

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.2169 of 2010

Date of Decision.24.07.2015

Manoj son of Shri Mange Ram

.....Petitioner

Versus

Umesh and others

.....Respondents

Present: Mr. Arun Jain, Senior Advocate with
Mr. Jagdish Manchanda, Advocate
for the petitioner.

Mr. Rishi Pal Rana, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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K. KANNAN J.

I. Facts that give place to proposition of law: Whether Court has power to extend time stipulated in compromise decree

1. The legal position that presents itself in this case is whether the period prescribed in a consent decree brought through an Award of the Lok Adalat could be extended by a Court in its jurisdiction. In a suit for specific performance, the parties had entered into a compromise in writing on 31.10.2009 under the terms of which the plaintiff undertook to deposit the balance of sale consideration of ₹ 3,41,84,125/- within five days from 01.02.2010 and would get the sale deed registered. The compromise stipulated that if the amount was not deposited within time, the plaintiff's claim would be dismissed and the earnest money of ₹ 38 lacs paid at the time of the agreement namely on 4.12.2006 shall stand forfeited. After the award was passed admittedly, the plaintiff

did not comply with the terms of the award but instead he moved an application under Section 148 CPC for extension of time of three months for complying with the obligation to deposit the money. The Lok Adalat which had originally passed the Award in terms of the compromise between the parties dismissed the application on 26.02.2010. This order was contested by the plaintiff himself through the present revision petition and this Court had directed the matter for fresh consideration by the Lok Adalat by its order dated 28.07.2010.

2. From the case file, it appears that after passing the order dated 28.07.2010, an application in C.M. No.7205-CII of 2011 was moved by the respondents on 15.03.2011 seeking for modification of the order dated 28.07.2010 on the ground that Permanent Lok Adalat in Faridabad has been abolished and the revision petition be heard on merits by this Court. On 02.04.2012 the applicants-respondents submitted that Chairman and Members of Permanent Lok Adalat at Faridabad have been appointed and hence they do not want to press the application and this Court disposed of the same as not pressed. Subsequently, yet another application in C.M. No.20804-CII of 2012 was moved before this Court on 13.08.2012 but this time, it was at the instance of the petitioner seeking for recall of the order passed by this Court on 28.07.2010 stating that the earlier application in C.M. No.7205-CII of 2011 was not pressed by the respondents under the wrong impression that the Chairman and Members of the Permanent Lok Adalat have been appointed but actually, it was the Permanent Lok Adalat (Public Utility) which was appointed. This application was allowed by this Court on 09.10.2012 recalling the order passed on 28.07.2010 and the main petition was

ordered to be heard on merits afresh.

II. Decreeholder's contention: Court always has power to extend time, irrespective of the nature of decree

3. Learned counsel appearing on behalf of the petitioner states that Section 28 of the Specific Relief Act that allows for the stipulation of time does not limit the power of the Court even in respect of compromise decrees. The counsel would, therefore, argue that since time is not of the essence of the contract in respect of sale of immovable property, a valuable right in relation to a relief for specific performance cannot be denied by the mere fact that the amount is not deposited. The counsel would refer me to the decision of the Calcutta High Court in Mangala Ghosh Vs. Rabindra Nath Hazra AIR 1987 Calcutta 307 that the Court would have a power to extend the time for depositing money even in a compromise decree by resort to the powers of the Court under Section 148 of the Civil Procedure Code and Section 28 of the Specific Relief Act. The counsel would also refer me to the judgment of this Court in Kedar Nath and others Vs. Kanwal Bhatia 1997(4) RCR (Civil) 625 that in contract of sale of immovable property, time is not of the essence and a trial Court which decrees the suit directing payment of balance of consideration within a particular time will also have power to extend the time under Section 28 of the Specific Relief Act itself.

III. Conflicting decisions of the High Courts noted

4. The judgment of this Court referred to above does not address the issue arising out of compromise decree. It was merely with reference to an agreement of sale in a decree for specific performance with some stipulations as to time and its power to extend the time

under Section 28 of the Specific Relief Act. The Calcutta High Court decision squarely took up issue to hold that Section 28 of the Specific Relief Act did not contain any restriction of such power and therefore, the Court must be taken as having jurisdiction to extend the time under Section 28 of the Specific Relief Act, although it may be a compromise decree. Since there is no law made by the decision of this Court on a pointed issue, I will find that Kedar Nath (supra) is not applicable to the case and the decision of the Calcutta High Court in Mangala Ghosh's case referred to above, I respectfully submit, I cannot convince myself to follow.

IV. Principle that time is not of essence - compulsion for a rethink

5. The fundamental understanding that in any suit for specific performance of immovable property time cannot be of the essence of the contract, is stating the old law. Things have changed and the Supreme Court has considered this aspect in two cases. It would be worthwhile to reproduce the observations of the Supreme Court in Saradamani Kandappan Vs. S. Rajalakshmi and others 2011 (12) SCC 18 in paras 24 and 25 as follows:-

"24. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market value of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor-defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase

in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

25. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and 'non-readiness'. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist (emphasis supplied). In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for ₹ One lakh and received ₹ Ten Thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining ₹ Ninety Thousand, when the property value has risen to a crore of rupees."

The same point was also brought out by yet another judgment of the Supreme Court in *M/s Citadel Fine Pharmaceuticals Vs. M/s Ramaniyam Real Estates P. Ltd. and another* 2011(9) SCC 147. The relevant portion is reproduced as under:-

"In case of contract relating to sale of immovable property, time is not normally of essence. However, this is not an

absolute proposition and has several exceptions. In a contract relating to commercial enterprise, Court is strongly inclined to hold time to be of the essence of the contract. Court can take judicial notice of fact that price of real estate is constantly escalating and clear intention of parties, as it appeared from the stipulations of the agreement, was to treat time as of the essence of contract."

6. The proposition which the Calcutta High Court took is, therefore, not correct or sound in the present trend of judicial dispensation. The Delhi High Court has also an occasion to deal with the same issue in Pioneer Engineering Co. Vs. D.H. Machine Tools AIR 1986 Delhi 165. The Court held that in relation to a compromise decree, time fixed therein could not be extended by the Court by resort to Section 148 CPC. The same reasoning was also adopted later by the same Court in Novartis AG Vs. Wander Pvt. Ltd. AIR 2005 Delhi 154.

V. Court's power to extend time circumscribed by consensual terms between parties operating at or after decree

7. Even without resort to understanding the proposition from the point of view whether the time for specific performance in respect of immovable property is of essence, I would hold that as a conceptual approach to the legal problem raised, I would understand that discretion of a Court to grant extension can be applied only in two situations. One, only at the time when the decree is passed where the decree itself sets out an extended time for performance when the parties had originally contracted. Two, it can extend time after decree if the decree was passed by the Court containing a stipulation as to time which it provided for, by its judicial reasoning and the extension of time could be for a period which the Court grants.

8. In cases of compromise decrees, the principle that operates is different. The Court has only a power to either accept a compromise

or reject it. There is no midway. If the compromise is not legal, the power of the Court shall be to deny the compromise, reject the same and allow for parties to go to trial. If, on the other hand, the compromise terms are legal, the Court simply casts its imprimatur and passes a decree. That decree which is brought under compromise cannot be in any way altered by the Court. The Court has no such power, for, otherwise it would mean that what the parties have agreed upon could be a subject of variation by Court's discretion. The Court does not enjoy any such discretion. Section 28 of the Specific Relief Act that allows for the Court to grant time shall at all times conform to any other legal fetter that may exist. There is no *non obstante* clause in Section 28 of the Specific Relief Act that can allow Court's discretion to be exercised even in situation where such discretion cannot be exercised. The rule of estoppel will operate between the parties who have provided for certain time and the Court that acts on the agreement between the parties to confirm the same through a decree will cast a fetter on the Court to traverse beyond the stipulated time in a compromise decree. Section 28 of the Specific Relief Act will have to be, therefore, read down to what the parties agreed and which was accepted by the Court through a compromise decree. It is here that we will notice the principle already enunciated that the Court's power to stipulate time can be modified and altered to the period already agreed between the parties only at the time when the decree was passed in a normally contested action. It cannot be done in other situations.

VI. Fact situation: Decreeholder's conduct betrays want of readiness and willingness

I must also observe that the plaintiff did not comply with

the terms even at the time when an application was moved for extension. He was still only asking for further time when the Court granted a time of one month, he was still not satisfied. He approached this Court in revision. The plaintiff's own conduct would betray the lack of readiness. The requirement of readiness and willingness to perform the part of the contract ought to exist on three occasions: (i) At the time of time stipulated in the agreement; (ii) During the pendency of the suit when the plaintiff's action is tested about on his pleadings of readiness and willingness under Section 16(c) and (iii) till the decree is satisfied when it is put to execution and when the defendant has not acted as per the terms of the agreement. If the readiness and willingness are lacking in any one of the three situations, relief cannot obtain in favour of the agreement holder. In this case, the plaintiff was surely not ready and willing even after decree within the time stipulated under the compromise decree and in spite of an extension of time by one month, as granted by the Lok Adalat.

VII. Dispensation

10. In the light of the above discussion, I hold that the order passed by the Lok Adalat declining to extend the time further was perfectly justified and I maintain the same. The revision petition is dismissed.

**(K. KANNAN)
JUDGE**

July 24, 2015
Pankaj*