



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2016

CORAM

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) .No.591 of 2016(PD)

and

C.M.P. (MD) .No.2611 of 2016

V.S.Sridharan

... Petitioner/Petitioner/Defendant/
Judgment Debtor

Vs.

Baby Mehala

... Respondent/Respondent/Plaintiff/
Decree Holder

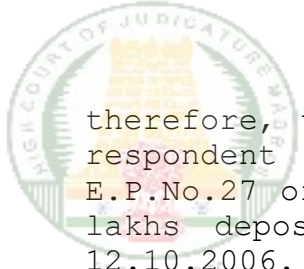
Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.02.2016 made in I.A.No.1260 of 2014 in O.S.No.714 of 2001 on the file of the Second Additional Subordinate Judge, Tiruchirapalli.

For Petitioner	:Mrs.N.Krishnaveni
For Respondent	:Mr.A.Arumugam for Mr.T.Muthuvel

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order dated 24.02.2016 passed in I.A.No.1260 of 2014 in O.S.No.714 of 2001 by the Second Additional Subordinate Judge, Tiruchirapalli.

2.The petitioner is the defendant/judgment debtor and the respondent is the plaintiff/decreed holder in the suit in O.S.No.714 of 2001. The respondent filed a suit for specific performance of an agreement of sale before the II Additional Subordinate Court, Tiruchirappalli. The suit was decreed ex-parte for non-filing of written statement on 06.08.2003. As per decree, the petitioner has to receive the balance sale consideration and execute the sale deed. Three months time was granted. The respondent deposited the balance sale consideration on 30.07.2004. The petitioner filed I.A.No.54 of 2005 to condone the delay of 431 days in filing a petition to set aside the exparte decree. The said application was dismissed for default on 02.08.2005. The petitioner filed I.A.No.101 of 2009 to condone the delay of 1325 days in filing a petition to restore the said petition. The said application was dismissed on 11.10.2011. Against that order, civil revision petition was filed by the petitioner before this Court and the same was dismissed. The petitioner filed I.A.No.1260 of 2014 praying for order to rescind the agreement between the petitioner and the respondent, as the respondent failed to deposit the balance sale consideration before the trial Court on time. The respondent deposited the balance sale consideration after one year and

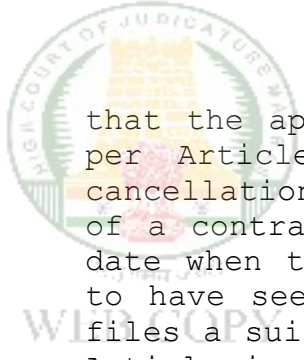


therefore, the respondent is not entitled to execution of sale deed. The respondent filed E.P.No.59 of 2004. Subsequently, the respondent filed E.P.No.27 of 2005 for cost of the suit and sought the attachment of Rs.3 lakhs deposited on 04.08.2004 by her. Both E.Ps were dismissed on 12.10.2006. Subsequently, the respondent filed E.P.Nos.105 and 106 of 2006 and the same were allowed and sale deed was executed in favour of the respondent 14.09.2007. The valuable property of the petitioner was sold for meagre amounts. Therefore, the petitioner filed application under Section 28 of the Specific Relief Act to rescind the contract.

3.The respondent in the counter denied all the allegations made by the petitioner. The respondent has paid balance sale consideration nearly 11 years back in E.A.NO.3809 of 2004. After depositing all the amount, the Court executed the sale deed in favour of the respondent. The respondent filed E.A.No.106 of 2006 for possession of the property and the same was allowed ex-parte. Thereafter, the petitioner filed E.A.No.18 of 2007 and the same was also disposed of and the sale deed was executed in favour of the respondent on 14.09.2007. The petitioner has not filed any appeal against the said order. The petitioner filed E.A.No.7 of 2009 to set aside the ex-parte order and the same was dismissed on 21.01.2014. Against the said order of dismissal, the petitioner filed C.M.A.No.47 of 2014 before this Court and the same was dismissed on 23.04.2014. Again, the petitioner filed a Special Leave Petition in S.L.P.No.16883 of 2014 and the same was returned by the Hon'ble Apex Court. The petitioner filed a petition under Section 47 C.P.C., before the I Additional District Court and the same was dismissed. Against that order, petitioner filed civil revision petition in C.R.P.No.1593 of 2014 and the same was dismissed by this Court. The claim of the petitioner to rescind the contract filed after almost 11 years of deposit of balance sale consideration is barred by limitation.

4.The learned Judge considering all the facts and materials on record and the judgment relied on by the learned counsel for the parties, dismissed the application along with other applications by a common order. Against the said order of dismissal, the present civil revision petition is filed.

5.The learned counsel for the petitioner contended that the learned Judge ought to have allowed the application filed under Section 28 of the Specific Relief Act to rescind the contract, as the respondent failed to deposit balance sale consideration of Rs.3 lakhs on or before 06.11.2004. The learned Judge failed to see that the respondent did not get any permission from the Court to deposit balance sale consideration, as per the decree dated 06.08.2003 in O.S.No.714 of 2001. The respondent did not offer the balance sale consideration to the petitioner and deposit made in the Court, in the circumstances, is invalid. The suit for specific performance is an extraordinary remedy which can be granted only on the discretion of the Court and it is an equitable remedy. Therefore, the respondent ought to have deposited the balance sale consideration within time limit. The learned Judge erred in holding that no time limit was fixed for depositing the balance sale consideration. The learned Judge ought to have seen that the balance sale consideration was deposited only after one year and the learned Judge failed to see that as per decree dated 06.08.2003, the respondent ought to have paid balance sale consideration within three months. The learned Judge erred in holding



that the application to rescind the contract is barred by limitation as per Article 59 of the Limitation Act. The said article deals with cancellation or setting aside an instrument or decree or for rescission of a contract, prescribing the period of limitation as 3 years from the date when the parties came to know of the same. The learned Judge ought to have seen Article 59 of the Limitation Act will apply when a person files a suit under Section 27(1) of the Specific Relief act and the said Article is not applied to the application filed under Section 28 of the Specific Relief Act. When the decree holder fails to pay balance sale consideration, cannot execute the decree.

6.The learned counsel for the petitioner placed reliance on the following judgments:

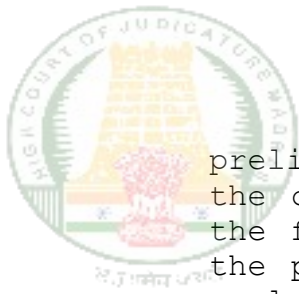
(i).In **RAJINDER KUMAR AND OTHERS V. KULDEEP SINGH AND OTHERS** reported in **2014 (2) CTC 93**, wherein in Paragraph No.31, it is held as follows:

"31.Having regard to the facts and circumstances, which we have discussed above, we are afraid the High Court ha not made an attempt to balance equity. As in the case of a Decree for Specific Performance where equity weighs with the Court so is the situation in considering an Application under Section 28 of the Specific Relief Act, 1963 for rescinding the contract. Under Section 28 of the Specific Relief Act, 1963, a vendor is free to apply to the Court which made decree to have the contract rescinded in case the purchaser has not paid the purchase money or other sum which the Court has ordered him to pay within the period allowed by the Decree or such other period as the Court may allow. On such an application, the Court may, by order, rescind the contract "as the justice of the case may require". It is now settled law that a suit for specific performance does not come to an end on passing of a decree and the Court, which passed the Decree retains control over the Decree even after the Decree has been passed and the Decree is sometimes described as the preliminary decree."

(ii).In **BHUPINDER KUMAR V. ANGREJ SINGH** reported in **(2009) 8 Supreme Court Cases 766**, wherein in Paragraph Nos.11, 13 and 19, it is held as follows:

"11.The said judgment and decree was passed on 13.10.1998. It appears that the plaintiff did not deposit the balance sale price within three months from the date of decree. Equally, the defendant did not execute the sale deed.

13.The respondent judgment-debtor also moved an application under Section 28 of the Specific Relief Act, 1963 with a prayer that the agreement to sell dated 20.11.1990 be rescinded since the plaintiff had failed to deposit the balance sale consideration within the time allowed by the Court. This application was contested by the plaintiff and the execution Court, vide order dated 7-5-2002, allowed the application and rescinded the original agreement. In view of the same, the execution application filed by the plaintiff was dismissed. We have already mentioned that the said order was affirmed by the High Court in civil revision.



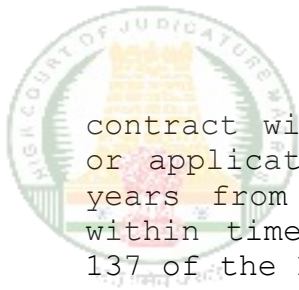
19. It is clear that the decree is in the nature of preliminary decree and the suit would continue and be under the control of the Court till either party moves for passing the final decree. It is also clear that though the Court has the power to extend time and it is the duty of the Court to apply the principle of equity to both the parties."

(iii). In **G.KESAVAN V. B.C.RAMAN** reported in **2013-4-L.W.626**, wherein in Paragraph Nos.11 and 15, it is held as follows:

"11. Thus the crux of the matter is that the second plaintiff/petitioner has to perform his obligation first by paying the sale consideration within one month as stipulated therein. Admittedly, no such payment was made or any such attempt was even claimed to have been made by the second plaintiff/petitioner. On the other hand, it is his case that he was under the impression that his father would have deposited into the Court during the life time. The father of the petitioner died before the decree. Hence, no such occasion would have arisen for the father to pay or deposit during the trial. Hence, this contention is to be held as false. When that being the position, whether an application filed after 4 ½ years under Section 151 C.P.C is maintainable, is the question to be considered in this case.

15. The learned counsel for the petitioner further submitted that as the defendant has not filed any application under Section 28 of the Specific Relief Act to rescind the contract, the Court is empowered to extend the time. I am unable to appreciate the said submission. As already pointed out by me supra, it is the first obligation on the part of the petitioner to pay the sale consideration within one month as per the decree. When he fails to perform such obligation, he cannot complain that the defendant has not filed application under Section 28 of the Specific Relief Act. Merely because the defendant has not filed application that does not mean that the decree becomes executable even in the absence of his part of performance by the petitioner. Equally passing of the ex parte decree also cannot be put against the defendant when executability of such decree itself is questioned by him."

7. Per contra, the learned counsel for the respondent submitted that no time limit was fixed by the Court for depositing the balance sale consideration. The respondent deposited the balance sale consideration on 30.07.2004. The same was accepted by the court and the sale deed was executed by the Court. The petitioner, in all the execution petitions filed by the respondent, entered appearance and did not take plea that the decree is not executable, as the respondent did not deposit the amounts within the time limit granted by the Court. As per Section 28 of the Specific Relief Act, the Court has power to extend the time limit to deposit the balance sale consideration. The Court has power to deal with the decree of specific performance only up to execution of sale deed. Beyond that period, the Court has no jurisdiction to entertain an application under Section 28 of the Specific Relief Act. The respondent has deposited the amount on 30.07.2004 and the sale deed was executed on 14.09.2007. The petitioner ought to have filed suit for rescission of



contract within three years from the date of execution of the sale deed or application under Section 28 of the Specific Relief Act within three years from the date when the respondent failed to deposit the amount within time limit as directed by the trial Court, as per Article 59 or 137 of the Limitation Act.

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8. The learned counsel for the respondent placed reliance on the following judgments:

(i) In **ASHOK CATERERS V. MUNICIPAL CORPORATION OF GREATER BOMBAY (BEST UNDERTAKING)** reported in **(1997) 9 Supreme Court Cases 220**, wherein in Paragraph No.4 it is held as follows:

"4. From the language of sub-Section (1) of Section 28, it could be seen that the Court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes functus officio. The very fact that Section 28 itself gives power to grant order of rescission of the decree would indicate that till the sale deed is executed in execution of the decree, the trial Court retains its power and jurisdiction to deal with the decree of specific performance. It would also be clear that the Court has power to enlarge the time in favour of the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, in spite of an application for rescission of the decree having been filed by the judgment-debtor and rejected. In other words, the Court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance."

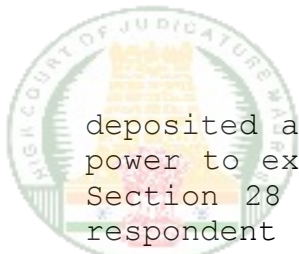
(ii). In **G.S.CHAKRAVARTHI ASOKAR ALIAS G.S.ASHOKAR V. THERASITTA SANTHI** reported in **(2004) 1 M.L.J.716**, wherein in Paragraph No.16, it is held as follows:

"16. It is also not denied that under the Limitation Act, the application for rescission of contract/agreement must be filed within the period of limitation of three years. It is not disputed that the petitioner herein has filed an application in E.A.No.274 of 2002 only on 07.11.2002, beyond the date when the alleged cause of action has arisen ie., more than three years."

9. I have heard Mrs.N.Krishnaveni, learned counsel appearing for the petitioner and Mr.A.Arumugam for Mr.T.Muthuvel, learned counsel appearing for the respondent and carefully perused the entire materials on record.

10. Point for consideration is whether the petitioner is entitled to rescind the contract as per Section 28 of the Specific Relief Act.

11. A reading of the decree dated 06.08.2003 reveals that the respondent was directed to pay sale consideration to the petitioner. Three months time was granted. The decree does not give any time limit to the respondent to deposit the balance sale consideration, if the petitioner refused to receive balance sale consideration and executed the sale deed. In the circumstances, the respondent has to deposit the balance sale consideration within a reasonable time. Further, the respondent filed E.P and deposited the balance sale consideration by a chellan dated 30.07.2004 to the credit of the suit. The said amount was



deposited after lodgment schedule was issued by the Court. The Court has power to extend the time to deposit the balance sale consideration as per Section 28 of the Specific Relief Act. After depositing the amount, the respondent filed E.P for execution of the sale deed. The petitioner appeared in E.P through Advocate and subsequently, remained ex-parte. The Court executed the sale deed in favour of the respondent on 14.09.2007. The petitioner has filed application to set aside the ex-parte order passed in E.P, which ordered execution of sale deed. The said application was dismissed. The petitioner has not taken any further proceedings. Therefore, the said order has become final.

12.In view of the fact that the sale deed has been executed by the Court and the contention of the learned counsel for the respondent that the Court has no power to entertain the application for rescind the contract under Section 28 of the Specific Relief Act, has considerable force. The Hon'ble Apex Court in Paragraph No.4 of the judgment cited supra **[(1997) 9 Supreme Court Cases 217]**, has held that the trial Court retain its power and jurisdiction to deal with the decree of specific performance till the sale deed is executed in execution of the decree. In the same paragraph, it has been held that the Court has discretion to extend the time for compliance of the conditional decree as mentioned in the decree for specific performance. As per the chellan No.279 dated 30.07.2004, the respondent deposited the balance sale consideration as per lodgment schedule issued by the Court.

13.In the circumstances, the respondent has deposited the amount as per the order of the trial Court. Therefore, the application filed by the petitioner after 11 years of deposit of balance sale consideration and after 8 years of execution of sale deed, is barred by limitation and is not maintainable, as per Article 137 as well as Article 59 of the Limitation Act. This Court in Paragraph No.6 of the judgment supra **[(2004) 1 M.L.J.716]** has held that the application for rescission of contract must be filed within the period of limitation of three years. In the present case, the petitioner has not filed application to rescind the agreement within three years from the date when according to the petitioner, the respondent has committed default in depositing of balance sale consideration or within three years from the date when the Court executed the sale deed in favour of the respondent. In the facts of the present case, the judgments relied on by the learned counsel for the petitioner are not applicable to the facts of the present case. The petitioner knowing fully well that the deposit of balance sale consideration by the respondent as well as the execution of sale deed was not diligent enough in taking proceedings to rescind the agreement of sale within the time limit as per Limitation Act. For the above reasons, the civil revision petition is devoid of merits and the same is liable to be dismissed.

14.In the result, the civil revision petition is dismissed. No costs. Consequently, the connected C.M.P is also closed.

Sd/-

Assistant Registrar(CS II)

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To
The Second Additional Subordinate Judge,
Tiruchirapalli.

+1cc to M/s.N.Krishnaveni, Advocate SR.No.16859

+1cc to M/s.T.Muthuvel Advocate SR.No.16250

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