THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.1949 OF 2012

ORDER:

Heard Sri M.V.S.Suresh Kumar learned Senior Counsel for petitioner and Sri N.Siva Reddy for respondents.

The legal representatives of sole plaintiff and sole defendant in O.S.No.6 of 2000 on the file of the I-Additional District Judge, Anantapur, are the parties in the instant revision. The revision petitioner is the legal representative of 1st defendant. Respondent Nos.1 to 4 filed I.A.No.58 of 2011 in the Court of Additional Judge, Anantapur to grant time to deposit the balance sale consideration in terms of the decree and the judgment dated 30.09.2005 in O.S.No.6 of 2000, the application was allowed on 04.01.2012. Hence, the Revision Petition at the instance of 2nd defendant/2nd respondent.

The application for enlargement of time was filed under Section 148 of the Civil Procedure Code (CPC). The counsel appearing for the parties have stated that Section 28 of Specific Relief Act, 1963 (for short 'the Act') is correct provision of law for relief of extension of time or similar reliefs. The quoting of wrong provision of law in I.A.No.58 of 2011 is not contested and arguments are advanced on scope, jurisdiction and discretion available under Section 28 of the Act.

The circumstances necessary for disposing of the revision are stated thus:

The parties are referred as plaintiff (s) and the defendant (s).

Makam Suresh Babu filed O.S.No.6 of 2000 for specific performance of the agreement of sale dated 31.10.1994 against Araveti Venkata Lakshmamma. The plaintiff agreed to purchase Ac.0-22¼ cents from the defendant at the rate of Rs.32,000/- per cent and the total sale consideration works out to Rs.7,12,000/-. The defendant received Rs.40,000/- as advance from the plaintiff. On 30.09.2005, O.S.No.6 of 2000 was decreed for specific performance of agreement of sale to an extent of Ac.0-19 cents and plaintiff was directed to pay balance sale consideration i.e., Rs.5,68,000/-(32000 x 19= Rs.6,08,000-Rs.40,000=Rs.5,68,000/-) within two months i.e., from 30.09.2015.

The operative portion of the judgment reads thus:

> "In the result, the suit is partly decreed holding that the plaintiff is entitled for the extent of Ac.0-19 cents only with the boundaries mentioned therein in the commissioner's report and *the plaintiff is granted two months time to deposit the balance amount and on such deposit the defendant is directed to execute the* registered sale deed in respect of Ac.0-19 cents of land at the expenses of the plaintiff and if the defendant failed to execute the registered sale deed within the two moths from the date of deposit, the plaintiff is at liberty to get it done through the process of law at the costs of the defendant. Both parties bear their own costs."
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> *(emphasis added)*

On the demise of sole plaintiff i.e., respondents 2 to 4 herein have come on record as the legal representatives of plaintiff. On 18.09.2010, the legal representatives of 1st plaintiff filed the instant application for enlargement of time granted in O.S.No.6 of 2000 to deposit the balance sale consideration. The case of the legal representatives of 1st plaintiff is that the judgment and decree dated 30.09.2005 directed deposit of Rs.5,68,000/- on or before 30.11.2005. The plaintiff, on 29.11.2005, applied for lodgment challan to deposit Rs.5,68,000/- as directed by the decree. The plaintiff was prevented from depositing the balance sale consideration in view of stay of all further proceedings in O.S.No.6 of 2000 was granted by this Court in C.R.P.No.3987 of 2005. The lodgment challan dated 29.11.2005 by reference to stay order was returned. One K.Venugopal, S/o Narayana Swamy filed I.A.No.68 of 2005 under Order I Rule 10 of CPC to come on record in O.S.No.6 of 2000. The said application for impleading K. Venugopal as defendant was dismissed by the trial Court. The said Venugopal filed C.R.P.No.3987 of 2005 against order in I.A.No.68 of 2005 and obtained stay of all further proceedings in O.S.No.6 of 2000. It is matter of record that C.R.P.No.3987 of 2005 was dismissed on 29.03.2006. Therefore, in the above circumstances, it is stated that the plaintiff though was ready to deposit the amount as directed by the Court in O.S.No.6 of 2000, he was prevented from complying with the direction to deposit balance sale consideration within two months from 30.09.2005. It is further alleged that the plaintiff did not contest C.R.P.No.3987 of 2005, therefore, the plaintiff was under the bona fide impression that the stay granted by this Court was continuing. It is averred that on 31.08.2009 the plaintiff was murdered, a case was registered and investigated in Crime No.277 of 2009. In the year 2008, the family of plaintiff was shifted to Hyderabad for education of children of plaintiffs 1 and 2. The 2nd plaintiff, on verification of record, has come to know the dismissal of C.R.P.No.3987 of 2005 and thereafter steps are taken for depositing the balance sale consideration. The Court did not accept the deposit tendered by plaintiff, therefore there is no default on the part of plaintiff and the subsequent delay is on account of two circumstances namely that the 1st plaintiff did not contest the revision, therefore, was unware of the dismissal of C.R.P., and secondly, the 1st plaintiff was murdered on 31.08.2009 without knowing the outcome of CRP. As legal representatives, it is stated that plaintiffs 2 to 4 are ready to deposit the balance sale consideration as per decree dated 30.09.2005. Hence, I.A.No.58 of 2011 was filed for enlargement of time for depositing the balance sale consideration.

The 2nd defendant/Revision Petitioner filed counter affidavit in I.A.No.58 of 2011 opposing the prayer for extension of time for deposit into Court on all fours.

The case of the 2nd defendant is that the decree for specific performance is a conditional decree. The balance sale consideration, if is not deposited within the time granted by the Court, the plaintiff loses all the rights under the decree and the decree cannot be enforced. The plaintiff is mandated by the decree in O.S.No.6 of 2000 to deposit the balance sale consideration on or before 30.11.2005 and admittedly, the balance sale consideration is not deposited within the time granted by the trial Court. Thus, the decree in O.S.No.6 of 2000 is unenforceable. The 2nd defendant denies the allegation *viz* ignorance of dismissal of C.R.P.No.3987 of 2005 pleaded by the 1st plaintiff. The stay granted in

C.R.P.No.3987 of 2005, if is considered as the reason for not depositing the amount on or before 30.11.2005, it is contended that the balance sale consideration should have been deposited within reasonable time after the disposal of C.R.P.No.3987 of 2005 on 29.03.2006. It is further contended that the plaintiff was alive up to 31.08.2009 i.e., beyond three years from the date of decree and judgment in O.S.No.6 of 2000. The plaintiff did not choose to deposit the balance sale consideration for the reasons known to plaintiff. Therefore, the question that the 2nd plaintiff expressing readiness and willingness to deposit the balance sale consideration is besides the point. Therefore, it is contended that there are no grounds for granting enlargement of time for depositing the balance sale consideration. The application, hence, is not tenable in law and no grounds are made out for accepting the prayer for extension of time granted in the decree in O.S.No.6 of 2000. The 2nd defendant prayed for dismissing the application.

The trial Court framed the following point for consideration.

Whether the petitioners can be granted time to deposit the amount at this stage?

After referring to the circumstances already noticed in this order, the learned trial Judge has taken note of the attempt of 1st plaintiff to deposit the amount on 29.11.2005 and held that the 1st plaintiff in fact made sincere efforts within the time stipulated by the Decree and the Judgment to deposit the balance sale consideration, but could not deposit on account of stay granted in

C.R.P.No.3987 of 2005, and the lodgment challan was returned by the trial Court. Thus, the plaintiff was prevented by stay order from depositing the amount on or before 30.11.2005. The plaintiff, since did not contest the CRP, might not be unaware of the result in C.R.P. It is, however, observed that the party to a *lis* is expected to know the stage or the outcome of pending proceedings. The murder of plaintiff is evidenced by FIR and the circumstances stated for not depositing the balance sale consideration within time or thereafter are considered sympathetically by trial Court. The trial Court referred to the decisions reported in 2002 (3) LS, 229 and 2010 (3) ALD 730 and through the order under revision has substantially condoned the delay of 2928 days in depositing the balance sale consideration. Finally it ordered for depositing the balance sale consideration immediately. Hence, the instant revision.

Mr.M.V.S.Suresh Kumar contends that the order under Revision suffers from patent illegality; the trial Court exercised the discretion arbitrarily and is reflected from the conclusion that the case for extending time is required to be considered sympathetically in the peculiar circumstances of the case. Therefore, the very approach of trial Court is vitiated and this Court in the exercise of revisional jurisdiction ought to correct these illegalities patent in the order under revision. He contends that Section 28 of the Act provides for rescission in certain circumstances of contracts executed for the sale or lease of immovable property and specific performance of such contract has been granted by a decree. Section 28(1) of the Act confers jurisdiction on Court to enlarge time for further period as the Court may allow for performance of obligation *viz* deposit of purchase money, therefore, the Court exercises equitable jurisdiction by keeping in view the totality of circumstances but not arbitrarily. Adverting to the facts of the instant case, he contends that the agreement of sale deals with sale of purchase of immovable property in Anantapur town. The trial Court ought to have taken note of escalating prices of immovable property at all the places and for no fault of vendor, the performance of obligation as directed under the decree if is accepted, the same amounts exercising without proper guidance and for no fault, the defendant/ vendor would suffer great prejudice and loss. The trial Court, after taking note of the defence set up by defendant/vendor, while disposing of O.S.No.6 of 2000 granted two months time from the date of judgment to deposit the balance sale consideration. According to him, the 1st plaintiff was prevented by the stay granted by this Court in C.R.P.No.3987 of 2005 in depositing the balance sale consideration, but the 1st plaintiff for all purposes was not prevented by any circumstance from 29.03.2006 i.e., when C.R.P. was dismissed, to 31.08.2009. According to him, the 1st plaintiff was alive for nearly three (3) years five (5) months, and during this period the 1st plaintiff chose not to deposit the amount. The murder of 1st plaintiff on 31.08.2009 does not grant excuse for coming with the instant prayer after lapse of several years. According to him, the Court while exercising the discretion is guided by all the relevant circumstances including the changed circumstances, escalation of prices etc., vis-à-vis the subject matter of litigation. The discretion must and should be exercised by taking note of applicable law, limitation and the laxity in filing application by the plaintiff. According to him, the trial Court does not exercise absolute discretion and jurisdiction to extend time for deposit particularly by referring to sympathetic circumstances. The jurisdiction to extend the time under Section 28 of the Act is unavailable and the power available under Section 28 of the Act to extend the time for complying with the condition imposed in the decree, this power is exercised within the four corners of law. According to him, in situations like this the Court exercises jurisdiction in equity and, therefore, the equitable jurisdiction is exercised without subjecting the contesting party to hardship, loss or prejudice. He prays for setting aside the order dated 04.01.2012 and also allow the revision. He relies on decisions reported in ABDUL SHAKER SAHIB v. ABDUL RAHIMAN SAHIB AND ANOTHER[1], V.S.PARANICHAMY CHETTIAR FIRM v. C.ALAGAPPAN AND ANOTHER[2], BHUPINDER KUMAR v. ANGREJ SINGH[3], ALI JAFFAR v. V.VENKAT REDDY[4] and V.S.PARANICHAMY CHETTIAR FIRM v. C.ALAGAPPAN AND ANOTHER[5] for the proposition that the power under Section 28 is examined on sound legal principles, without room for assuming the discretion in favour of one party and the detriment of another party.

Mr.Suresh Kumar finally contends that the point formulated for decision by the trial Court is incorrect and assumes the plaintiff's entitlement for enlargement.

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[1] 1987 (2) ALT 229
[2] (1999) 4 SCC 702
[3] (2009) 8 SCC 766
[4] 2012 (3) ALT 202
[5] (2017) 11 SCC 57

According to him, the point for consideration ought to be whether the application for extension of time at this length of time is maintainable in law and whether the plaintiff is entitled for enlargement of time or not? According to him, in matters of commercial importance, the Court ought not to have based its conclusions on sympathy in extending time lines, which are otherwise very material for timely compliance by a party.

Per contra, Mr.N.Siva Reddy contends that the facts and circumstances of the case are singular and the power to enlarge time is exercised by keeping in view the peculiar circumstances of the case, therefore the contentions otherwise made are untenable. According to him, the 1st plaintiff by applying for lodgment challan on 29.11.2005 has obeyed the time limit stipulated by the trial Court in the decree and judgment dated 30.09.2005. Therefore, the readiness and willingness to pay balance sale consideration of Rs.5,68,000/- is substantially established in the case on hand. The stay granted in C.R.P.No.3987 of 2005 practically prevented the 1st plaintiff from depositing the balance sale consideration. Therefore, according to him, firstly there is no default on the plaintiff and secondly, the default in depositing the amount is due to circumstances beyond plaintiff's understanding. It is further contended that the 1st plaintiff, since has not contested C.R.P.No.3987 of 2005, the plaintiff was not aware of dismissal of C.R.P on 29.03.2006. He concedes that the plaintiff died after 3 years 5 months from the date of disposal of C.R.P. The inaction in moving the matter, if any, will have to be treated as bona fide but not indifference on the part of plaintiff or his legal representatives to pay the balance sale consideration. Therefore, though the trial Court used the expression 'sympathetically', still the discretion for enlargement of time is exercised by referring to hard and undisputed circumstances of the case on hand. Therefore, he contends that this Court, in its discretion under Section 115 of CPC, ought not to re-examine and interdict the order of the trial Court, in the absence of patent infirmity or illegality pointed, which goes to the root of jurisdiction of the trial Court. He next contends that the defendants if are of the view that the plaintiff committed default, the defendant ought to have applied for rescission of the contract under Section 28 of the Act. The defendant since did not apply for rescission, the obligations created through the decree and judgment dated 30.09.2005 would subsist. According to him, the contention of defendant that the decree for specific performance has become inexecutable with the default in depositing the balance sale consideration, is against well established precedents that a decree for specific performance is in the nature of a preliminary decree and till the reciprocal promises are completed, the Court has jurisdiction. According to him, the decree crystallized rights and obligations of the parties and the prayer in I.A.No.58 of 2011 is to grant time for discharging the obligation fastened by the decree. He contends that in the absence of an application for rescission by the defendants, the discretion exercised by the trial Court is within its jurisdiction and no exception can be taken. According to him, the word 'may' under Section 28 of the Act will have to be read as 'shall'. For the proposition, the defendant must ask for rescission of the contract, he places strong reliance on the decisions reported in ABDUL SHAKER SAHIB v. ABDUL RAHIMAN SAHIB AND ANOTHER[6]; METTA RAMA BHATLU V. METTA ANNAYYA BHATLU AND OTHERS[7] and for the proposition the word 'may' to be read as 'shall' in SMT. VATSALA SHANKAR BANSOLE v. SHRI SAMBHAJI NANASAHEB KHANDARE AND ANOTHER[8].

I have perused the record and noted the submissions of learned counsel appearing for the parties.

The point for consideration is whether the prayer in I.A.No.58 of 2011 is maintainable; whether the plaintiffs have made out case for granting the extension of time for depositing the amount as directed in O.S.No.6 of 2000 and whether the Court in exercise of power under Section 28 of the Act can direct refund of consideration received under the suit agreement.

<u>Section 28 of the Act reads thus</u>:

> 28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—
> (1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or *<u>other sum which the court has ordered him to pay</u>*, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

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[6] AIR 1923 Madras 284
[7] AIR 1956 Madras 144
[8] AIR 2003 Bombay 57

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court".

A few binding precedents on Section 28 of the Act are adverted to before answering the point for consideration.

In ABDUL SHAKER SAHIB case (1 supra) the Division Bench while considering the effect of non-compliance with the condition stipulated by the Court and also the nature of decree for specific performance held as follows:

> "Where plaintiff was given a decree for specific performance of a contract to sell on condition of his

paying a certain amount to defendant within a specified time.

Held, the decree is in the nature of a preliminary decree, the Original Court keeping control over the action and having full power to make any just and necessary orders therein, including in appropriate cases the extension of the time. The vendor may either file a fresh suit for rescission of the contract or may, in the same suit, apply to the Court to rescind the contract. *The contract is not determined by mere failure of the plaintiff to pay the amount within the specified time*. Though certain persons entitled to the benefit of the contract refused to join the plaintiffs in the suit and have joined by them as defendants, the decree for specific performance can be granted.

Persons who desire the assistance of the Court in obtaining equitable relief must come quickly. In each case is it a question to be decided on the facts whether the delay on the part of the plaintiff is such that the Court ought not to exercise its powers". *(emphasis added)*

In METTA RAMA BHATLU case (7 supra), Phillips, J was determining whether the Court can enlarge the time stipulated in the decree and if so the manner in which the discretion could be exercised held as follows:

"As an order for specific performance of a contract for transfer of immoveable property is in the nature of a preliminary decree and as the Court does retain power to make any stipulation it thinks fit with reference to the performance that power extend time vests in the Court which actually passes the order for specific performance although it is an appellate Court.

In considering whether time should be granted it has to be remembered that the delay need not be explained so minutely in a case of this sort as in a case, for instance, under the Limitation Act, where it is sought to excuse a bar of limitation. Delay in such a case should be looked at more leniently than in a case of limitation".

To the same effect is the decision of Bombay High Court in SMT. VATSALA SHANKAR BANSOLE case (8 supra) and held as under:

> In Ramankutty Gupta v. Ayara , the Apex Court has in no uncertain terms held that after passing the decree for specific performance, the Court does not cease to have jurisdiction in the suit but retains the control over the decree even after the decree has been passed. It is further held that it is open to the Court to exercise the powers under Section 28(1) of the Specific Relief Act either for extension of time or for rescinding of contract. In the said case, the plaintiff had deposited the amount after expiry of the period fixed by the Court under the decree for specific performance of agreement. The Apex Court while holding that the application for extension of time for payment of balance amount of consideration can be filed in the Court of the first instance as well as in the appellate Court, has observed that, "It is to be seen that the procedure is hand maid for justice and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve substantial justice. Therefore, technicalities would not stand in the way to subserve substantive justice."
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> ...... Undoubtedly, in terms of Order 20, Rule 12A of C.P.C. while passing such a decree, the Court has to specify the period for payment of consideration amount under the agreement. At the same time, as observed by the Allahabad High Court in the matter referred to above, the Section 35 of the Specific Relief Act, 1877, which was in force then, indicated that in event of a party to a decree for specific performance being in default, another party could either file a suit for recession of the contract on which specific performance was granted or he could apply to the Court which would then rescind the decree. Section 28 of the Specific Relief Act, 1963 provides for certain steps to be taken by the Judgment debtor in a decree for specific performance of the agreement pursuant to the failure on the part of the decree holder to perform his obligation under the decree. Considering these provisions of law, Nagpur High

Court as well as Madras High Court have clearly ruled that the decree for specific performance of a contract for sale, has to be in the nature of a preliminary decree, and therefore, the Court does not become functus officio after passing such a decree as is fully empowered to extend the period fixed under the decree for deposit of the money by the decree holder. This view is confirmed by the Apex Court in K. Kalpana Saraswathi's case (supra). Considering the said decision of the Apex Court along with the provisions of Order 20, Rule 12A of C.P.C. and other decisions particularly in the matter of Ramankutty as well as Hungerford Investment Trust it is to be held that decree in a suit for the specific performance has to be in the nature of preliminary decree.

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Undisputedly, in the case in hand, the time granted to the decree holder/petitioner to deposit the balance amount was of one month from the date of the decree. The application filed for extension of the time apparently discloses that the petitioner was ill for about 15 days prior to the filing of the application and, therefore, she prayed for extension of one month's time to pay the balance amount. The time was apparently granted under the decree to facilitate the petitioner to make payment of the balance amount, and in terms of Order 20, Rule 12A, it is necessary for the Court to grant the time to pay the balance amount while decreeing the suit for specific performance. It should be always remembered that the final end of law is justice, and so the means to it too should be informed by equity as has even ruled by the Apex Court in K. Kalpana's case (supra). Being so, merely because there was failure to pay the said amount within one month and the extension was asked for only for one month, it was not a case of the petitioner being a persistent defaulter. Besides the time having been granted for the benefit of petitioner to enable her to deposit the balance amount, she could not have been denied the fruits of the decree in her favour merely on account of few days delay in making payment of balance amount.

18. Before parting with the matter it is necessary to take note of the decision of the learned single Judge in Bhujangrao Ganpati v. Sheshrao Rajaram reported, in , though both the parties have made no reference to the said decision. The said decision was passed following an un-reported decision of the Division Bench of this Court in Civil Appeal No. 3964/1958 dated 19-8-1959 and referring to that of the Apex Court in Mahanth Ram Das v. Ganga Das, . The Apex Court in the said case has ruled that Section 148 of C.P.C. empowers the Court to deal with the events those might arise subsequent to an order for the purpose of enlarging the time for payment even though it had been peremptorily fixed, but also observed that such procedural orders, though peremptory (conditional decrees apparent) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estope the Court from taking note of events and the circumstances which happen within the time fixed. Considering the said ruling of the Apex Court, the learned single Judge held that "it is, therefore, quite clear that whilst laying down, in effect, that Section 148 must be liberally constructed, the Supreme Court has excluded from its ambit conditional decrees like the one in the present case." It is to be noted that in the case before the learned single Judge, the time specified for payment of amount in the decree for specific performance had already expired and a request for extension of the said time was rejected by the lower appellate Court. In view of provisions of law contained in Order 20, Rule 12-A of CPC, and the decision of the Apex Court in K. Kalpana Sarawathi (supra) and Ramankutty Guptan's (supra), which were delivered subsequent to the decision in Mahant Ram Das's case, it is apparent that the law as regards the nature of decrees in suit for specific performance is well settled and it is to be held that the settled law now is that mere specification of time to pay the amount and observation therein that in case of failure to pay amount within the specified time, the suit would stand dismissed, that would not render such a decree either to be conditional or final decree and, therefore, the decision of the learned single Judge in Bhujangrao Ganpati's case is no more a good law and is not binding upon this Court in view of the above referred Supreme Court decisions which have

been delivered subsequent to the said decision in Bhujangrao Ganpati's case (supra), and the same being on the point in issue.

A Division Bench of this Court in CHERUKURI VENKATA RAO v. BRAHMOJOSYULA BALA GANGADHARA SHARMA AND OTHERS[9]' considered the ambit of sub-section (3) of Section 28 of the Act and also the reasonable extension for performance could be considered and held as follows:

"We may point out at the outset that the filing of an execution petition by the plaintiff for directing defendants 1 & 2 to execute a sale deed was really unnecessary. No execution petition as such is necessary for the said purpose after the coming into force of the Specific Relief Act, 1963, sub-section (3) of Section 28 empowers the Court to direct not only the execution of sale deed in pursuance of a decree for specific performance, but also to direct delivery of possession, and to pass all other necessary and ancillary orders in the same suit".

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Treating the petitioner's application as E.P. too does not mean automatically that since it is filed within twelve years, it ought to be ordered automatically. Can it be said that inasmuch as the decree did not prescribe the time for depositing the balance consideration, it is open to the purchaser to deposit at any time within twelve years? Cannot the concept of 'reasonable period' imported in such a context? This is the question that we have to answer. On this question it is well to remember that the relief of specific performance is an equitable remedy. Indeed, the Specific Relief Act itself is based upon equity, fair play and good conscience. It has been held by the Supreme Court in H.I. Trust vs. Haridas Mundra (AIR 1972) SC 1826) that the contract between the parties is not extinguished by the passing of a decree for specific performance, and that the contract subsists notwithstanding the passing of the decree. The purchaser cannot, and should not be allowed to take unfair advantage of the situation. _He must act with reasonable diligence. The application for execution of the sale deed and/or for delivery of possession, whether by way of an E.P. or an application under Section 28(3) must therefore be made within a reasonable time_. What is 'reasonable time' is a question of fact to be decided in the facts and circumstances of a given case. No hard and fast rule can be enunciated in that behalf. However, it may be borne in mind that the period of limitation prescribed by the Limitation Act for enforcing an agreement of sale is three years from the date fixed for the purpose, or, if no such date is fixed, when the plaintiff has notice that performance is refused; (Art.54). _The said period must be treated as the outer limit, generally speaking. Indeed, it should be much sooner_".

[9] 1987(2) ALT 229

The Apex Court in BHUPINDER KUMAR case (3 supra) examined the nature of decree for specific performance and the power of court under Section 28 of the Act and held as follows:

"The following questions arose for consideration before this Court:

(i) Whether the Court has power to extend the time in favour of a decree holder to pay the balance amount/perform conditions as mentioned in the decree for specific performance?

(ii) Whether the appellant had shown sufficient and reasonable ground for extension of time?

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In K. Kalpana Saraswathi v. P.S.S. Somasundaram Chettiar : (1980) 1 SCC 630, this Court has held that the court has power under Section 28 of the Act to extend time for making deposit. The following conclusion in para 4 is relevant:

> "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 offset 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, 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 sterilise this decree is necessary equity to which the appellant must submit herself before she can enjoy the. fruits of specific performance".

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

In Kumar Dhirendra Mullick and Ors. v. Tivoli Park Apartments (P) Ltd. : (2005) 9 SCC 262, this Court, after analyzing earlier decisions, has concluded that:

> "when the court passes the decree for specific performance, the contract between the parties is not extinguished. The court does not lose its jurisdiction after the grant of the decree for specific performance nor does it become functus officio. The decree for specific performance is in the nature of a preliminary decree, and the suit is deemed to be

> pending even after the grant of such decree. Hence, the Court retains control over the entire matter even after the decree. 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 specific performance. Therefore, the court has the power to enlarge the time in favour of the decree-holder to pay the amount or to perform the conditions mentioned in the decree for specific performance.

It is clear that Section 28 gives power to the court either to extend the time for compliance of the decree or grant order of rescission of the agreement. These powers are available to the Trial Court which passes decree of specific performance. In other words, when the court passes the decree for specific performance, the contract between the parties is not extinguished. To put it clear that the decree for specific performance is in the nature of preliminary decree and the suit is deemed to be pending even after the decree. Sub-section 1 of Section 28 makes it clear that the court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes functus officio. On the other hand, Section 28 gives power to the Court to grant order of rescission of the agreement and it has the power to extend the time to pay the amount or perform the conditions of decree for specific performance despite the application for rescission of the agreement/decree. In deciding application under Section 28(1) of the Act, the Court has to see all attending circumstances including the conduct of the parties.

As discussed earlier, though the Court has power and discretion to extend the time for fulfillment of the contract, in the case on hand, there is neither any material to show that the appellant was having the required money nor had he tendered or deposited the same as per the terms of the decree. *Both the Executing Court and the High Court found that there was no just and reasonable cause to extend the time for depositing the balance consideration*.

In the circumstances and the materials placed, we are satisfied that due to bereft of any acceptable material for extension of time, the Executing Court rightly declined to extend the time, consequently rescinded the contract as requested by the respondent judgment-debtor. The High Court, after analyzing all these aspects and finding that the decision arrived at by the Executing Court is just and equitable, dismissed the revision. We are in entire agreement with the said conclusion. Consequently, the appeal fails and the same is dismissed".

In PREM JEEVAN V. K.S.VENKATA RAMAN AND ANOTHER[10], the Supreme Court was considering failure of judgement debtor to apply for rescission and the effect of such failure on the validity of the decree. This binding precedent answers the two decisions relied on by Mr.Siva Reddy, viz., Abdul SHAKER SAHIB'S & METLA RAMA BHATLU case. I find it useful to advert the very question that was decided and also the ratio on the point.

> "The short question that arises for consideration in these appeals is: whether failure of the decree-holder in a suit for specific performance to make the requisite deposit within the specified time, will permit the decree-holder to execute the decree in the absence of extension of time?
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> xxxxxxxxxxx
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> xxxxxxxxxxx
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> There is no doubt that the above provision permits the judgment-debtor to seek rescission of a contract and also permits *extension of time by the court but merely because rescission of contract is not sought by the judgment-debtor, does not automatically result in extension of time*"

In V.S.PARANICHAMY CHETTIAR FIRM case (2 supra), the Hon'ble Apex Court held thus:

> "The agreement of sale was entered into as far back on February 16, 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

[10] (2017)11 SCC 57

> 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. 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 holder 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 decree-holder-respondents 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 decree holder-respondents and no extension of time be granted to them to comply with the decree.

The decision of the Apex Court in RAJENDER KUMAR V. KULDEEP SINGH AND OTHERS[11] case is directly on the facts-in-issue in the case on hand as well and illustrated the manner of exercise of equity, jurisdiction or discretion by the Court, which reads as follows:

> "Held, as in the case of determining whether a decree for specific performance is to be granted in the first place where equity weights with the court, so is the situation in *considering an application under S.28 SRA for rescinding the contract* – If the purchaser is entitled to claim compensation for deterioration, a fortiori it must be held that the vendor should also be *entitled to compensation for accretion in value of the subject-matter of the agreement for specific performance, in case the execution thereof is unduly delayed by the purchaser – S.28 provides that the court has to pass an order as justice of the case requires* – Court did not advert to one of the main contentions *regarding the escalation in land value by which the vendors has to incur liability of around four times the balance consideration by way of payment of unearned increase to the L&DO* so as to complete their obligation which arose only on account of the delayed execution of the decree – In the facts and circumstances of the case, it is very difficult to balance the equity and rights of both the parties in the background of their conduct as both plaintiff purchaser and defendant vendors were equally at fault - However, balancing equities purchaser directed to pay vendors the land value as per prevailing notified circle fate – Purchaser also held liable to meet the unearned increase to be paid to the L&DO – Equity.

[11] (2014) 15 SCC 529

Having regard to the facts and circumstances the High Court has not made an attempt to balance equity. As in the case of determining whether a decree for specific performance is to be granted in the first place where equity weighs with the court, so is the situation in considering an application under Section 28 of the Specific Relief Act, 1963 *for rescinding the contract*. Under Section 28 of the Specific Relief Act, 1963, a vendor is free to apply to the court which made decree to have the contract rescinded in case the purchaser *has not paid the purchase money or other sum which the court has ordered him to pay within the period allowed by the decree or such other period as the court may allow*. On such an application, the court may, by order, rescind the contract "*as the justice of the case may require*". It is now settled law that a suit for specific performance does not come to an end on passing of a decree and the Court which passed the decree retains control over the decree even after the decree has been passed and the decree is sometimes described as the preliminary decree. A decree for specific performance is a decree in favour of both the plaintiff and the defendant in the suit. Hence, the decree can be executed either by the plaintiff or the defendant. The plaintiff or the defendant is also free to approach the court for appropriate clarification/directions in the event of any ambiguity or supervening factors making the execution of the decree unexecutable.

In the instant case, converse is the position. If the purchaser is entitled to claim compensation for deterioration, a fortiori it must be held that the vendor should also be entitled to compensation for accretion in value of the subject matter of the agreement for specific performance, in case the execution thereof is unduly delayed by the purchaser. Section 28 of the Specific Relief Act provides that the court has to pass an order as the justice of the case may require. The parties on approaching the court must get the feeling that justice has been done in the facts and circumstances of the case, particularly in specific performance related cases, in terms of equity, equality and fairness. In the facts and circumstances of the case, it is very difficult to balance the equity and balance the rights of both the parties in the background of their conduct. No doubt there was no time fixed in the agreement for payment of the purchase money. That was also contingent on a series of obligations to be performed by the vendor and the duty of the purchaser to pay the purchase money was only thereafter. But closely analysing the pleadings and submissions, the purchaser had made an attempt, though belatedly, for getting the obligations performed even at his expense.

The trial court should have passed an equitable order while considering the application for rescission. Having regard to the fact that the decree was passed in 1984, it would be unjust and unfair to relegate the parties to the trial court at this distance of time. For doing complete justice to the parties, it is a case where the purchaser should be directed to pay the land value to the vendors as per the circles rate prevailing during 16-11-2011 to 5-1-2012."

The meaning of the words 'Equity Jurisdiction' and 'Equity Jurisprudence', in P. Ramanatha Aiyar's Advanced Law Lexicon reads thus:

<u>Equity jurisdiction</u>: A broad and flexible jurisdiction to grant remedial relief where justice and good conscience demands it, but without purporting to create rights, being limited to determining what rights the parties have and whether or in what manner it is just and proper to enforce them. A jurisdiction in two categories, the one dependent upon the substantive character of the right sought to be enforced, the other dependent upon the inadequacy of the legal remedy.

"The term equity jurisdiction does not refer to jurisdiction in the sense of the power conferred by the sovereign on the Court over specified subject-matters or to jurisdiction over the res or the persons of the parties in a particular proceeding but refers rather to the merits. The want of equity jurisdiction does not mean that the Court has no power to act but that it should not act, as on the ground, for example, that there is an adequate remedy at law.

"**<u>Equity jurisprudence</u>**" that portion of remedial justice which is exclusively administered by a Court of equity as contradistinguished from that portion of remedial justice which is exclusively administered by a Court of Common Law."

Maxims of Equity. Pervading the administration of equity in all its branches there appears a recognition of certain broad principles, so generally accepted and of such fundamental character, that they have become known as maxims. "They are not the practical and final doctrines of rules which determine the equitable rights and duties of individual persons, and which are constantly cited by the Courts in their decisions or judicial controversies. They are rather the fruitful germs from which these doctrines and rules have grown by a process of natural evolution." Having not anywhere been authoritatively declared as a code of rules, they have not been expressed precisely in the same form by different writers, and the treatises are not even in record as to what precepts should be dignified as maxims. Most of these maxims of equity have received general acceptance."

What follows from that precedes on the point is:-

(i) a decree passed in a suit for specific performance is in the nature of a preliminary decree;

(ii) Section 28 (1) of the Act provides for depositing or paying purchase money or such/other money as may allow; or allows the vendor or lessor to apply for rescission in certain cases of contract of sale of immoveable property where the specific performance has been granted;

(iii) Sub-section (2) enables the Court to pass orders on restoration of possession together with the profits, if any derived by vendee to vendor;

(iv) Sub-section (3) allows the Court to grant reliefs of execution of proper conveyance, delivery of possession etc.

(v) Sub-section (4) bars a separate suit for any relief which can be claimed in the same suit under Section 28;

(vi) Therefore, the Court which passed the decree does not become functous officio with the passing of decree for specific performance;

(vii) the power under Section 28 is discretionary and the court exercises equity jurisdiction.

(viii) the exercise of discretion under this Section must be equitable to both the vendor and the purchaser and on exceptional factors that justify such grant beyond the time specified in the decree. The further caution exercised by the Court in its discretion is that the extension of time is not a matter of course, or for protracted periods, which would result in parties acting with laxity or the relief if granted would be iniquitous to the contesting party.

(ix) the language of sub-section (4) of Section 28 of the Act reads thus:

> "No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be".

(x) Therefore, the default if any subsequent to the decree for specific performance resulting in extension of time or rescission of contract, is decided in the same application and having regard to the broad terms in which Section 28 (1) and (4) are worded, in an application either filed for extension of time or rescission of contract, the Court can exercise its equity jurisdiction under Section 28 of the Act and pass comprehensive orders which give quietus to the dispute without recourse to fresh suit."

Now, let me examine the order under revision within the scope of Section 115 of the Civil Procedure Code by keeping in view the legal propositions adverted to supra.

In cases like the one on hand, the Court in exercise of equity jurisdiction or discretion walks the path the circumstances have laid in the case. That means, the Court appreciates the circumstances pleaded and proved; thereafter applies the provision of law. In other words, exercise of discretion is guided by circumstances of the case and the Court ought not to enter into extraneous matters. Now, let me revert to the facts of the case.

The circumstances leading to filing of I.A.No.58 of 2011 are adverted to in detail in preceding paragraphs. This Court both for precision and to avoid repetition does not refer to these circumstances once again, but appreciates these circumstances chronologically and examines whether discretion the Court has been exercising judiciously or not.

On 30.10.1994, the suit agreement was executed between the 1st plaintiff and the 1st defendant. The suit was filed in the year 2000. On 30.09.2005, the suit was decreed for specific performance of an extent of Ac.0-19 cents instead of Ac.0-22¼ cents. As per the decree, the balance sale consideration of Rs.5,68,000/- is payable on or before 30.11.2005. This Court notices the tender of balance sale consideration of Rs.5,68,000/- made on 29.11.2005 by the plaintiff. The lodgment challan was returned by reference to the stay of all proceedings granted in C.R.P.No.3987 of 2005 by this Court. On 29.03.2006, C.R.P.No.3987 of 2005 was dismissed. On 31.08.2009, the 1st plaintiff died. On 18.09.2010, the application for extension of time is filed by the plaintiffs. Let me first examine the time spells namely the 1st time spell of two months which expired by 30.11.2005. The 1st plaintiff tendered the balance sale consideration by way of lodgment challan, but was unsuccessful on account of the stay granted by this Court in C.R.P.No.3987 of 2005. The excuse now offered by the plaintiff for not depositing the balance sale consideration is that the plaintiff did not contest C.R.P.No.3987 of 2005 and, therefore, was unaware of dismissal of C.R.P.No.3987 of 2005 on 29.03.2006. The defendants on the other hand contend that the plaintiff was represented by an Advocate and ignorance pleaded is only a convenient plea to show sufficient cause for the delay. The said dispute is verified by referring to the cause-title in C.R.P.No.3987 of 2005. The suit was decreed on 30.09.2005. On 03.10.2005, this Court granted stay of all further proceedings in O.S.No.6 of 2000. By the time the stay was granted, the suit was already decreed. The plaintiff ought to have been vigilant and taken steps for re-submitting the lodgment challan with a suitable reply but instead 1st plaintiff during his lifetime preferred to keep quiet. The 1st plaintiff if is desirous of completing the reciprocal promise, is expected to act with due diligence and avoid consequences arising out of non-performance including rescission of contract. It is because of this reason, it is immaterial whether plaintiff did contest the CRP or not. The voluntary non-participation by 1st plaintiff in CRP ought not to be treated as sufficient excuse.

Civil Rules Practice, Rules 157 to 159 (old), {corresponding to Rules 225 to 227 of the Civil Rules of Practice and Circular Orders 1980}, deal with deposit by a party into the Court. The effect of applying for lodgment challan within the time and the deposit of amount subsequent to the time granted by a Rule under CPC or the time granted by the Court in the decree has been considered by a Division Bench of this Court in AMBATI RAGHAVALU v. MOVVA VENKAMMA AND OTHERS[12]. The tender within the time is accepted as complying with the requirement of Rule or the condition stipulated by the decree, even if the amount could be deposited into Court by the party beyond the stipulated time. In the said circumstances, AMBATI RAGHAVALU case which has arisen under Order XXI Rule 85 of CPC has held as follows:

> "It is obligatory on the part of the auction purchaser to satisfy the conditions of Or.XXI Rule 85 and including General Stamp duty and any default in that behalf will result in the properties being re-sold.
>
> It is clear that rules 157 & 158 of Civil Rules of Practice insist on a challan being obtained before a payment could be made into court. Without a challan, a deposit could not be made.

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[12] 1962(1) ALT 168 (DB)

Thus, this is the first step in the process of making the deposit if the court does not issue the challan in spite of the application for it by the party before the expiry of the prescribed period, he is not in a position to fulfil the obligations cast by Rule 85. So, the non-observance of the terms of Rule 85 is not due to any default or negligence on his part but due to causes beyond his control. It is the inaction or the erroneous act of the court that is responsible for the inability of the party to deposit the money into Court. It is in such a situation that the maxim Actus Curia Neminem Gravabit i.e., an act of the Court prejudices no man comes into play. When a litigant is unable to comply with the requirements of a statute not because of his own fault but on account of the action or inaction of a court, the principle underlying that maxim is attracted.

A party is not entitled to resort to Rule 159 when the Bank or the treasury is working.

It is no argument to say that had he been diligent in applying for a challan long before, he would have obtained one and would have been in a position to comply with the requirements of that rule. A party expects a court to be diligent in the despatch of its business and not to be inactive. If really a party is disabled to perform the obligations owning to an act of the court, he should not be made to suffer the penal consequences flowing from the non performance thereof.

Filing an application for challan before the prescribed time was sufficient compliance with the mandatory provisions of

O. XXI Rule 85 CPC and hence O. XXI Rule 86 is not attracted".

The ratio laid down in AMBATI RAGHAVULU case could be applied to the case on hand if the Court ordered issue of lodgement challan or the lodgement challan returned by the Court was represented and the balance of sale consideration was deposited beyond reasonable time after 30.11.2005. The decision of this Court in ABMATI RAGHAVULU is distinguishable to the facts and circumstances of the case. Therefore, the application for lodgment challan cannot be treated as amounting to performing the direction as stipulated in the decree. Further, the Apex Court in RAJENDER KUMAR (supra) has held that the Court exercises equity jurisdiction and all aspects of the matter are considered on the day when the discretion is exercised. For this reason as well, the plaintiff could not establish the performance within the reasonable time.

Be that as it may, the plaintiff was alive up to 30.08.2009. That means, if we calculate the time from the date of decree and judgment, the plaintiff was alive for three years eleven months. If we take the starting period from the date of disposal of C.R.P., on 29.03.2006, the plaintiff was alive for 3 years 5 months. The application is filed nearly after five years from the date of decree and judgment and the trial court exercised its discretion through order dated 04.01.2012 on sympathetic consideration. In other words, substantial time for deposit of balance sale consideration is accepted nearly after seven years from the date of decree and judgment. At the time of exercise of the discretion these aspects are crucial and relevant one way or other.

As held by precedents the trial Court, even with the passing of decree for specific performance, retains the power to consider prayers connected with or incidental to the terms of decree. In other wards, the Court, which has passed the decree for specific performance retains control over the decree even after the decree has been passed. The challenge to the order under revision is that the discretion though is available to the Court, the discretion has been arbitrarily exercised and secondly such wide or unfettered discretion as held by Apex Court in RAJENDER KUMAR case (11 supra) is not available to the Court. The execution of the decree for specific performance arises if the obligations fastened in the decree are fulfilled. Therefore, for filing an application for extension, the period of limitation for execution of the decree is not the applicable act even for guidance. Mr.Suresh Kumar contends that in exercising the discretion under Section 28, the Court is required to see all the attendant circumstances including the conduct of the parties. At the bottom of exercise of discretion, justice must be done in terms of equity, equality and fairness. The exercise of discretion under this Section must be equitable to both the vendor and vendee; and in exceptional factors or circumstances that justify such grant beyond the time specified in the decree for paying balance sale consideration. The grant of extension for deposit as a matter of course or for protracted periods results in parties undertaking their obligations under the decree with a sense of latitude.

The consideration of discretion cannot and ought not to be accepted in case where the Court has to show maximum latitude in favour of applicant or Court accepts every circumstance stated by the party. Such discretion, if exercised, results in prejudice and hardship to the contesting parties. The Court while considering the request for extension of time can and also could direct refund of advance money received by the defendant if case for extension of time is not favourably considered. With a view to doing justice between the parties, the Court can also direct repayment with such terms and conditions as are just and proper.

Considering the case on hand, in the above analysis, this Court is of the view that the first effort made by 1st plaintiff to deposit the balance sale consideration, even if accepted as sincere and the plaintiff was prevented by the order of stay granted by this Court, the inaction thereafter does not relieve the plaintiffs the heavy burden fastened on them in showing that they were diligent etc. Further, the subsequent inaction of 1st plaintiff during his life time is inexplicable and the inaction is substantially for three years and five months. The plaintiff did not file an application either within reasonable period or at least within three years from the date on which the time granted by the Court expired or the C.R.P. was dismissed. The plaintiff was alive for 3 years 5 months from the date of disposal of the C.R.P. The application is now filed by the legal representatives of plaintiff nearly after five years. The extension of time for depositing balance sale consideration after lapse of five years requires deeper examination, and whether by exercising such discretion one party is subjected to hardship, irreparable injury etc. ought to be examined. In the fact situation of this case, the discretion exercised by the trial Court is more on sympathetic grounds. In the performance of obligation under commercial contract where sale and purchase of immovable property is involved, the Court ought not to extend time for deposit of balance sale consideration on sympathetic ground and secondly beyond the reasonable period accepted by the precedents or time stipulated in the decree. It is another thing if a party is prevented by an act or omission by opposite party or orders of competent Court. If the party is not prevented by circumstances from acting, the equity jurisdiction demands timely reflex or performance by plaintiff/purchaser for invoking the equity jurisdiction. If extension is considered and granted, then the conditions stipulated by the Court in the decree are not treated with sanctity. This Court hastens to add that if the delay in deposit or default in meeting the time limit is attributable to defendant/judgment debtor, then the consideration is different in exercising the discretion by the Court under Section 28 of the Act and the limitations referred to above are examined on case to case basis.

For the above reasons, this Court is of the view that the exercise of discretion for extension of time by the trial Court is illegal and untenable. The point is answered accordingly.

The counsel are also heard on the obligation of vendor to refund the advance amount received in the year 1994. In the case on hand, meagre advance of Rs.40,000/- was paid and received by revision petitioner's father/vendor. The sale consideration was deposited as per the order under revision on 06.01.2012. The affidavit filed by revision petitioner to refund Rs.50,00,000/- (Rupees fifty lakhs only) in full quits of all the obligations under the agreement dated 31.10.1994 and the decree and judgment in O.S.No.6 of 2000 is taken on file and accepted. The order in the revision is set aside.

The Civil Revision Petition is, accordingly, allowed and ordered as follows:-

(i) the order dated 04.01.2012 in I.A.No.58 of 2011 is set aside.

(ii) the affidavit of revision petitioner is accepted and revision petitioner deposits Rs.50,00,000/- (Rupees fifty lakhs only) to the credit of O.S.No.6 of 2000 on or before 03.02.2019.

(iii) On such deposit alone, the obligations in the agreement of sale dated 31.10.1994 read with decree dated 30.09.2005 stand rescinded and in default the rescission ordered by this Court shall be deemed to have been withdrawn, leaving it open to decree holder to work out the remedy by filing E.P.

(iv) On an application made for refund by plaintiffs, the trial court is directed to refund Rs.5,68,000/- together with interest accrued thereon to plaintiffs 2 to 4/respondents 2 to 4.

No order as to costs.

Pending miscellaneous petitions, if any, stand closed.

S.V.BHATT, J

Date: 03.10.2018

Note:
CC within two weeks
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B/o Dv/Prv