

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 5122 of 2017

Date of Decision: 13.11.2017

Lakhmi Chand (deceased) through LRs

.....Petitioners

Versus

M/s Big Jo's Estate Limited

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. V.K.Jindal, Senior Advocate with
Mr. A.K.Jindal, Advocate
for the petitioner.

Mr. Hemant Saini, Advocate
for the respondent.

ANITA CHAUDHRY, J

This petition has been filed by the petitioners aggrieved by the order dated 21.7.2017 (Annexure P-21) as the application filed under Section 28 of the Specific Relief Act seeking rescission of the contract was dismissed. The petitioners are also aggrieved of the order dated 21.7.2017 (Annexure P-22) vide which their objections to the execution petition had been dismissed.

The background facts in a nutshell are as follows:-

The plaintiff filed a suit seeking specific performance of the contract entered with Lakhmi Chand on 28.5.2005. The total consideration agreed was Rs. 3,10,20,000/- i.e. @ 48.00 lacs per acre. Out of the sale amount, a sum of Rs. 31,02,000/- was paid as earnest money. The last date for execution of the sale deed was agreed to be 27.2.2006. The sale deed was not executed. The plaintiff filed a suit on 24.3.2006 stating that he

the defendant did not turn up and he was ready to perform his part of the agreement.

The defendants who are the legal heirs of Lakhmi Chand took the plea that the suit was not maintainable and it was a case of suppression of material facts. The suit was not maintainable as the plaintiff was a limited company and there was no resolution in favour of the Director through whom the suit had been filed. It was pleaded that Lakhmi Chand had suffered a decree in their favour and he was not the owner of the property and the agreement was fabricated. It was pleaded that they were reserving their right to initiate criminal complaint against Manik Ram who was alleged to be a witness to the agreement and the agreement had been entered into after hatching a conspiracy and fraud.

After a complete trial, the lower Court held the consent decree to be sham. The suit was decreed on 13.6.2011.

The defendant aggrieved by the judgment, preferred an appeal which came to be dismissed. Thereafter the defendant approached the High Court with a Regular Second Appeal which was dismissed. The defendants then approached the Supreme Court and their Special Leave Petition was dismissed on 25.2.2016.

After the dismissal of the RSA, the execution petition was filed. The decree holder filed an application seeking permission to deposit the balance amount. At the same time the judgment debtor filed an application for rescission of the contract. The Executing Court passed an order dated 6.2.2016 on the application filed under Order XXI Rule 1(a) CPC allowing the decree holder to deposit the balance sale consideration

and also observed that it would not in any way affect the merits of the

execution or the objections raised by judgment debtor. The case was adjourned to 27.4.2016. On 27.4.2016, the decree holder made a statement that he was not aware of the order passed on 6.2.2016 and undertook to inform his client and deposit the amount. The Executing Court allowed the decree holder to deposit the balance sale consideration on or before 18.5.2016. The judgment debtor filed a revision in the High Court challenging the order dated 6.2.2016 (Annexure P-17) and 27.4.2016 (Annexure P-19). This Court vide order dated 27.4.2017 (Annexure P-20) disposed of the revision saying that there were no grounds to interfere but gave liberty to the Executing Court to decide the application filed under Section 28 of the Specific Relief Act. The Executing Court later dismissed the application filed by the judgment debtor on 21.7.2017. It is against that order that the judgment debtor has filed this petition.

The main ground for assailing the order is that the balance sale consideration was to be deposited within two months of the judgment and decree and the amount had been deposited in 2016 and there was no stay in the appeal pending before the District Judge and the Executing Court could not have allowed the decree holder to deposit the amount when they had moved an application for rescission of the contract. It was pleaded that the Executing Court had wrongly relied upon a judgment rendered in ***Kumar Dhirendra Mullick versus Tivoli Park Apartments (P) Limited 2004 (4) RCR (Civil) 763***. It was pleaded that conduct of the parties and the attending circumstances were required to be seen and there was no explanation why the decree holder did not deposit the balance consideration during the period interregnum and the Executing Court could not enlarge the time and there was no material to show that the sale consideration was

ever offered by the company or its authorized representative and since the relief under the Specific Relief Act was a relief based on equity, therefore, the Executing Court had gone wrong in dismissing their application and the objections.

Initiating the arguments, the submission on behalf of the petitioners was that the decree enjoined on the plaintiff to deposit the balance sale consideration within a period of two months from 13.6.2011 and though, they had filed an appeal but no stay was granted and during the pendency of the first appeal, the plaintiff did not approach the Court nor deposited the amount. The counsel has further submitted that after the dismissal of the first appeal they had filed the second appeal in the High Court where stay was granted. It was urged that the plaintiff had never approached them nor offered the amount and they had not placed on record any resolution to show that they had authorized any of its Directors or any other person to take necessary steps for deposit. It was urged that the plaintiff had filed an application for deposit of the amount and they had filed an application under Section 28 of the Specific Relief Act for rescission of the agreement as the plaintiff had not deposited the money within two months but the Executing Court dismissed the application and allowed the plaintiff to deposit the amount. It was urged that the Executing Court had gone wrong holding that Article 59 of the Limitation Act was applicable but this Article is applicable to suits and there is no time limit for filing the application under Section 28 of the Act. It was urged that there was a penal clause and since the deposit had not been made, therefore, the Court had no discretion left to extend the time. It was urged that in a decree passed by the Court in a suit for specific performance, the Court retains its

control over the decree even after the decree has been passed and this provision provides complete relief to both the parties in terms of the decree. It was urged that it was a case of laches on the part of the plaintiff in depositing the amount and the plaintiff could not explain why it took over two years in moving the application and it had no intention to comply with the judgment and decree and there are ample powers to annul the decree under Section 28 of the Specific Relief Act. Reliance was placed upon (i) ***Chanda (dead) through LRs versus Rattni and another 2007(2) R.C.R. (Civil) 534***, (ii) ***Bhupinder Kumar versus Angrej Singh 2009(4) R.C.R. (Civil) 249***, (iii) ***Kumar Dharendra Mullick versus Tivoli Park Apartments (P) Ltd. 2004(4) R.C.R. (Civil) 763***, and (iv) ***Sukhdev Singh versus Nirmal Singh 2016(2) R.C.R. (Civil) 298***.

On the other hand the submission on behalf of the respondent is that there was no penal clause and the defendants had no intention to abide by the decree and had filed the first appeal and even after the dismissal of the appeal they had filed Regular Second Appeal and stay had been granted to them and after the dismissal of the Regular Second Appeal, the plaintiff had approached the Executing Court and had filed an application expressing their willingness to deposit the amount but in the meantime, the defendants approached the Supreme Court where their appeal was disallowed. It was urged that time had been given upto 18.5.2016 to deposit the amount and the amount was deposited on 13.5.2016. It was urged that the petitioner had challenged the orders dated 6.2.2016 and 27.4.2016 in a revision which were dismissed. It was urged that the Executing Court allowed them to deposit the amount and those orders had been upheld in revision by the

the extension was upheld, therefore, their application under Section 28 of the Specific Relief Act became infructuous. It was urged that defendants are still not ready to accept it today and the position now is that the sale deed has been executed and warrant of possession has been issued and mutation had been entered and possession was taken on 20/21.10.2017. Reliance was placed upon (i) ***Kumar Dharendra Mullick versus Tivoli Park Apartments (P) Limited 2004 (4) RCR (Civil) 763*** (ii) ***Sardar Mohar Singh through Power of Attorney Holder, Manjit Singh versus Mangilal @ Mangtya 1997(2) R.C.R. (Civil) 296*** (iii) ***K. Kalpana Saraswathi versus P.S.S. Somasundaram Chettiar 1980 (1) SCC 630*** (iv) ***Abdul Shaker Sahib versus Abdul Rahiman Sahib and Anr. 1923 AIR (Madras) 284*** (v) ***Ramakutty Gupta versus Avara 1994(2) SCC 642*** (vi) ***Mahanth Ram Das versus Ganga Das 1961 AIR (SC) 882*** (vii) ***Tapan Kumar Chatterjee versus Kalyani Debi 1985 AIR (Calcutta) 243*** (viii) ***Bhujangrao Ganpati versus Sheshrao Rajaram 1974 AIR (Bombay) 104*** (ix) ***Bhutnath Das and others versus Sahadeb Chandra Panja 1962 AIR (Calcutta) 485*** (x) ***Bokarao and Ramgur Ltd. versus State of Bihar 1965 AIR (Calcutta) 308*** and (xi) ***Hungerford Investment Trust Ltd. versus Haridas Mundhra and others 1972 AIR (SC) 1826.***

It would be necessary to reproduce para 41 of the judgment of the first Court:-

“As a sequel to the findings of this Court on above issues, the suit of the plaintiff succeeds and is hereby decreed with costs. A decree for specific performance directing the defendants to get executed and registered the sale deed of the land as detailed and described in para No. 1 of the plaint in favour of the plaintiff after receipt of the balance sale consideration amount within a period of two months from today as per letter

and spirit of the agreement dated 28.5.2005 Ex. P2 is passed in favour of the plaintiff and against the defendant. In case of failure of the defendants, the plaintiff shall be at liberty to get the sale deed executed and registered through the assistance of the Court. Decree sheet be drawn accordingly and file be consigned to the records, after due compliance.”

A decree for specific performance has been described as preliminary decree. The power under Section 28 of the Specific Relief Act is discretionary and the Court cannot ordinarily annul the decree once passed by it although the power to annul the decree exists in Section 28 of the Specific Relief Act which provides for complete relief to both the parties in terms of the decree. It is equally settled that there is no automatic rescission of the agreement due to delay in execution of the sale deed unless there was a strict stipulation of time in the agreement and decree of specific performance. The vendor is entitled to enforce a decree for specific performance and the Court retains its full control over such decree till it is complied with. It is only when the vendor or vendee is shown to be not ready and willing to perform his part of the decree, can the other party ask for cancellation of the decree and the Court can refuse to execute the decree on the ground of unreasonable delay.

In the present case the decree was passed on 13.6.2011 in the suit bearing No. 243 of 2006. The agreement is of May 2005. The first appeal was decided on 9.9.2013. The regular second appeal was dismissed on 2.11.2015. Admittedly, there was a stay in operation when the matter was pending before the High Court. The defendants still not satisfied with the verdict, approached the Apex Court and the Special Leave Petition was decided on 25.2.2016. The plaintiff moved an application for deposit of the

balance sale consideration on 6.2.2016. It is now necessary to notice some judgments.

In **Kumar Dharendra Mullick's** case (supra) the Apex Court has held as under:-

24. In the case of *Abdul Shaker Sahib v. Abdul Rahiman Sahib & another* [AIR 1923 Madras 284] while construing section 35 of the 1877 Act (similar to section 28 of the 1963 Act) it has been held as follows:

"After the original judgment for specific performance it is the definite practice in England that all consequential relief by reason of any party failing to comply with the terms of the judgment must be sought by application to the Court by which the judgment was passed. Such applications are made by motion in the action showing that in England, after the original judgment the action is by no means ended but remains under the control of the same Court. If the default is made by the purchaser in paying the purchase-money there are several remedies open to the vendor. (1) He may on motion in the action obtain an order fixing a definite time and place for payment and delivery over of the conveyance and title-deed and can, after the expiration of that time, levy execution for the amount, if not paid. (2) He may apply by motion in the action for an order rescinding, not the judgment but the contract, and in order to succeed in such a motion he has to satisfy the Court that there has been a positive refusal to complete, which it may be observed in the present case, the respondent has certainly not proved. A similar right is given by Section 35 of the Specific Relief Act of 1877. (3) He can enforce his unpaid vendor's lien for the purchase-money and costs. (4) He can by motion in the action obtain an order for sale by the Court of the property when he will be at liberty to bid. The proceeds of the sale are paid into Court and the vendor gets his contract price,

interest and costs and the purchaser the balance, if any. Where the vendor is in default, the remedies are even more varied.

It would seem to be absurd to hold that the mere fact that a date of completion is fixed in the original decree puts an end to the action and that the control of the original Court expires on the expiration of that date and thus substitute in effect for all the known remedies stated above the simple expedient of treating the action and the decree as dead for all purposes and leaving the vendor in undisturbed possession of property which is not his..."

In the case of *M. Sakuntala Devi v. V. Sakuntala & others* reported in AIR 1978 A.P. 337 it has been held that though section 28 does not confer power on the Court to extend time, it recognizes its power to do so in cases of default in payment.

In the case of *K. Kalpana Saraswathi v. P.S.S. Somasundaram Chettiar* AIR 1980 SC 512 it has been held as follows:

"It is perfectly open to the court in control of a suit for specific performance to extend the time for deposit, and this court may do so even now to enable the plaintiff to get the advantage of the agreement to sell in her favour. The disentitling circumstances relied upon by the defendant-respondent are off-set by the false pleas raised in the course of the suit by him and rightly negatived. Nor are we convinced that the application for consideration and extension of time cannot be read, as in substance it is, as a petition for more time to deposit. Even so, specific performance is an equitable relief and he who seeks equity can be put on terms to ensure that equity is done to the opposite party even while granting the relief. The final end of law is justice, and so the means to it too should be informed by equity. That is why he who seeks equity shall do equity. Here, the assignment of the mortgage is not a

guileless discharge of the vendor's debt as implied in the agreement to sell but a disingenuous disguise to arm herself with a mortgage decree to swallow up the property in case the specific performance litigation misfires. To sterilize this decree is necessary equity to which the appellant must submit herself before she can enjoy the fruits of specific performance."

In ***Sardar Mohar Singh v. Mangilal*, 1997 (2) RCR (Civil) 296 (SC) : [(1997) 9 SCC 217]** it has been held that [section 28\(1\)](#) postulates that the Court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes *functus officio*. [Section 28](#) gives power to grant order of rescission of the agreement which itself indicates that till the sale deed is executed, the trial Court retains its power and jurisdiction to deal with the decree of the specific performance. Therefore, the Court has the 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, despite the application for rescission of the agreement/decreed.

In ***Vaiyapuri Reddy & another v. Sivalinga Reddiar* [(1970) 1 Madras L. J. 92]** it was held that since the Court has, under [section 28](#), the power to extend the period in cases where it has already fixed a period of deposit, it should be deemed to have the power to either fix a period or grant a fresh period to deposit, particularly in cases where no such period is fixed by the decree. In that case, the Court found that there were laches on the part of the plaintiff in depositing the amount and yet the Court gave thirty days time to the plaintiff to deposit the amount on the application made by the defendants for rescission of the contract.

In the case of ***V. S. Palanichamy Chettiar Firm v. C.***

918], the vendee decree holder filed application for execution of the decree of specific performance after five years. No reason was given for not putting the decree in execution for five years. Further, under the decree, there was a specific direction to the decree holder to deposit the balance purchase price within a stipulated period. Under the said decree, a further direction was given to the judgment debtor to execute the sale deed on the vendee's depositing the balance purchase price. It was a case of a final decree. In the execution application, the judgment debtor applied for rescission of the agreement of sale on the ground of default on the part of the vendee in failing to deposit the balance price. Under the above circumstances, the Apex Court held that the vendee, who had applied for extension of time to deposit the balance price, was not entitled to such extension. It was observed that in deciding the application under [section 28\(1\)](#), the Court has to see all the attending circumstances including the conduct of the parties. It found that there was no default on the part of the vendor judgment debtor.

In the case of *[Ouseph & another v. Devassy](#) reported in [AIR 2001 Kerala 104* the decree was silent as to the date by which the decree holder was to pay the balance price. Possession was with the decree holder. The purchaser deposited the balance before filing the petition for rescission of the agreement but after expiry of the period fixed by the decree. The decree holder applied for condonation of delay. The same was granted. In doing so, the Court observed that [section 28](#) enables the Court to extend the time which by itself implies that mere failure to deposit the balance need not result in rescission of the contract. On facts, it was found that the decree was silent as to the date by which the decree holder was to deposit the balance of the sale consideration. On facts, it was found that the decree

holder was in possession for 18 years and the vendor did not take any steps to get the balance sale consideration. The vendor failed to seek rescission for 18 years. The Court allowed the decree-holder, condonation of delay in depositing the balance consideration.

In ***Satya Jain (Dead) Through Lrs. and others v. Anis Ahmed Rushdie (Dead) Through Lrs. and Others (2013) 8 SCC 131***, it was held as under:

“38. The ultimate question that has now to be considered is: whether the plaintiff should be held to be entitled to a decree for specific performance of the agreement of 22-12-1970?

39. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.

40. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the [Specific Relief Act](#), 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasized that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief

of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in [P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi, 2007\(2\) R.C.R. \(Civil\) 290 : 2007\(2\) Recent Apex Judgments \(R.A.J.\) 82 : \(2007\) 10 SCC 231](#) and more recently in [Narinderjit Singh v. North Star Estate Promoters Ltd., 2012 \(3\) R.C.R. \(Civil\) 168 : 2012 \(3\) Recent Apex Judgments \(R.A.J.\) 84 : \(2012\) 5 SCC 712](#) may be usefully recapitulated.”

*In **Chithambaran Ponnappan versus Viswambaran and another AIR 2001 Kerala (205)** it was held as under:-*

4. *In the instant case, the justification given by the plaintiff for not making the deposit in time was the fact that the defendant himself took up the matter in appeal and on the dismissal of the appeal on 15.10.1992 even a second appeal was filed which was dismissed only on 15.02.1996. Thus, here is a case where the decree was not executable atleast till 15.02.1996. Where there is failure on the part of the decree-holder to deposit the purchase price or where there is failure to deposit other sums to comply with the terms of the decree, the judgment-debtor is not without any remedy. He has got a right, under [Section 28](#) of the Specific Relief Act, to seek rescission of the contract. In the Instant case, the revision petitioner has not resorted to the said power and as such the decree continues to be enforceable. Then what remains is whether the Court was justified in allowing extension of time.*

5. *The contention of the revision-petitioner, that the Court has no power to extend the time, has to fail in view of the specific mention in [Section 28](#) of the Act itself, that the power to rescind the decree would arise where there is failure on the part of the purchaser or lessee to pay the purchase money or other sum due under the decree "within the period allowed by the decree or such further period as the Court may allow". The power to extend the time is thus inbuilt in [Section 28](#) itself, and*

as such the revision petitioner cannot be heard to contend that there is no power on the part of the Court to extend the time.”

Applying the tests to the facts of the present case and on perusal of the decree, it can be said that there was no default clause. The decree did not provide any specific period for deposit of the balance amount. On the given facts detailed above and without burdening the record further it can safely be said that the decree holder never intended to abandon the contract. There was no positive refusal on its part to complete the agreement. It is the defendants who were avoiding the agreement and after the decreetal of the suit, they carried an appeal which was dismissed and still not satisfied they filed a Regular Second Appeal. Having failed in the High Court they approached the Supreme Court. Never did they express their readiness to complete their part of the agreement even after the decrees were passed.

Section 28 of the Specific Relief Act gives power to the Court to enlarge the time and to pay the amount or to perform the conditions mentioned in the decree. Discretion has been left to the Court to extend the time. It is true that the respondent did not explain everyday's delay but the reasons are obvious. The decree had been passed on 13.6.2011 giving two months time to the defendants to execute the sale deed but within a month they had filed an appeal and it was natural for the plaintiff to await the result but the non-deposit of the amount would not prove that it was never ready or willing to perform its part of the agreement. The plaintiff was perfectly entitled to ask for extension for deposit so that it could get advantage of the agreement. There are no disentitling circumstances produced by the defendants. They had raised false pleas before the Courts below which

were rightly negated. There is no evidence that the defendants were ever ready to execute a conveyance. The plaintiff was in no way responsible for the delay that has occurred. It has keenly participated in the proceedings to show its live interest to have the agreement enforced in law.

In the present case, the amount had been deposited and the sale deed has been executed and possession had been taken. It was open to the defendants to apply for rescission of contract on the expiry of period given to them under the decree, had they approached the Court showing their willingness to execute the agreement. They cannot be allowed to seek rescission of the contract after five years of the date of decree. The argument that the plaintiff should not have been allowed to get extension does not appeal and does not impress me. There is no merit in the petition.

The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

November 13, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes