

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.140 of 2013

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1. Ram Naresh Rai S/o Mathav Rai Resident of Vllage Haldi Chappara Dhajwa Tola, Police Station Maner, District Patna at present residing at Jogipur Kankarbagh, Patna, Police Station Kankarbagh, District Patna.

.... Petitioner/s

Versus

1. Subhas Prasad S/o Sri Ramdeo Prasad Rai Resident of Vllage Chamman Chak, Police Station Gauriichak, District Patna.

2. Ramdeo Prasad S/o Late Gyan Rai Resident of Vllage Chamman Chak, Police Station Gauriichak, District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. NAVING KUMAR, ADV Mr. BRAJ
NANDAN SINGH, Adv

For the Respondent/s : Mr. BINOD KUMAR SINGH, ADV AND MR.
SHYAM KUMAR, ADV

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-01-2017

Heard learned counsel for the parties.

This revision application has been filed against the order dated 25.07.2013 by which the learned court below has rejected the petition dated 17.07.2013 filed by the petitioner praying for condonation of delay in depositing the balance consideration amount as directed under the decree and to permit the petitioner to deposit the amount in pursuance to the said decree.

The facts are not in dispute that the present petitioner as plaintiff filed T.S. No. 505 of 2004 praying for decree of specific



performance of contract against the defendants (opposite parties in the present application). By judgment and decree dated 15.05.2013 the aforesaid suit was decreed and the plaintiff-petitioner was directed to pay the balance consideration amount of Rs. 3600/- to the defendant no. 1 within two months from the date of order and the defendant no. 1 was directed thereafter to execute the sale deed in pursuance to the agreement for sale. The payment of the amount as directed was not made by the plaintiff within the prescribed period of time. However, the plaintiff filed the petition on 16.07.2013(Annexure-II) seeking permission for deposit of the balance consideration amount as directed in view of the averments made in the petition. A petition for condonation of delay (Annexure-II/A) was also filed by the plaintiff.

It transpires from the petition dated 16.07.2013 (Annexure-II) that the plea was raised on behalf of the plaintiff that he fell ill from 05.07.2013 to 15.07.2013 resulting in non deposit of the balance consideration amount within the time as directed. It has also been averred in paragraph no. 3 of the said petition that there was delay of only a day in depositing the said amount. From the ordersheet as annexed with the revision application, it further transpires that on 16.07.2013 the step had been taken by the plaintiff-petitioner to deposit the said amount by filing a copy of



challan along with the petition. It is also evident from the aforesaid ordersheet that no petition under Section 28 of the Specific Relief Act has been filed by the defendants praying for rescission of the contract. It is well settled that a suit for specific performance of contract does not come to an end on passing of a decree therein and the court passing such decree retains the control over the decree even after the decree has been passed. Such decree is sometimes also described as a preliminary decree. While explaining the ambit and scope of Section 28 of the Specific Relief Act, three judges bench of the Apex Court in **Sardar Mohar Singh vs Mangilal** 1997(9) SCC 217 have ruled as follows:-

“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. It is true that the respondent has not given satisfactory explanation for every day's delay. It is not, unlike Section 5 of the Limitation Act, an application for condonation of delay. It is one for extension of time.....”

Tested on the anvil of the aforesaid dictum the facts of the present case clearly disclose that the plaintiff-petitioner had in fact taken steps to deposit the balance consideration money in pursuance to the decree though belatedly but by one day delay. It is true, as observed by the court below in the impugned order that the directions in the decree was to pay the aforesaid amount to the defendants and not to deposit the same in the court. In the facts and circumstances of the case, however, the learned court below instead of rejecting the prayer made by the plaintiff-petitioner could have considered the same for the purpose of extension of time keeping in view that such decree in the suit for specific performance of contract is only a preliminary decree, except for issues finally decided therein, and the prescription as to time for discharge of mutual



obligations by the parties are never so peremptory that they cannot be subsequently altered as such condition in the decree does not make it a conditional decree in the technical sense. The principles in this regard has been well discussed by a bench decision of the Calcutta High Court in *Tapan Kumar Chatterjee vs Kalyani Devi AIR 1985 Cal 243*. This Court therefore comes to the conclusion that the impugned order suffers from the vice of failure of the court to exercise its jurisdiction vested in it by law.

Accordingly, this revision application is allowed and the impugned order is set aside and the matter is remanded back to the court below for consideration afresh of the petitions (Annexure-2 and Annexure-2/A) dated 16.07.2013 and 17.07.2013 respectively filed on behalf of the petitioner in T.S. No. 505 of 2004 in accordance with law. It is, however, recorded that this Court has not expressed any opinion on the merits of the prayer of the petitioner which shall be decided by the learned court below in accordance with law without being prejudiced by any observation made in this order.

(V. Nath, J)

Ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

