



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)No.122 of 2016 (NPD)

and

C.M.P(MD)Nos.552 to 554 and 1624 & 1625 of 2016

M.Parimanam @ Parimana Konar

.. Revision Petitioner/
Petitioner/3rd Respondent/JD

Vs.

T. Egammai

.. Respondent/Respondent/Petitioner/DH

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decreetal order, dated 28.10.2015 in E.A.No.317 of 2015 in E.P.No.20 of 2013 in O.S.No.1 of 1996 by the learned I Additional Subordinate Judge, Thiruchirapalli.

For Petitioner : Mr.K.S.Shankar Murali

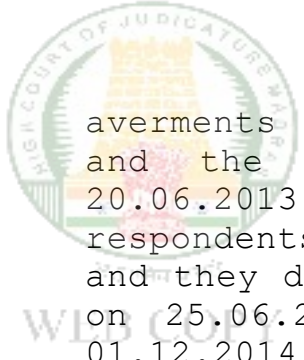
For Respondent : Mr.G.R.Swaminathan
for Mr.T.Antony Arul Raj

ORDER

This Civil Revision Petition has been filed against the order and decreetal order, dated 28.10.2015 in E.A.No.317 of 2015 in E.P.No.20 of 2013 in O.S.No.1 of 1996 by the learned I Additional Subordinate Judge, Thiruchirapalli.

2.The petitioner is the third respondent in E.P.No.20 of 2013. The petitioner filed E.A.No.317 of 2015 in E.P.No.20 of 2013 to condone the delay of 206 days in re-presenting the application to set aside ex-parte order, dated 25.06.2014, passed in E.P.No.20 of 2013. According to the petitioner, the said E.P. was posted to 25.06.2014, for filing counter. The petitioner and other respondents did not file any counter and they were set ex-parte. The petitioner filed application to set aside ex-parte order. The said application was returned for certain compliances. The returned papers were misplaced and was not re-presented in time and therefore, there is a delay in re-presenting the application. The petitioner has good case on merits. Unless the delay is condoned, the petitioner will be put to irreparable loss and hardship.

<https://hcservices.equifile.in/hcservices> 3.The respondent filed counter and opposed the said application. According to the respondent, the petitioner has made vague averments about the filing of the application and the said



averments are false. The respondent has filed E.P.No.20 of 2013 and the petitioner entered appearance through Advocate on 20.06.2013. From that date onwards, the petitioner and other respondents took time for filing counter for more than one year and they did not file any counter. After they were set ex-parte, on 25.06.2014, the Execution Court executed the sale deed on 01.12.2014 and registered sale deed was produced before the Court on 08.04.2015 and the E.P. was closed and therefore, no proceeding is pending and the application filed by the petitioner is not maintainable. Further, the respondent filed E.A.No.171 of 2015 to take delivery of the suit property. The petitioner and others took time for filing counter on six occasions and did not file any counter and therefore, delivery was ordered.

4. Before the learned Judge, the learned counsel for the petitioner contended that after decree of specific performance was passed, the respondent did not offer to pay the balance sale consideration within the time limit fixed by the Court and also did not deposit the balance sale consideration into Court and therefore, the E.P. itself is not maintainable and relied on the following judgments:

(i) 1994 (1) SCC 1 [S.P.Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) by LRs. and others

(ii) 2007 (14) SCC 26 [Chanda (Dead) Through LRs. Vs. Rattni and another

(iii) 1999 (4) SCC 702 [V.S.Palanichamy Chettiar Firm Vs. C.Alagappan and another]

(iv) 2015 (2) CTC 559 : 2015 (4) LW 90 [P.R.Yelumalai Vs. N.M.Ravi]

(v) 2011 (8) MLJ 12 [N.Rajendran Vs. Shriram Chits Tamil Nadu Pvt. Ltd., Rep. by its Branch Manager/Foreman, Tiruvarur]

5. The learned Judge considering the materials on record and the judgments relied on by the learned counsel for the respondent, dismissed the application holding that the petitioner has not given sufficient reason to condone the delay. The petitioner had also filed E.A.No.318 of 2015 to set aside the ex-parte order, dated 25.06.2014; E.A.No.370 of 2015 to recall the delivery warrant, which was issued in E.A.No.171 of 2015; and E.A.No.369 of 2015 to stay of the proceedings in E.A.No.171 of 2015 pending disposal of E.A.Nos.317 and 318 of 2015. The learned Judge dismissed all the above applications.

6. Against the order dated 28.10.2015, passed in E.A.No.317 of 2015 in E.P.No.20 of 2013 in O.S.No.1 of 1996, the present Civil Revision Petition is filed.

7. At the out set, the learned counsel for the petitioner contended that E.P.No.20 of 2013 filed by the respondent is not maintainable and this Court has power to strike off the said E.P. by exercising its power under Article 227 of the Constitution of India. The learned counsel for the petitioner submitted that this



Court can *suo motu* exercise the said power without there being any application being filed by the petitioner. The learned counsel for the petitioner made elaborate arguments on this point.

8. Facts of the case necessary to decide the issue raised by the petitioner are as follows:

8.1. The respondent filed O.S.No.1 of 1996 before the Principal Subordinate Court, Trichirappalli, for specific performance of agreement of sale, dated 12.03.1993, against the petitioner/third defendant and the defendants 2 and 4 to 19 therein. According to the respondent, as per agreement of sale, sale consideration was fixed at Rs.4,00,000/- and a sum of Rs.3,000/- was paid as advance. The revision petitioner is the third defendant in the said suit and eldest member of his family contested the suit contending that the agreement of sale, dated 12.03.1993 was obtained by mis-representation and is not executable and not enforceable in respect of the suit property mentioned therein. The Revision Petitioner and his family members have filed O.S.No.46 of 1996 on the file of the Principal Subordinate Court, Trichy, against the respondent herein and others to set aside the sale deeds, dated 24.08.1993 and 25.08.1993, executed by the first defendant therein in favour of the second defendant therein/the respondent herein, who is his wife, as null and void and for declaration of title. The Revision Petitioner and others also filed O.S.No.979 of 1996 for permanent injunction. All the suits were heard together and decreed in toto. The Trial Court vide judgment and decree, dated 30.04.1999, in O.S.No.1 of 1996, directed the respondent to pay balance sale consideration to the petitioner and others within two months and get the sale deed executed in her favour. Against the said judgment and decree, dated 30.04.1999, made in O.S.No.1 of 1996, the petitioner and others filed A.S.No.484 of 1999 before the Principal Bench of this Court. The said appeal was transferred to this Bench and subsequently, it was dismissed for non-prosecution on 12.06.2009. The respondent filed Transfer A.S.No.532 of 1999 before the Principal Bench of this Court and also filed C.M.P.Nos.14838 and 14839 of 1999 for injunction restraining the petitioner and others from alienating the suit property, which are subject matter of the suit in O.S.No.46 of 1996. This Court, by order dated 28.08.1999, dismissed the said applications, holding that the respondent herein and her husband played fraud on the petitioner and his family members.

8.2. As per decree, dated 30.04.1999, made in O.S.No.1 of 1996, the petitioner and his family members were directed to execute the sale deed in favour of the respondent on or before 30.06.1999. The respondent did not offer the balance sale consideration of Rs.3,97,000/- on or before 30.06.1999. The respondent filed E.P., on 02.04.2013. The respondent deposited Rs.3,97,000/- on 03.06.2013 as per lodgment schedule and filed a Memo on 20.06.2013 in the Court.

8.3. Based on the above facts, the learned counsel for the

petitioner contended that the Trial Court has directed the petitioner and his family members to execute the sale deed on or before 30.06.1999. In view of the said direction, the respondent ought to have paid balance sale consideration of Rs.3,97,000/- on or before 30.06.1999 and got the sale deed executed in her favour. The respondent did not offer the amount before 30.06.1999 and did not deposit the amount into Court. She deposited the amount only on 03.06.2013 after 14 years, after filing of E.P. The respondent has not deposited the balance sale consideration within a reasonable time from 30.04.1999, i.e., the date of decree. The respondent has not obtained any order extending the time for deposit. Admittedly, no order was passed extending the time for the respondent to deposit the balance sale consideration. The balance sale consideration deposited on 03.06.2013 is invalid and *void ab initio*. It is pertinent to note that before filing of E.P., the respondent did not deposit the balance sale consideration. The respondent has deposited the balance sale consideration after 14 years of decree without any order extending the time limit for deposit. While so, the value of the property enhanced manifold and the Special Deputy Collector (Stamps), Trichy, valued the property at Rs.1,43,65,156/-. In spite of such valuation, the Executing Court has executed and registered a sale deed in favour of the respondent for Rs.4,00,000/-. The Execution Court has no power to extend the time limit for depositing the amount and only the Trial Court has power to extend the time limit. The learned Judge failed to consider the fact that E.A.No.317 of 2015 is only to condone the delay in re-presentation and the Courts have held that such application must be considered more liberally than the application to condone the delay in filing the application to set aside the ex-parte order. The learned Judge erred in holding that in view of deposit of Rs.3,97,000/- as per lodgment schedule issued by the Court, it must be presumed that the time has been extended for the respondent to deposit the balance sale consideration. The learned Judge has erred in not properly appreciating the fact that by delay in depositing the balance sale consideration within the time limit or within the reasonable time, the decree-holder loses his right to execute the decree of specific performance. Without specific order as per Section 28 of the Specific Relief Act and Section 148 of C.P.C., the respondent cannot deposit the balance sale consideration after expiry of time limit or within a reasonable time, if no time limit was fixed in the decree. In the present case, as per decree, the petitioner and his family members must execute the sale deed on or before 30.06.1999, which means the respondent has to pay the balance sale consideration before that date or deposit the same into Court, if the petitioner and others refuse to receive the balance sale consideration. The respondent has deposited the balance sale consideration after 14 years and after five years of dismissal of first appeal filed by the petitioner and others. The petitioner is the eldest male member of his family and therefore, he is entitled to

maintain the Civil Revision Petition on behalf of all the respondents in the Civil Revision Petition.

9. The learned counsel for the petitioner relied on the following judgments with regard to condonation of delay.

(i) **2002 (3) CTC 22 [Bhuvaneswari Vs. R.Elumalai]**, wherein at paragraph 14, it has been held as follows:

"14. The time granted by the court for the representation of the plaint, is only an administrative order and not a judicial order, and as such, if there is any delay in the representation of the plaint, an application to excuse the said delay could be filed under Section 151 CPC and it need not necessarily be the one under Section 148 CPC. In fact, Section 151 CPC is an omnibus provision available in the code to make suitable orders, which are necessary to meet the ends of justice and therefore, the application, which was filed under Section 151 CPC could have been allowed by the trial court. Even otherwise, the substance of the petition is more important than the form. Mere quoting of the provision wrongly, is not fatal to the petition itself. In that view of the matter also, the trial court could have allowed the said petition in excusing the delay in representation of the plaint. But, however, the court had taken a rigid view that the petitioner ought to have filed the petition either under Section 148 CPC or under Section 149 CPC and dismissed the petition. The said view of the trial court is an erroneous one and liable to be set aside. In fact, in this case, the plaint itself has not been admitted and the trial has not been commenced and it would not prejudice the case of the defendant to any extent, and that is also yet another reason, in favour of the petitioner to allow the petition. The defendant has got enough time to put forward his defence in the suit and his right to defend the case would not at all be prejudiced."

(ii) **2007 (4) MLJ 635 [D.Muralidharan Vs. Chinnappan (Died) and others]**, wherein at paragraphs 11 and 12, it has been held as follows:

"11. From the above two decisions it is very clear that a petition to condone the delay in filing a petition and a petition to condone the delay in re-presenting the papers filed within time, are not one and the same and a different consideration is warranted in the case of the latter. It is true that a learned Single Judge of this court in the decision reported in 2006 (1) CTC 187 (cited supra) held that the principles applicable to the proceedings under Sec.5 of the Limitation Act are applicable while considering the delay in re-presentation of the papers. In **Chinnappan Vs. D.Muralidharan** Division Bench decision reported in 1993 TLNJ 375 (cited supra), I am bound to follow the above said



Division Bench decision to hold that the courts should have different consideration for a petition filed under Sec.5 of the Limitation Act and for a petition filed to condone delay in re-presenting the papers. Further the Division Bench judgment was not produced before the learned Single Judge who decided the case in 2006 (1) CTC 187 (cited supra).

12.The reason given by the plaintiff in O.S.No.105/2004 for condoning the delay of 1664 days in re-presenting the said papers is that the advocate mixed up the suit papers with other old records and the same was not traced out by the advocate. Accepting the reason the trial court exercised the discretion by condoning the delay at the same time awarding a cost of Rs1,500/- to the defendant. In such circumstances, I do not find any reasons to interfere with the order of the trial court. Further the delay in re-representation cannot be put to the account of the party and the court has to take care to see that justice does not suffer in such cases."

(iii) **1978 (1) SCC 483 [Indian Statistical Institute Vs. M/s.Associated Builders and others]**, wherein at paragraph 10, it has been held as follows:-

"10. Section 5 of the Limitation Act provides for extension of the prescribed period of limitation if the petitioner satisfies the Court that he had sufficient cause for not preferring the objections within that period. When there is no delay in presenting the objection petition Section 5 of the Limitation Act has no application and the delay in representation is not subject to the rigorous tests which are usually applied in excusing the delay in a petition under Section 5 of the Limitation Act. The application filed before the lower Court for condonation of the delay in preferring the objections and the order of the Court declining to condone the delay are all due to misunderstanding of the provisions of the Civil Procedure Code. As we have already pointed out in the return the Registrar did not even specify the time within which the petition will have to be re-presented."

9.1.The learned counsel for the petitioner also relied on the following judgments with regard to maintainability of E.P. and exercise of power under Article 227 of the Constitution of India.

(i) **2015 (4) LW 90 : 2015 (2) CTC 559 [P.R.Yelumalai Vs. N.M.Ravi]**, wherein at paragraph 14, it has been held as follows:

"14.Having given above findings, the obvious corollary is that since the Plaintiff-Buyer failed to comply with the terms of the decree, the suit stood dismissed as the order passing the decree was a peremptory order. In light of



this, we do not find it necessary to address the arguments made by the counsel on the point of bona fide purchaser. Further, the contention that the acceptance of deposit made by the Plaintiff-Buyer on 29.05.2007 is an implied grant of extension of time is a misplaced one."

(ii) **2015 (4) LW 319 [F.M.Anthoni Vs. R.Johnson and others]**, wherein at paragraphs 16, 17 and 20, it has been held as follows:

"16. The suit for specific performance is a discretionary remedy. The Court exercises control even after passing the decree. The control would extend till the decree is executed. The conduct of the petitioner, before filing the suit and after suit, are all relevant consideration. Merely because the Court decreed the suit, it cannot be said that the contract cannot be rescinded subsequently.

17. The decree passed in a suit for specific performance is in the nature of a preliminary decree. The Trial Court retains control till the execution of decree. Section 28 of the Specific Relief Act, 1963 gives power to the Court to grant rescission of contract. Similarly, it gives power to the Court to extend the time for payment or performing the other conditions of the decree for specific performance. This makes the position very clear that by passing a decree for specific performance, there is no automatic extinguishment of contract. The decree in a suit for specific performance, therefore, stands on a different footing. Section 28 gives a clear discretion to the Court to pass equitable orders either in favour of the decree holder or judgment debtor, taking into account the background facts.

20. The petitioner waited till 2007 to deposit the money. By the time, the property value has gone up considerably. The Court cannot be a silent spectator in a matter like this. While exercising discretion in favour of a person, the Court is bound to consider equity in the light of background facts. The petitioner wanted to take undue advantage. He wanted the decree dated 24 August, 1982, to be executed now, notwithstanding the fact that the mandatory deposit was made only after a period of 25 years. I am, therefore, of the view that this is



not a fit case to exercise the discretion in favour of the petitioner."

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(iii) **1994 (1) SCC 1 [S.P.Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) by LRs. and others]**, wherein at paragraph 6, it has been held as follows:

"6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

(iv) **2013 (4) LW 626 [G.Kesavan Vs. B.C.Raman]**, wherein at paragraphs 13 to 15 and 17, it has been held as follows:

"13. Thus, from the perusal of the above said provision of law, it is crystal clear that the court may, in its discretion, enlarge any period fixed or granted by the court for doing of any act prescribed or allowed, even though



the period originally fixed or granted may have expired. But, such enlargement, from time to time, can be made not exceeding 30 days in total. Going by the above said provision, it has to be seen as to whether the Court is empowered to extend such period for doing of any act, if in the meantime, the very action itself is barred by limitation by virtue of the Limitation Act, 1963. No doubt, the extension contemplated under 148 C.P.C. is in respect of a decree or order passed by the Court for doing of any act prescribed or allowed by C.P.C. But, at the same time, if the party fails to perform such action within the time stipulated by the Court and allows such performance also to be barred by limitation in the meantime, in my considered view, the Court cannot enlarge the time beyond the period of limitation under section 148 C.P.C. Needless to say that power to extend time under Section 148 cannot be construed to mean that such power is conferred notwithstanding anything contained under the Limitation Act.

14. Here in this case, the trial court passed the decree on 28.08.2003. As per the decree, the parties have to perform their obligation. If such obligation is not performed within the time stipulated in the decree and if they seek extension of time, then such extension could be considered only when such performance sought to be made is not barred by limitation in the meantime. When the decree has been passed on 28.08.2003 by granting one month time for the parties to perform their mutual obligation, admittedly, the petitioner has not paid the amount within one month. However, for performing such action, he is seeking extension of time after nearly 4-1/2 years. At this juncture, it is useful to refer Article 54 of the Limitation Act which grants only three years period as limitation for specific performance of a contract. Therefore, when the parties more particularly, the petitioner herein has allowed the mutual performance to be barred by limitation, in my considered view, Section 148 C.P.C. cannot be pressed into service and consequently, the Court is not empowered to enlarge the time also.



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 exparte decree also cannot be put against the defendant when executability of such decree itself is questioned by him.

17. Thus, it is clear that Section 28 can be invoked by both parties under the circumstances as stipulated therein. But at the same time, it is not an automatic entitlement for the purchaser to seek extension of time under Section 148 C.P.C. In my considered view, the purchaser has to independently satisfy the Court when he seeks extension of time under Section 148 of C.P.C. Mere non filing of an application for rescission of contract under Section 28 of the Specific Relief Act by the other side itself cannot be taken as a ground for seeking extension of time under section 148 C.P.C. Such application for rescission of contract can be filed by the defendant at any time before the expiry of period of limitation for performing such obligation or he can just leave it as it is once such performance is barred by limitation."

(v) **1999 (4) SCC 702 [V.S.Palanichamy Chettiar Firm Vs. C.Alagappan and another]**, wherein at paragraphs 16 and 17, it has been held as follows:

"16. In view of the decision of this Court in Ramankutty Guptan case [1994 (2) SCC 642] when the trial court and the executing court are same, executing court can entertain the application for extension of time though the



application is to be treated as one filed in the main suit. On the same analogy, the vendor judgment-debtor can also seek rescission of the contract of sale or take up this plea in defence to bar the execution of decree. One of the grounds on which the trial court dismissed the execution application was that the decree holder did not pay the balance of consideration as per the sale agreement and also did not pay within the time stipulated by the court in the decree. The High Court could have certainly gone into this question when applications for extension of time were filed before it. However, on the objection by the judgment-debtor, it chose to send back the matter to the executing court for decision on these applications, which was perhaps, in the circumstances, not the correct procedure to adopt. But then, at the same time, the High Court put shackles on the discretion of the executing court by observing that vendor might have felt that after the appeal filed by the vendor judgment-holder against the decree for specific performance was disposed of, they can even then deposit the amount at the time of seeking the execution of the sale deed.

17. The agreement of sale was entered into as far back on 16.02.1980, about 19 years ago. No explanation is forthcoming as to why the balance amount of consideration could not be deposited within time granted by the court and why no application was made under Section 28 of the Act seeking extension of time of this period. Under Article 54 of the Limitation Act, 3 years period is prescribed for filing the suit for specific performance of contract of sale from the date of the agreement or when the cause of action arises. Merely because a suit is filed within the prescribed period of limitation does not absolve the vendee-plaintiff from showing as to whether he was ready and willing to perform his part of agreement and if there was non-performance was that on account of any obstacle put by the vendor or otherwise. Provisions to grant specific performance of an agreement are quite stringent. Equitable considerations come into play. The Court has to see all the attendant circumstances including if



the vendee has conducted himself in a reasonable manner under the contract of sale. That being the position of law for filing the suit for specific performance, can the court, as a matter of course, allow extension of time for making payment of balance amount of consideration in terms of a decree after 5 years of passing of the decree by the trial court and 3 years of its confirmation by the appellate court? It is not the case of the respondent-decree holders that on account of any fault on the part of the vendor-judgment-debtor, the amount could not be deposited as per the decree. That being the position, if now time is granted, that would be going beyond the period of limitation prescribed for filing of the suit for specific performance of the agreement though this provision may not be strictly applicable. It is nevertheless an important circumstance to be considered by the Court. That apart, no explanation whatsoever is coming from the respondent decree-holders as to why they did not pay the balance amount of consideration as per the decree except what the High Court itself thought fit to comment which is certainly not borne out from the record. Equity demands that discretion be not exercised in favour of the respondent decree-holders and no extension of time be granted to them to comply with the decree."

(vi) **2007 (14) SCC 26 [Chanda (Dead) Through LRs. Vs. Rattni and another]**, wherein at paragraphs 9 and 10, it has been held as follows:

"9. The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the Court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The Court does not cease to have the power to extend the time even though the trial Court had earlier directed in the decree that payment of balance price to be made by certain date and on failure



the suit to stand dismissed. The power exercisable under this Section is discretionary.

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10. As rightly contended by learned counsel for the respondents the stand now taken was not pleaded before the trial Court and the High Court. The decision in Kumar Dhirendra's case [2005 (9) SCC 262], is clearly distinguishable on facts. In fact, it has been noted in that case that the decree-holder was repeatedly assured of payment. The situation is not the same here. The only stand taken was that there was no direction to pay within a particular time. This plea is clearly unsustainable and untenable and has been rightly rejected."

(vii) **2016 (4) CTC 834 [XXXXXX 'A' Vs. XXXXXX 'B']**, wherein at paragraph 27, it has been held as follows:

"27. The power of the Courts to pass appropriate orders is preserved by Article 227 of the Constitution of India and Section 151 of the Code of Civil Procedure. Both Section 151 C.P.C., and Article 227 of the Constitution of India would enable this Court to pass orders to meet the ends of justice as may be necessary or to prevent the abuse of process of Court. Section 151 C.P.C., reads as follows:-

"151. Saving of inherent powers of Court.-

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

The Hon'ble Supreme Court, in Padam Sen and another v. State of Uttarpradesh reported in AIR 1961 SC 218, categorically held that the inherent powers of the Court under Section 151 C.P.C., is in addition to the powers specifically conferred on the Court by the Code of Civil Procedure. In Manoharlal Chopra v. Bahadur Rao Raj Seth Hiralal reported in AIR 1962 SC 527, it has been held by the Hon'ble Supreme Court that the powers conferred under the Code of Civil Procedure are complementary to



the inherent powers already available, as mentioned under Section 151 of the Code of Civil Procedure.

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The Hon'ble Apex Court has elaborately discussed the scope of Article 227 of the Constitution of India in *Suryadev Rai v. Ram Chandar Rai* reported in (2003 (6) SCC 675) and held that the power under Article 227 is wider than Article 226 of the Constitution of India, in the sense, that it is not subject to those technicalities and the procedure or traditional fetters, which are to be found in certiorari jurisdiction.

In *Jasbir Singh v. State of Punjab* reported in 2006 (8) SCC 294, the Honourable Supreme Court declared that the power of superintendence conferred upon the High Court by Article 227 of the Constitution of India is not confined to administrative superintendence only, but also includes the power of judicial revision. The said power can be invoked suo motu also. The relevant portion of paragraph No.10 of the, judgment is extracted as follows:-

"10. The power of superintendence over all the subordinate courts and tribunals is given to the High Court under Article 227 of the Constitution. So also, under Article 235 of the Constitution, the High Courts exercise control over all the district courts and courts subordinate thereto on all matters relating to posting, promotion and grant of leave to officers belonging to the judicial service of the State. The power of superintendence conferred on the High Court under Article 227 over all the courts and tribunals throughout the territory of the State is both of administrative and judicial nature and it could be exercised suo motu also."

<https://hcservices.ecourts.gov.in/hcservices/> In *New India Assurance Company Ltd., v. Ramesh Bai C.Patel* reported in 1997 (5) SCC 510, it has been held by the Hon'ble Apex Court that



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the procedure or technical objection should not frustrate the course of justice. In *Roshan Deen v. Prithi Lal* reported in 2002 (1) SCC 100, the Apex Court held that the powers conferred on the High Court under Article 227 of the Constitution of India is to advance justice and not to thwart it and the very purpose of the Constitution is that no man should be subjected to injustice by violating the law. The Apex Court in *Baby v. Travancore Devasvom Board and other* reported in 1998(8) SCC 310, held that the power of the High Court under Constitution of India is always in addition to the power of Revision given under Section 103 of the Kerala Land Reforms Act. Similarly, the power conferred upon Article 226/227 of the Constitution of India is in addition to Section 24 of the Code of Civil Procedure. In *Union of India and another v. Kriloskar Pneumatic Co. Ltd.*, reported in 1996 (4) SCC 453, the Apex Court held that the power conferred under Article 226/227 of the Constitution of India is designed to effectuate law. Therefore, this Court, suomotu invoking Article 227 of the Constitution of India and Section 151 of the C.P.C. hereby withdraws H.M.O.P.No.158 of 2015 on the file of XXXXXX XXXXXXXX XXXXXX and F.C.O.P.No.1922/2015 filed by the respondent on the file of XXXXXX XXXXXX XXXXXXXX XXXXXX to the file of this Court, to decide the main issue involved therein to render speedy justice to them."

10.Per contra, the learned counsel for the respondent contended that in the decree, no time limit was fixed for paying balance sale consideration. Therefore, the deposit made by the respondent on 03.06.2013 is valid and in compliance of the decree passed in the suit. The respondent deposited the amount as per lodgment schedule issued by the Court and therefore, the Court has extended the time to deposit the balance sale consideration. Once the Court accepts the deposit of sale consideration, it is not open to the petitioner and other judgement-debtor to challenge the same on the ground that the said deposit is not in compliance of the decree, dated 30.04.1999. The petitioner and others after entering appearance through Advocate and taking number of adjournments, did not file counter. Therefore, they were set ex-parte on 25.06.2014. The Court executed the sale deed on 01.12.2014 and the registered sale deed was produced before the Court on 08.04.2015 and the E.P. was closed. In view of the same, E.A.No.317 of 2015 filed by the petitioner is not maintainable. In any event, the petitioner has not given any reason for the



delay. They have not furnished any particulars as and when the application to set aside the ex-parte order was filed and when it was returned. In view of the same, E.A.No.317 of 2015 is only an application to condone the delay in filing application to set aside the ex-parte order. The respondent filed E.A.No.171 of 2015 for delivery. In the said application also, the petitioner did not file any counter and the Court ordered delivery on 25.08.2015 and the respondent took delivery on 05.11.2015.

11. In support of his submissions, the learned counsel for the respondent relied on the judgment reported in **2014 (O) Supreme [Mad] 3827 [T.G.Navaneetha Krishnan (Died) Vs. T.G.R.Vasanthakumar]**, wherein at paragraph 11, it has been held as follows:

11. In the judgments relied on by the learned counsel for the petitioners and the respondent, the following principles are laid down:

(i) As per Section 28 of Specific Relief Act, the Courts have power to extend the time for depositing balance sale consideration as well as to rescind the contract.

(ii) When no time limit is fixed to deposit the balance sale consideration in the decree, then the plaintiff must deposit the same within a reasonable time. The reasonable time is a question of fact.

(iii) As per Article 54 of the Limitation Act, time limit in respect of specific performance of agreement of sale is three years. Therefore, three years is a reasonable time.

(iv) The Courts have power to extend the time for depositing the balance sale consideration on application filed under Sections 148 and 151 of CPC. It is further held that the Courts can extend the time even without any application.

12. The issue to be decided in the Civil Revision Petition is whether this is a fit case to exercise extraordinary discretionary power conferred on this Court under Article 227 of the Constitution of India. This Court in the judgment reported in **2016 (4) CTC 834** [cited supra] has held that the Court has power to *suo motu* invoke Article 227 of the Constitution of India to render justice and prevent injustice being done to a party. The procedure or technical objection should not frustrate the Courts of justice. Further, in the order reported in **2007 (4) MLJ 635** [cited supra], this Court held that when technicalities and substantial justice are pitted against each other, the Court should always be in favour of substantial justice, rather on



technicalities. In view of the principles laid down in the two judgments, I am inclined to invoke the power under Article 227 of the Constitution of India, in the interest of justice.

13. It is well settled by number of judicial pronouncements, a decree of specific performance is in the nature of preliminary decree. It is also well settled that;

(a) the Courts have power under Section 28 of the Specific Relief Act and Section 148 C.P.C., to extend the time to deposit the balance sale consideration even after expiry of time limit fixed in the decree;

(b) if no time limit is fixed in the decree, the decree-holder must deposit the balance sale consideration within a reasonable time;

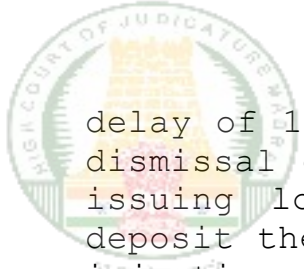
(c) the Courts have power to rescind the contract at the instance of judgment-debtor;

(d) extension of time to deposit is not automatic. The Court must consider all the facts and circumstances, while passing order either extending or rejecting the request;

(e) the decree holder must seek extension of time within three years from the time limit granted, or if no time limit is fixed within three years from the date of decree or judgment in Appeal; and

(f) Courts have no power to extend time if such request is made after the time for deposit is barred by limitation.

14. In the present case, in the decree, no time limit was fixed directing the respondent to pay the balance sale consideration. At the same time, it is to be seen that the petitioner and other defendants were directed to execute the sale deed in favour of the respondent on or before 30.06.1999. This clearly means that the respondent must pay the balance sale consideration on or before 30.06.1999 or deposit the same into Court before that date, if the petitioner and others refuse to receive the balance sale consideration. It is not the case of the respondent that she offered to pay the sale consideration of Rs.3,97,000/- on or before 30.06.1999 to the petitioner and others and that they refused to receive the same. The petitioner and others filed A.S.No.484 of 1999 challenging the decree, dated 30.04.1999 before this Court. The said appeal was dismissed for default on 12.06.2009. It is not the case of the parties herein that this Court stayed the decree, dated 30.04.1999 made in O.S.No.1 of 1996. The respondent did not deposit the amounts on or before 30.06.1999 and within three years after dismissal of A.S.No.484 of 1999 on 12.06.2009. It is an admitted case that the respondent did not file any application for extension of time at any point of time to deposit the balance sale consideration. The respondent filed E.P.No.20 of 2013 on 02.04.2013 without depositing the balance sale consideration. The Execution Court erred in law in issuing lodgment schedule without there being any order permitting the respondent to deposit the balance sale consideration after the



delay of 14 years from the date of decree and after five years of dismissal of First Appeal filed by the petitioner and others. By issuing lodgment schedule to the respondent permitting her to deposit the amount a grave error is committed by the Court causing injustice to the petitioner and other defendants, when it is settled that within three years, the decree holder must seek extension of time and if the decree holder fails to seek extension of time within three years, his claim is barred by limitation and Court has no power to extend the time to deposit. The Hon'ble Apex Court in the judgment reported in **2015 (2) CTC 559 : 2015 (4) LW 90** [cited supra], has held that even a single day delay in depositing the balance sale consideration as directed by the Trial Court, will disentitle the decree-holder from executing the decree for specific performance. Further, it is well settled that when no time limit is fixed in the decree to deposit balance sale consideration, the decree-holder/purchaser must deposit the balance sale consideration within the reasonable time. The issue of reasonable time was considered by this Court in the order reported in **2013 (3) LW 626** [cited supra]. This Court took note of the fact that there is no provision in the Limitation Act, fixing time limit to deposit the balance sale consideration, when there is no time limit is fixed in the decree. This Court considering the fact that a suit for specific performance must be filed within three years, held that the Court has power to extend the time, if request is made within three years and has no power to extend the time when the application for extension of time to deposit the balance sale consideration is made after 4½ years, i.e., beyond three years from the date of the decree.

15. In the present case, the respondent has deposited the balance sale consideration after 14 years of decree without obtaining any order extending time to deposit balance sale consideration. The contention of the learned counsel for the petitioner that value of the property has increased to Rs.1,43,65,156/- as evidenced by the order of the Special Deputy Collector (Stamps), Trichy, is not disputed by the respondent. Considering the fact that the respondent has not obtained order extending time to deposit the balance sale consideration and failed to deposit the balance sale consideration within the reasonable time and value of the property has enormously increased during 14 years of delay, I hold that in equity and interest of justice, E.P.No.20 of 2013 is liable to be struck off. The judgment relied on by the learned counsel for the respondent is not applicable to the facts of the present case. Even in the said judgment, this Court has held that the Courts can extend the time even without any application. In the present case, there is no extension of time to deposit the balance sale consideration. The respondent has not given any reason for not depositing the balance sale consideration within reasonable time, namely, within three years. The only contention of the learned Senior Counsel for the



respondent is that no time limit was fixed to deposit the balance sale consideration and therefore, the deposit made and accepted by the Court is valid is untenable and unacceptable. The reasoning of the learned Judge that by issuing lodgment schedule, it is to be presumed that the Court has extended the time to deposit, is not a valid reason and contrary to the judgments referred to above. Further, in the judgment relied on by the learned counsel for the respondent, it has been held that the respondent therein had taken steps to deposit the balance sale consideration within the reasonable time. In the present case, the respondent has not taken any step and has not deposited the balance sale consideration within the reasonable time. The said judgment does not advance the case of the respondent. On the other hand, the judgments relied on by the learned counsel for the petitioner are applicable to the facts of the present case.

16.The failure on the part of the judgment-debtor to file an application under Section 28 of the Specific Relief Act, will not be a ground for extension of time for deposit of balance sale consideration. As already stated, the respondent has not yet taken any steps to get extension of time to deposit the balance sale consideration.

17.Courts can invoke the power under Article 227 of the Constitution;

- (a) to prevent abuse of process of law;
- (b) to prevent miscarriage of justice;
- (c) to prevent grave injustice;
- (d) grave dereliction of duty or flagrant violation of law or error of law apparent on the face of the record; and
- (e) arbitrary exercise of authority or discretion.

18.The Court below by issuing lodgment schedule and permitting the respondent to deposit the balance sale consideration after 14 years without any order extending time for depositing and numbering the Execution Petition, committed grave error, warranting this Court to invoke the power under Article 227 of the Constitution of India, to set right the miscarriage of justice and prevent grave justice.

19.In the result, E.P.No.20 of 2013 is dismissed. The sale deed, dated 01.12.2014, registered as Document No.4947/2014 executed by the Execution Court in favour of the respondent, is cancelled. The Sub-Registrar, Manachanallur, is directed to make necessary endorsement in the concerned Register. The said cancellation of sale deed as per this order to be reflected in the Encumbrance Certificate. The Execution Court is directed to order the suit properties to the petitioner and other defendants and effect re-delivery of possession through Court Amin within two months from the date of receipt of a copy of this order



and file compliance report before this Court. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True copy/

WEB COPY

Sub Assistant Registrar.

To

1 The I Additional Subordinate Judge,
Thiruchirapalli.

2 The Sub Registrar, Manachanallur
(For taking necessary action)

+2cc to Mr. Anthoy ArulRaj, Advocate, SR.Nos.15971,16243

+2cc to Mr. Shankar Murali, Advocate, SR.No.16010

C.R.P. (MD) No.122 of 2016 (NPD)

C.M.P (MD) Nos.552 to 554 & 1624 & 1625 of 2016

20.03.2017

KK-SVMMS-SAR2-23.03.2017-20P-7C