligence on the part of the plaintiff before a Court proceeds to invoke Section 28 of the Act and rescind the contract.

50. *This litigation is an eye-opener for the appellate courts reminding that they owe a duty to comply with the provisions of Order XX Rule 12A of the CPC. Where an appeal is filed against the decree passed by the trial court and the appeal is disposed of, the appellate court should specify time to deposit the balance sale consideration. It is too much to say that since the trial court had granted two months time to the decree holder to deposit the balance sale consideration the same time period would apply even to the decree that may be drawn by the appellate court. What is executable is the decree passed by the appellate court. The*



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appellate court owes a duty to specify the time period. If during the specified time period the decree holder is not in a position to deposit the balance sale consideration or, in other words, fails to deposit the balance sale consideration and later upon expiry of the specified time period seeks permission to deposit, then it would be within the discretion of the trial court to grant further time to deposit the balance sale consideration or decline. This discretion has to be exercised judiciously keeping in mind various factors like bona fide of the decree holder, the cause for failure to deposit the balance sale consideration in time, the length of delay and also the equities that might have been created during the interregnum period in favour of the judgment debtor. It is the cumulative effect and considerations of such factors that should weigh with the court concerned while permitting the decree holder to deposit the balance sale consideration beyond the time period that might have been prescribed by the trial court in its final decree.

51. *In the case on hand, undoubtedly, there was a delay on the part of the decree holder in filing the execution petition and thereby seeking permission to deposit the balance sale*



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consideration. Just because a decree of specific performance can be executed within 12 years from the date of original decree or from the date the appellate court affirms such decree that, by itself, does not mean that a decree holder deposits the balance sale consideration at his own sweet will.

52. *If the appellate court had failed to stipulate any particular time period then it is expected of the decree holder to deposit the same within a reasonable period of time.*

53. *As noted earlier, the balance sale consideration of Rs. 4,87,000/- came to be deposited by the decree holder way back in 2019. In the overall facts and circumstances of the case we have reached the conclusion that High Court should not have interfered with the order passed by the executing court.*

54. *In Ramankutty Guptan (supra) this Court while holding that the application for extension of time for payment of balance amount of consideration can be filed in the Court of the first instance as well as in the appellate court, observed that. "It is to be seen that the procedure is hand-maid for justice and unless the procedure touches upon jurisdictional issue, it should be moulded to*



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subserve substantial justice. Therefore, technicalities would not stand in the way to subserve substantive justice.

***55.** The balance sale consideration deposited by the appellant-plaintiff way back on 20-05-2019 i.e. Rs. 4,87,000/- shall now be disbursed in favour of the defendants with interest accumulated thereon within a period of four weeks from today. Since there was a delay of 2 years in filing the execution petition and delay of 4 years in depositing the balance sale consideration of Rs. 4,87,000/- we are of the view that the respondents-herein (judgment-debtors) are entitled to simple interest at the rate of 9 per cent per annum from the date of the judgment and order passed by the appellate court till the date the balance consideration was deposited i.e. 20.05.2019. The executing court shall calculate the interest amount at the rate of 9 per cent simple interest and direct the appellant-herein to deposit the said amount within a period of two weeks from today."*

(Emphasis supplied)

10. The Hon'ble Supreme Court, in the case of **DR.AMIT ARYA Vs. KAMALESH KUMARI**⁵ has followed

⁵ 2025 INSC 1486



the decision of the Hon'ble Supreme Court in the case of **RAM LAL**, referred *supra*. This Court, in the case of **SMT.SHAKILA Vs. SMT.POOJA**⁶ considering the decisions of the Hon'ble Supreme Court at paragraph (g) has held as under:

“(g) Keeping in mind the enunciation of law laid down by the Hon'ble Supreme Court in the aforesaid cases, it is clear that non-payment of the balance sale consideration within the time period fixed by the Trial court does not amount to abandonment of the contract and consequent rescinding of the same. The real test would be to see if the conduct of the plaintiff amounts to positive refusal to complete his part of the contract and whether there is any wilful negligence on the part of the plaintiff before invoking Section 28 of the Act and rescinding the contract. The Hon'ble Supreme Court also makes it clear that a decree for specific performance, when appealed, merges with the decree of the Appellate court despite the modification or affirmation to the original decree. It is further the duty of the Appellate court that when an appeal is filed against a decree passed by the trial Court and the appeal is disposed of, the

⁶ W.P.100148/2022 dt. 18.09.2025



appellate court should specify the time to deposit the balance sale consideration. However, if the appellate court fails to stipulate any particular time period then it is expected of the decree holder to deposit the same within a reasonable period of time."

11. It is to be noticed that the judgment and decree in the instant case clearly indicates that the Court directed the defendant to execute the registered sale deed in the favour of the plaintiff within 3 months, by receiving the balance sale consideration from the plaintiff. If the defendants have failed to comply with this order, the plaintiff is at liberty to deposit the balance sale consideration before the Court and by appointing the Court Commissioner to get the sale deed at the cost of the defendants. The Court placed the first obligation on the defendants to execute the sale deed in favour of the plaintiff within 3 months by receiving the balance sale consideration. The defendants did not come forward to execute the sale deed within three months by receiving



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the balance sale consideration. Hence, the decree holder, on failure to comply with the order filed an execution petition seeking to execute the decree at his cost. The judgement clearly indicates that the plaintiff is at the liberty to deposit the balance sale consideration amount before the Court and get the sale deed executed through the process of the Court and no time was fixed for deposit of the amount. The contention that the decree holder is liable to deposit the balance sale consideration immediately after the lapse of 3 months, or ought to have deposited it after the appeal period was over or the contention that because of non-deposit till the present day, the decree is unenforceable and the contract is liable to be rescinded, has no merit. There is no time stipulation under the judgment for deposit of the amount by the plaintiff-decree holder and he is entitled to deposit the said amount in the execution proceedings and get the sale deed executed through the process of the Court.



12. The Executing Court, considering all the aspects has passed a well-reasoned order and the same is neither perverse nor contrary to law, calling for any interference in this petition. Considering the decision of the Hon'ble Supreme Court in the case of **RAM LAL** referred *supra*, the petitioners-judgment debtors would be entitled to pay simple interest at the rate of 6% p.a. on the balance amount from the date of drawing of the decree excluding 3 months provided in the judgment and decree as there is delay in filing the execution petition.

13. The order of the Trial court does not require any interference insofar as the rejection of the application for rescinding agreement of sale and annulment of decree for specific performance in O.S.No.271/2009 is concerned.

14. For the aforementioned reasons, I proceed to pass the following:



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ORDER

- (i) The writ petition is ***disposed of.***
- (ii) The impugned order dated 11.07.2022 passed on I.A.No.V in Ex.No.47/2018 by the Civil Judge and JMFC, T.Narsipura, Mysuru, is upheld.
- (iii) The respondent-decree holder shall deposit the balance sale consideration before the Executing Court within an outer limit of 8 weeks from the date of the receipt of the copy of this order and on such deposit, the Executing Court shall take steps to execute the sale deed through the process of the Court.
- (iv) The respondent-decree holder is liable to pay the interest at the rate of 6% p.a. on the balance sale consideration amount to the petitioners-judgment debtors. The said interest shall be calculated from the date of drawing of the decree excluding the period of 3 months as provided in the judgment and decree.



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(v) The interest amount shall be deposited by the decree holder in the execution proceedings, and the judgement debtors are at liberty to withdraw the amount deposited by the decree holder in accordance with law.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 SI No.: 2