

HON'BLE SRI JUSTICE P.NAVEEN RAO

**CIVIL REVISION PETITION NOS.4198, 5056, 6280, 6574 OF
2004; 45 AND 4797 OF 2005**

DATE: 26.12.2017

CRP No.4198 of 2004:

Between :

Smt K.Annapurna, w/o. Sri K.Prasad,
Aged about 43 years, occu: Business,
R/o. 502, Emerald Apartments, Amrutha
Hills, Punjagutta, Hyderabad.

.... Revision petitioner/respondent/
Plaintiff

and

Chintala Rami Reddy, s/o.Penta Reddy,
Aged about 51 years, occu: Agriculture,
r/o.Kottaguda, Hamlet of Batasingaram
village, Hayatnagar Mandal, Ranga Reddy
district and others.

.... Respondents/petitioners/
defendants



HON'BLE SRI JUSTICE P.NAVEEN RAO

**CIVIL REVISION PETITION NOS.4198, 5056, 6280, 6574 OF
2004; 45 AND 4797 OF 2005**

COMMON ORDER :

Heard Sri V.Hari Haran, learned counsel for the petitioners. There was no representation on behalf of the respondents on 14.12.2017. On 20.12.2017, learned counsel for the petitioners was heard. There was no representation on behalf of the respondents and to give one opportunity, matter was directed to be listed under the caption 'for Judgment' on 21.12.2017. On 21.12.2017 also there was no representation and today also there is no representation on behalf of respondents.

2. Plaintiffs filed O.S.No.26/1996 and 25 of 1996 to grant decree for Specific Performance of Agreement of sale deeds dated 24.04.1993 and 19.04.1993, respectively, and for possession of the suit schedule land. By the decree granted on 06.03.1998, defendants were directed to execute sale deeds in favour of plaintiffs on respective suit schedule properties within three months, after receiving the balance sale consideration i.e., Rs.7,32,625/- and Rs.3,60,125/- respectively. Defendants were further directed to deliver physical and vacant possession of suit schedule lands to plaintiffs. Plaintiffs filed E.P.Nos.3/2000 and 2/2000 respectively on 17.12.1999. While issuing notice to Judgment Debtors (J.Drs), the Executing Court granted time to decree holder to deposit balance sale consideration amount by 08.03.2000 and directed to call the matter on 08.03.2000. On 31.03.2000, decree holder filed E.A.No.17/2000 and 16/2000 respectively, under Section 148 of Code of Civil Procedure, seeking further two months to deposit balance sale consideration. On

31.03.2000, the Court granted time to deposit balance sale consideration till 24.04.2000. As against the said orders, J.Drs.1 to 3 in O.S.No.26 of 1996 and J.Drs.1 and 2 in O.S.No.25/1996 filed C.R.P.Nos.2109 and 2108 of 2000, respectively, challenging the orders dated 31.03.2000 made in E.A.Nos.17 & 16 of 2000. In the said revisions, it was pleaded before this Court that the J.Drs, were not heard before granting extension of time. It was also pleaded that they filed I.A.Nos.124 and 123 of 2000 respectively, under Section 28 of the Specific Relief Act, 1963 (for short 'the Act'), for rescission of agreements of sale dated 24.04.1993 and 19.04.1993 respectively. This Court allowed said revisions and remitted the matter for consideration by the trial Court.

3. On remand, the trial Court considered E.P.No.3/2000, E.A.No.17/2000 and I.A.No.124/2000 arising out of O.S.No.26/1996 and E.P.No.2/2000, E.A.No.16/2000 and I.A.No.123/2000 arising out of O.S.No.25/96. On 12.04.2004, the Court below passed separate orders in respective cases, as mentioned above, (i) dismissed E.P.Nos.3/2000 and 2/2000; (ii) Consequently, E.A.No.17/2000 & 16/2000 were also dismissed; and (iii) allowed I.A.Nos.124/2000 & 123/2000 rescinding the agreements of sale dated 24.04.1993 and 19.04.1993 respectively.

4. Aggrieved by the said orders these Civil Revision Petitions are filed. C.R.P.No.4198/2004 is filed against the order in I.A.No.124/ 2000, C.R.P.No.5056/2004 is filed against the order in I.A.No.123/2000, C.R.P.No.6280/2004 is filed against the order in E.A.No.17/2000, C.R.P.No.6574/2004 is filed against the order in E.A.No.16/2000, C.R.P.No.45/2005 is filed against the order in

E.P.No.2/2000 and C.R.P.No.4797/2005 is filed against the order in E.P.No.3/2000.

5.1. Learned counsel for the petitioners submit that the trial Court erred in dismissing the E.Ps., filed by the plaintiffs for execution of the decree granted in their favour and also erred in dismissing applications for extension of time and grossly erred in allowing the I.As, filed by the J.Drs seeking rescinding agreement of sale deeds in the two suits.

5.2. He further submits that in the decree when no time limit is prescribed for payment of balance sale consideration, the trial Court erred in holding that within the time granted, the amount was not deposited and that the E.A.Nos.17/2000 and 16/2000 were not filed within the time granted for depositing the balance sale consideration, therefore, petitions are not maintainable, is erroneous.

5.3. Learned counsel further submits that the Court has inherent power to grant extension of time in suits for specific performance for deposit of balance sale consideration, as per the decree granted in their favour. As held in several precedent decisions, the decree of specific performance is in the form of preliminary decree and the trial Court is not ousted of jurisdiction after the decree is passed.

5.4. Learned counsel further contends that the Court below mis-directed itself in invoking the provision under Section 28 (2) of the Act, without appreciating the fact that these are suits for specific performance of agreements of sale and no time limit was fixed to the plaintiffs to perform their part of the direction issued in the decrees. He further submits that in fact after the order in

E.A.Nos.17/2000 & 16/2000 respectively, the balance sale consideration was already deposited on 24.04.2000 and therefore, her part of terms of decrees were already complied and what remained, in terms of the decrees, was execution of sale deeds by the judgment debtors and to hand over possession of the suit schedule properties.

5.5. In support of the said contentions, learned counsel for the petitioners placed reliance on the following decisions :

i. **Sardar Mohar Singh through Power of Attorney Holder, Manjit Singh v. Mangilal alias Mangtya¹;**

ii. **Mandavilli Sujatha v. Baratam Vykuntarao and others²;**

iii. **Kumar Dhirendra Mullick and others v. Tivoli Park Apartments (P) Ltd.³; and**

iv. **K.S.Venkata Raman v. Prem Jeevan and another⁴.**

6. Similar issue was fallen for consideration before the Supreme Court in **Kumar Dhirendra Mullik** (supra).

6.1 Briefly, the facts are as under:

Trustees of the Trust Estate of Raja Rajendra Mullick Bahadur executed lease deed in favour of Mohd.Ismail for 21 years, commencing from 01.05.1960. Mohd.Ismail executed a deed of assignment dated 20.08.1970 and assigned the suit premises to the respondent - decree-holder for the unexpired period. Before expiry of lease, agreement was entered by the then trustees with the respondent decree holder, to the effect that terms

¹ (1997) 9 SCC 217

² 2000 (1) ALD 237

³ 2005 (1) ALD 74 (SC)

⁴ 2015 (2) ALD 207

and conditions of said lease would be extended/renewed for further period of 70 years on payment of increased rent per month plus premium. Alleging that trustees failed to execute the deed, the respondent decree-holder filed the suit for specific performance of agreement in the Court of Assistant District Judge, Alipore, Calcutta. The trial Court decreed the suit. On the application filed by the trustees the trial Court, by order dated 31.07.1996, rescinded the agreement and also recalled the decree.

6.2 On appeal, High Court held that Section 28(1) of the Act has no application as there was no default clause in the decree. High Court allowed the appeal preferred by the decree-holder setting aside the trial Court order rescinding the agreement.

6.3. On going through the decree passed by the trial Court, Supreme Court observed that decree did not specify the period within which balance premium was to be paid by the decree-holder; that there was no default clause in the order, but appellant was only directed to execute the lease on or before 24.10.1985. Supreme Court, therefore, held that trial Court erred in directing recession of the agreement and upheld the decision of the High Court.

7. In **Sardar Mohar Singh** (supra), briefly noted the facts are as under:

Trial Court granted decree for specific performance directing the respondent to refund earnest money of 15,000/- and also damages quantified at 2,000/- within a period of three months and in default to execute sale deed. Respondent filed applications to rescind the decree in execution and sought extension of time for

compliance. The Executing Court allowed both applications and directed him to deposit amount within three days from the date of the order. In the revision, while upholding the order, the High Court directed the respondent to deposit further sum of 16,000/- to compensate the petitioner for loss of enjoyment of money.

7.1. With reference to scope of Section 28 (1) of the Act and nature of the decree of specific performance, Supreme Court held as under:

“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. It is true that the respondent has not given satisfactory explanation of 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.”

8. In **Mandavilli Sujatha** (supra), the trial Court passed decree for specific performance of contract of sale. The decree-holder was required to pay balance sale consideration within 15 days and thereupon the defendant-judgment debtor should execute registered sale deed within month. Unable to pay balance sale consideration, decree-holder filed I.A., for extension of time for payment of balance sale consideration. Said application was dismissed on the ground that Court had no power to enlarge the time, inasmuch as decree was self operative. By referring to provision in Section 28 of the Act, this Court held that trial Court

erred in holding that it had no power to consider application for extension of time for payment of balance sale consideration and failed to exercise jurisdiction vested in him under Section 148 of CPC and Section 28 of the Act, and accordingly set aside order of the trial court.

9. In the cases on hand, no time limit was fixed for payment of balance sale consideration. The judgment debtor was directed to execute sale deed within three months after receiving balance sale consideration. Alleging that judgment debtor failed to comply with decree, E.P.Nos.3 and 2 of 2000 respectively, are filed. In the EPs, the Executing Court directed the decree-holder to deposit balance sale consideration by 08.03.2000. On 31.03.2000, E.A.Nos.17 and 16 of 2000, respectively were filed, to extend the time to deposit the amount. In support of applications to grant extension of time, decree-holder stated that she had put her lands in Sy.Nos.100, 105, 106 and 109, admeasuring Ac.17.02 for sale and same could not be materialized and, therefore, there was delay in depositing the amount. In the said E.As., time to deposit balance sale consideration was granted till 24.04.2000. Decree-holder then filed E.A.Nos.31 and 30 of 2000 respectively seeking permission to deduct the suit costs from the balance sale consideration amount. After the said permission was granted, the decree-holder deposited the balance sale consideration.

10. On remand, trial Court observed that having obtained decree for specific performance, failing to deposit balance sale consideration for nearly two years would show that decree-holder was not ready and willing to perform her part of contract. Trial Court observed that applications for extension of time filed after

expiry of time granted earlier are not maintainable. Holding so, trial Court refused to extend the time for depositing the balance sale consideration. Further, held that judgment debtor is entitled to ask for rescission of contract and, therefore, decrees in the respective suits cannot be put to execution and agreements of sale have to be rescinded.

11. The decree for specific performance is in the form of preliminary decree and the jurisdiction of the Court is not ousted until the terms of decree are completely performed. As held by the Supreme Court and this Court consistently, even when there is time limit prescribed for payment of balance sale consideration, it is permissible for the Court to extend the time to give effect to the decree of specific performance.

12. Ordinarily, decree for specific performance has to be enforced. The Court should be circumspect in accepting plea to rescind the contract. Unless Court is persuaded to come to conclusion, based on material placed on record, that in spite of affording sufficient time and for no valid or justified cause or reason, the decree-holder failed to perform his part of decree and has to be blamed himself for such inordinate delay, and because of his lapses grave prejudice is caused to judgment debtor, the agreement cannot be rescinded. Rescinding an agreement is an exception but not a general norm.

13. In the case on hand, there was no time limit fixed by the trial Court while granting decree. Petition for execution of decree was filed within two years. In E.P.Nos.3 and 2 of 2000, respectively, trial Court fixed time to pay balance sale consideration. Within a

short period thereafter, the decree-holder filed petitions for extension of time by stating that money could not be secured as the properties belonging to decree-holder could not be disposed of as initially anticipated. This stand of the decree-holder was not doubted by the respondents. It can be said as a valid justification, more so, in the absence of contradiction. Trial Court also failed to note that consequent to extension of time granted in E.A.Nos.17 and 16 of 2000, respectively, the balance sale consideration was deposited on 24.4.2000. In the facts of this case, it cannot be said that there was unreasonably long delay on the part of decree-holder to pay balance sale consideration.

14. To hold that decree-holder did not deposit money within the time stipulated, the trial Court referred to decision rendered by the High Court in CRP Nos.1498 and 1500 of 2000. In those CRPs, High Court observed that the decreetal terms require plaintiff to pay balance sale consideration within such period as would obligate and enable the judgment debtor to execute sale deed, i.e., within three months from the date of decree. Since obligation of the judgment debtor to execute sale deed springs into operation on receipt of balance sale consideration, the plaintiff was obligated to pay balance sale consideration prior to 05.06.1998 i.e., expiry of three months. Though said revision petitions were not arising out of two decrees in issue, on the ground that the decree-holder herein was also the decree-holder in O.S.No.23 of 1995, from out of which those two CRPs were filed, trial Court holds that, in the instant case also, the decree holder was required to deposit balance sale consideration within three months and on that

premise holds that inaction on the part of decree-holder for 1½ year disentitle him to claim enforcement of the decree.

15. As noted from the above precedent decisions, this view of the trial Court is erroneous. In the absence of time fixed to deposit balance sale consideration, trial Court cannot assume, *per se*, amount to be deposited in three months. When the decree did not prescribe time limit for depositing balance sale consideration and did not impose any conditions for enforcement of decrees, merely because there was a delay in seeking to deposit amount cannot be a ground to nullify decree validly granted. At this stage, it is also appropriate to note that in the affidavits filed in support of I.A.Nos.124 and 123 of 2000, the only plea raised by the judgment debtors in support of the prayer to rescind contracts was on premise that in terms of decrees, the decree-holder was required to deposit the amount within three months and since amount was not deposited for 25 months, judgment debtors are entitled to rescission of contract. No other plea was raised.

16. It is also appropriate to note that trial Court accepted plea of the decree-holder that trial Court has jurisdiction to extend time prescribed in the decree for specific performance, but fails to grant extension on the ground that applications seeking extension were filed after the time granted by the Court in EPs expired and, therefore, holds that E.As are not maintainable.

17. For the reasons aforesaid, the orders of the Court below are not sustainable and they are accordingly set aside.

18. (i) CRP Nos.4198 and 5056 of 2004 are allowed setting aside the orders of the Court below in I.A.Nos.124 and 123 of 2000, respectively;

(ii) Orders of the Court below in dismissing E.P.Nos.3 and 2 of 2000, respectively, are set aside and CRP Nos.6280 of 2004 and 45 of 2005, respectively, are allowed. The E.P.s are restored to file of Court below and the Court below is directed to proceed from the stage of depositing of balance sale consideration;

(iii) CRP Nos.4797 of 2005 and 6574 of 2004 are allowed setting aside the orders in E.A.Nos.17 and 16 of 2000, respectively, and balance sale consideration paid by the plaintiffs in terms of extension of time granted by the Court below is in satisfaction of two decrees; and

(iv) It is always open to the petitioners to file appropriate application before the Court below.

Miscellaneous petitions, if any, pending in these revision petitions shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

Date: 26.12.2017
rds/kkm/tvk

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