

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**24 SECOND APPEAL NO. 409 OF 2016
WITH
CA/8765/2016
IN
SA/409/2016**

**VISHNU BHAGWAN PACHPANDE
DIED LRS BHADU DIED LRS SHUSHILA
DIED BHAGWAN AND ORS.**

VERSUS

**KASHINATH MURLIDHAR PATIL
DIED LRS DIPAK DIED LRS
PUSHPA AND ORS.**

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Mr. Swapnil S.Patil, Advocates for Appellants.

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CORAM : T.V.NALAWADE, J.

DATE : 8th AUGUST, 2016

ORAL ORDER :-

. The Appeal is filed to challenge the order made on Exh. 127 in R.D. No. 79/2012 which is pending in the Court of the Civil Judge [Sr.Division], Bhusawal, District Jalgaon and also to challenge the Judgment and decree of R.C.A. No. 1/2016 which was pending in the Court of the

District Judge -1, Bhusawal. Heard learned counsel for the appellant.

2. It appears that the vendor had filed Suit for specific performance of contract against the present appellants, as present appellant had failed to pay the consideration when he was put in possession under agreement of sale. The said Suit was decreed [Spl. Civil Suit No. 86/1972] in favour of the vendor and execution proceeding bearing Spl. Darkhast No. 52/1978 was filed by the vendor for recovery of money. In that proceeding, present appellant/Judgment Debtor deposited amount of ₹ 1,500/- on 27/06/1980 and filed application for time to deposit remaining amount of ₹ 5,301/-. Said application was rejected by the executing Court. Then the Decree Holder/vendor filed Misc. Application No. 253/1980 under the provisions of Section 28 of the Specific Relief Act.

3. Thereafter Decree Holder filed application u/s 28 of the Specific Relief Act on 21/10/1981. It appears that prior to that application, application was filed by the Judgment Debtor for permission to deposit the amount in R.D.No. 52/1978 and the amount was deposited in the Court. However, said petition was dismissed as Judgment Debtor had not paid deficit court fees. The execution proceeding of the vendor was also dismissed as process fee was not paid.

4. The application filed by the vendor u/s 28 of the

Specific Relief Act was allowed on the ground that the Judgment Debtor had failed to deposit the remaining amount and there was right given to the vendor to rescind the contract u/s 28 of the Specific Relief Act. This decision was challenged by filing R.C.A. No. 410/1982 before the District Court, Jalgaon, but the Appeal was dismissed. This decision of the District Court was challenged by filing Writ Petition No. 2484 of 1986 in this Court by the vendee, but the said proceeding also came to be dismissed on 27/11/2008. Thus, the decision given in favour of the vendor u/s 28 of the Specific Relief Act has become final.

5. Even after the aforesaid decision given by this Court, when the decision in favour of the vendor had become final, present appellant moved an application at Exh. 127 in R.D.No. 79/2012 which is filed by the vendor for getting possession by execution of the order made in his favour u/s 28 of the Specific Relief Act. In this application filed u/s 47 of the Code of Civil Procedure read with Order XXI Rule 97, reply was filed by the vendor and the application was opposed. The Courts below have held that the remaining consideration which was around ₹ 5,301/- was not deposited as per the direction of the Court even during extended time and so the contract was rescinded. It is held that subsequent incident of depositing the amount would not make difference when the time was fixed by the Court already and the right had accrued to the vendor u/s 28 of the Specific Relief Act.

6. Learned counsel for the appellants placed

reliance on 2 cases reported as 1997 AIR (SC) – 1995 [Alimuddin Vs. Waizuddin] and AIR 1954 Supreme Court – 340 (1) [Kiran Singh & Ors. Vs. Chaman Paswan & Ors.]. In the first case, it is laid down by the Apex Court that the power given to the Court u/ss 20 and 28 of the Specific Relief Act is discretionary and if order is made by the Court, it can be presumed that the time granted is extended. Thus, the point involved in this case was altogether different. When the right accrues to the vendor as provided u/s 28 of the Specific Relief Act, even the Court becomes powerless and Court has no power to use such discretion. In the other case, the Apex Court has observed that the decree made without jurisdiction is nullity.

7. Learned counsel for the appellant submitted that as after amount was deposited, the subsequent order made on the application of the vendor of rescinding the contract was nullity. This submission is not acceptable in view of the right given u/s 28 of the Specific Relief Act and the facts and circumstances of the present matter.

8. The aforesaid circumstances show that when the decision given on the point and the right involved in the matter has become final, present appellants are trying to protract the things by filing applications before the executing Court. This Court holds that no substantial question of law as such is involved in the matter and there is no necessity to issue notice also.

9. In the result, Second Appeal stands dismissed.

In view of dismissal of Second Appeal, C.A. No. 8765 of 2016 stands disposed of.

[T.V.NALAWADE, J.]

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