

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 7391 of 2013 (O&M)
Date of decision: March 24, 2015

Smt. Krishna

...Petitioner

Versus

Naresh Kumar and others

...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**

Present: Mr. JP Sharma, Advocate,
for the petitioner.

Mr. Ashok Kumar, Advocate,
for the respondents No. 1,2, 5 and 6.

K. KANNAN, J. (Oral)

1. The revision petition is against the order dismissing an application filed by the judgment debtor under Section 28 of the Specific Relief Act (for short '**the Act**') for rescission of the decree. The suit for specific performance was filed by the plaintiffs for enforcement of the agreement dated 16.4.1988 for a consideration of ₹48,750/- under the terms of which the defendant had received advance of ₹47,750/- and the balance of ₹1,000/- was required to be paid within 15 days. On the alleged failure of the defendant to perform the part of the contract, the suit was filed which on its institution resulted in a compromise on 8.3.1991 itself where the court recorded the following order:-

“On statements of parties compromising the suit, the present
suit of the plaintiff is decreed to the effect that the balance sale

consideration of ₹1000/- would be paid by the plaintiff to the defendant No.1 in addition to costs of the suit and charges of stamp and registration detailed for execution of the sale deed in their favour. Sale deed in favour of the defendant No.2 from the defendant No.1, however, would stand cancelled. Decree-sheet be prepared accordingly. File be consigned to records, after due compliance.”

2. By the purported compromise, the parties had directed that the sale effected by the 1st defendant in favour of the 2nd defendant would also stand cancelled.

3. The plaintiff/decree-holder did not pay ₹1,000/- in the manner contemplated and applied for execution just on the eve of completion of 12 years on 1.2.2003 for grant of the decree. The plaintiff would claim that he sought for permission to deposit of ₹1,000/- and the court had granted such permission. The petitioner, who is one of the legal representatives of the deceased judgment debtor, moved a petition under Section 28 of the Act contending that the decree is unenforceable and is bound to be rescinded since the decree-holders did not pay the balance of purchase money which the court had ordered them to pay in terms of the compromise. The court has dismissed the petition holding that the compromise decree itself did not stipulate any particular date before when the amount was to be paid and in any event, the decree-holders had deposited the amount and the decree cannot be rescinded. It is also brought out that some other legal representatives have also filed a similar petition and when it was dismissed, its correctness has not been canvassed elsewhere in any other forum. The petitioner, who is one of the legal representatives, is aggrieved against the

order is the revision petitioner before this court.

4. I have extracted the terms of the compromise decree. Evidently, it does not spell out any particular date. The issue must be whether in the absence of such stipulation, the decree-holder will arrive in the court at any time at his will and whether he can deposit the amount and seek for its enforcement. The court's power to examine what the decree purports to be in any case where it is silent could be examined by what the parties were trying to enforce. In this case, if the contractual terms provided for payment of balance of amount within 15 days from the date of the agreement and when the plaintiffs were filing a suit for alleged non-fulfillment of terms of the compromise by the vendor, a compromise decree which was passed allowing for the plaintiffs to obtain the conveyance and annulling the decree cannot secure a larger concession than what the contract itself stipulated. If the 15 days time was to be concluded from the date of the agreement i.e. 16.4.1998, the best that the plaintiffs could bargain without parting with any additional sum to the defendant within 15 days was from the date when the decree was passed. The period of payment of ₹1000/- cannot be left to an indefinite period because the term was not stipulated. The terms ought to be incorporated as in the decree as well, when the plaintiffs are getting a decree in terms of the contract and without suffering any additional detriment than what the contract provided for. If the plaintiffs were not paying any additional amount and if they were also getting a relief that the sale made by the 1st defendant in favour of the defendant was also to be treated as cancelled, they were getting full benefit of the bargain. If the plaintiffs did not pay the amount within 15 days from the decree, I would hold that the plaintiffs have been guilty of laches.

5. I am prepared to assume that non-mentioning of the specific date would allow for the decree-holder to come to the court to seek for permission to deposit. If such permission is to be granted, it has to be again within a reasonable time. A plaintiff who secures a decree on 8.3.1991 cannot wait for 11 years and 11 months, that is up to 1.2.2003 to deposit ₹1000/-. This deposit was also not made in 2003 when the petition was filed. It appears to have been made in 2005 i.e. more than 14 years from the date when the decree was obtained. In V.S. Palanichamy Chettiar Vs. C. Alagappan AIR 1999 Supreme Court 918, where the court held that even a delay of 5 years for depositing the balance of consideration after the decree can not be tolerated. In the same judgment the court also draw adverse inference on the conduct of the decree holder in not applying for extension of time but a specific petition under Section 28 of the Act. The counsel for the decree-holders/ respondents argues with passion that the court below has considered the fact that it had granted permission to deposit on 24.10.2005. I have no order granting such permission nor do I have copy of any application seeking for such permission. If the decree holder assumes that by the fact that he filled a challan for deposit in the treasury and the court initialled that challan for deposit, it cannot be treated as court passing an order allowing for such a deposit. The court could not have allowed for the deposit unmindful of the fact of whether there was any justification making such a delay in deposit after the decree was passed in the year 1991. In the absence of specific order allowing for such deposit, I will find that the deposit made by the decree-holders cannot secure to them the benefit of the decree.

6. Assuming for argument's sake that the court had granted such

permission and the treasury deposit made under the initial of the court, must be taken as implying a court's consent to such deposit, such consent also cannot be given by the court without notice to the judgment debtor of a request by the decree-holders for permission to deposit. If the court had passed an order or it is to be assumed that such an order must be taken as passed, even then such order is grossly vitiated in that it failed to: (i) exercise judicial application of mind to examine whether there was any justification for such a delayed deposit; and (ii) put the judgment debtor on notice of such an attempt to deposit. After all, the deposit was not merely to benefit the decree-holders. The deposit was bound to benefit the judgment debtor who was entitled to that money. The court cannot thrust an amount on an unwilling vendor if the purchaser had been guilty of gross negligence and extraordinary laches.

7. It must be remembered that specific relief is always considered as an equitable relief and Section 20 of the Act specifically enacts that the court will not grant a decree merely because it is lawful to do so. A relief which was available in the Court of Equities in England obtained statutory recognition through enactment of Specific Relief Act, but the courts have always applied the equitable principles in even granting the reliefs or shaping the relief under the Act. Section 28 of the Act itself is unique for, there is no other enactment which renders a rescission of a decree in the suit itself where the decree was passed. Apart from the law of limitation, which may prohibit a decree-holder from enforcing the decree beyond the period stipulated, there is no other law except the Specific Relief Act allowing for rescission of a decree for failure of the plaintiff/decreed-holder to comply with the direction contained in the decree. A decree for specific itself, it

has been held, in Rajinder Kumar Versus Shri Kuldeep Singh AIR 2014 Supreme Court 1155, is in the nature of preliminary decree, though the court does not spell it out so. It is the act of the execution of the sale and delivery of property that constitute realization of the fruits for the decree-holder but there again, the court still has the power to exercise its discretion to see whether such relief the decree-holder must have. It is to that extent the second phase of the decree which is in common parlance understood as a final decree and if a court had not already provided for the ultimate action of the delivery of the property and any one of the judgment-debtors has already approached the court for rescission of the contract and consequently the decree, it was justified that the court examine whether the act of the decree-holder in depositing the amount as late as 14 years was justified or not. The court would be remiss in its duty to exercise discretion properly, if it would allow a lackadaisical approach of the plaintiff to deposit the money of what may be seen as a small portion of the whole consideration, to be brought for deposit without any justification for such delay.

8. Even an argument by the learned counsel that some other legal representatives made similar objection and the court rejected them cannot take away the right of any one of the legal representatives against whom also the decree is sought to be executed. It will be competent by any person who is obligated under the decree to come up with the objection that the decree cannot be executed and the decree has to be rescinded. Once a decree is passed and accord and satisfaction are not recorded, there could not have been even a separate suit for realization of the money or rescission of the decree. It ought to be only through the very same court which passed the decree in terms of Section 28 (4) of the Act which states that 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. The petitioner had approached the only forum where she could have the relief and rejection of the petition was erroneous. The order suffers from a serious vice of non-consideration of important issue of what we have examined above and the impugned order is bound to be, therefore, set aside.

9. The decree obtained on 8.3.1991 pursuant to a contract which was executed on 16.4.1988 is ordered to be rescinded. The amount of ₹ 47,750/- received by the defendant is ordered to be refunded within 30 days, failing which it will attract interest at 9% per annum from today. The said amount shall constitute a charge against the estate in the hands of the legal representatives. The Civil Revision is allowed on the above terms. There shall be no order as costs.

March 24, 2015
prem

(K.KANNAN)
JUDGE