

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 29 of 2018**

- Smt. Nutan Verma W/o Shri Arun Kumar Verma Aged About 47 Years R/o 23/1, Nehru Nagar (West) Tahsil And District Durg, Chhattisgarh

---- Petitioner**Versus**

1. Dilip Chhatre S/o Arjun Das Aged About 52 Years R/o Basant Vihar, Near Puraina, Tahsil And District Raipur, Chhattisgarh
2. Suresh Ratnani S/o C.J. Ratnani Aged About 53 Years R/o 10, C.H.P.L. Dream Home, Junwani Road, Bhilai, Tahsil And District Durg, Chhattisgarh
3. Amit Ratnani S/o Suresh Ratnani Aged About 27 Years R/o 10, C.H.P.L. Dream Home, Junwani Road, Bhilai, Tahsil And District Durg, Chhattisgarh

---- Respondent

For Petitioner : Shri T.K. Tiwari, Advocate.
For Respondent No. 2 & 3 : Shri Prateek Sharma, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****25/06/2019 :**

1. This Revision Application is preferred against two separate orders passed by the Executing Court, first on 8.5.2017 and the other on 25.1.2018. In course of hearing on application for condonation of

delay in filing the Revision Application, learned counsel for the applicant/judgment debtor would submit that he would not press this Revision Application against the order dated 8.5.2017 by which the Executing Court has directed the decree holder to deposit requisite fee before the Sub Registrar for registration of the sale deed.

2. Restricting his argument to the other order passed by the Executing Court on 25.1.2018, Shri T.K. Tiwari, learned counsel for the applicant/judgment debtor, argued that the judgment debtor's application under Section 47 of the CPC should have been allowed by the Executing Court for the simple reason that once a particular date/time was fixed by this Court in Civil Revision No.89/2012, deposit of amount under decree has to be made within the said date and not later unless prayer for extension is made and allowed by the High Court. Reference is made to the law laid down by the Supreme Court in the matter of **Prem Jeevan Vs. K.S. Venkata Raman and another** {AIR 2017 SUPREME COURT 623}.
3. Brief facts necessary for disposal of this Revision Application are that a compromise decree pursuant to mediation was passed by the Executing Court on 2.5.2011 directing the plaintiff/decreed holder to make payment of sale consideration by 2.9.2011 for

registration of the sale deed. If the plaintiff desires to get the sale deed executed before the said date, they shall put the defendants on notice on which the defendants shall make available all necessary documents for registration of sale deed within 7 days. It was mentioned that necessary charges for registration of sale deed like stamp duty, registration fee etc. shall be borne by the plaintiff. It was also mentioned that the plaintiff has already received a sum of Rs.70 lakhs as advance, therefore, balance sale consideration of Rs.75,43,000/- shall be paid by the plaintiff/decree holder to the defendants/judgment debtor at the time of execution of registration.

4. Earlier also an objection under Section 47 of CPC was moved on the ground that decree holder has failed to adhere to the terms of decree by not making payment of the balance sale consideration by 2.9.2011, therefore, the decree has become inexecutable. This objection was dismissed by the Executing Court on 16.4.2012 against which the applicant/judgment debtor preferred Civil Revision No.89/2012 which came to be disposed of by this Court on 3.10.2012 directing the following as contained in para-4 of the order:-

“4. Considering the submissions made by the parties and Clause Nos. (2) & (4) of the decree passed by the Court below in Civil Suit No.6-

A/2011, this revision is disposed of with the following directions:-

a. The respondents are directed to prepare bankers cheque/ account payee bank draft of the decretal amount due for payment and intimate in writing to the petitioner and his counsel Mr. Shree Kumar Agrawal, Senior Advocate by affixing photocopy of the same on or before 29.10.2012.

b. The petitioner shall obtain documents necessary for registration/execution of sale deed on or before 29.10.2012 and intimating in writing to the respondents and their counsel Smt. Fouzia Mirza, Advocate. The petitioner shall also send copies of documents relevant for registration of sale deed to the respondents.

c. The respondents are directed to purchase stamps and submit before the Executing Court on or before 05.11.2012 for execution of the sale deed by the petitioner. The respondent shall also bear other charges to be incurred in registration/execution of the sale deed.

d. The petitioner is directed to prepare draft sale deed mentioning number of the banker's cheque/ account payee demand draft between 5th to 7th November, 2012 and execute the sale deed on 07.11.2012 in favour of the respondents.

e. The respondents are directed to handover original banker's cheque/account payee demand draft to the petitioner before the Sub Registrar concerned at the time of registration of sale deed.

f. In case of failure, the Executing Court is directed to execute the sale deed on 08th November, 2012.”

5. Challenging this order of the High Court, the judgment debtor moved SLP (Civil) No.34580/2012 in which an interim order staying the operation of the High Court's order was passed in his

favour on 26.11.2012. However, thereafter SLP was dismissed by the Hon'ble Supreme Court on 11.11.2013.

6. The present Application under Section 47 CPC was moved objecting to continuation of execution proceeding on the plea that in Civil Revision No.89/2012, the High Court had directed the plaintiff to purchase stamps and submit before the Executing Court on or before 5.11.2012 which he failed to do nor sought any extension from the High Court, therefore, the decree has been rendered inexecutable. It is also urged that in the matter before the Supreme Court in the case of **Prem Jeevan** (Supra), it has been held that when the decree holder fails to make payment of the decretal amount to the judgment debtor or make deposit in the Court in terms of the decree, the Executing Court cannot accept the amount later without there being any extension of time.
7. Shri Prateek Sharma, learned counsel for respondents 2 & 3 would submit that as on date the decree has already been executed and nothing remains to be done on the part of any of the parties, therefore, the Civil Revision has been rendered infructuous. He would submit that out of total sale consideration of Rs.1,43,00,000/-, the plaintiff had received a sum of Rs.39 lakhs, which is mentioned in the decree itself and thereafter

balance amount of Rs.61.43 lakhs was deposited in the Court in the form of banker's cheque on 29.10.2012, as directed by the High Court, but since the judgment debtor did not accept the amount, the same was to be deposited in the CCD which could happen only by issuance of cheque in the name of Executing Court. Therefore, the amount was again paid before the Executing Court on 8.11.2012 in the form of DD. It is also pointed out by showing the order sheet of the Executing Court recorded on 6.11.2012 that stamp for a sum of Rs.12, 35, 650/- has already been purchased on 5.11.2012 and the same is submitted to the Court. On the next date before the Executing Court i.e. on 7.11.2012, the judgment debtor informed the Executing Court that the SLP has already been preferred before the Hon'ble Supreme Court. However, in the absence of any interim order in favour of judgment debtor, the Executing Court proceeded in the matter and fixed the proceeding for registration of sale deed and submission of registration report by the Sub Registrar.

8. Learned counsel for the decree holder would also refer to the Executing Court's observation in the impugned order itself that no further action is required in the matter.
9. Be that as it may, this Court is required to deal with the legal

submission made by the applicant that once the High Court has fixed a particular date for deposit of charges for purchase of stamp, the said date cannot be extended by the Executing Court and thus, the decree has been rendered ineffective and inexecutable.

10. In the matter of **Prem Jeevan** (Supra), the Hon'ble Supreme Court has held that for a decree for specific performance of contract, the Court has to specify the period within which payment has to be made. In the absence of said time being extended, the decree holder could execute the decree only by making payment of the decretal amount to the judgment debtor or making deposit in the Court in terms of the said decree.
11. At this stage, Shri T.K. Tiwari, learned counsel for the applicant would submit that in the instant case, the High Court had directed the Executing Court to execute the sale deed on 8.11.2012. Therefore, in any case, the Executing Court is not entitled to execute the sale deed after 8.11.2012.
12. The subject decree between the parties is a compromise decree as a result of mediation and settlement. The judgment debtor has already accepted a sum of Rs.39 lakhs at the time of passing of the decree and a part of the remaining amount. The balance of Rs.61.43 lakhs was directed to be deposited by the High Court on

or before 29.10.2012, which was duly complied by the decree holder, but the judgment debtor did not accept the banker's cheque, therefore, bank draft was again deposited on 8.11.2012. The stamp was purchased on 5.11.2012 as directed by the High Court and thereafter stamp duty was to be informed to the decree holder by the office of Sub Registrar so that the amount is paid in the treasury by the decree holder.

13. The decree holder having deposited the entire amount of sale consideration before the Executing Court on or before 8.11.2012 and they having paid stamp duty for a sum of Rs.12, 35, 650/- on 5.11.2012, fruits of the decree cannot be denied to the decree holder. The objection that the sale deed was not registered on or before 8.11.2012, therefore, the date could not be extended by the Executing Court by accepting the registration fee and directing the Sub Registrar to present sale deed is erroneous and cannot be accepted for the reason that on 8.11.2012, the decree holder had paid both the amounts as directed by this Court towards payment of balance sale consideration and stamp duty. Deposit of registration fee is only a minuscule part for registration process which is performed by the office of the Sub Registrar. If this amount was not calculated by the office of Sub Registrar, there is nothing wrong with the Executing Court to direct

payment of registration fee and submission of registered sale deed. Since as on date registration is already complete and registered sale deed has been handed over to the decree holder, nothing remains before the Executing Court for execution of the decree. It is not a case where the Executing Court has extended time for execution of the sale deed.

14. It is now argued by the judgment debtor that under clause 4.c of the High Court's order, the decree holder was required to bear other charges to be incurred in registration/execution of the sale deed.

15. A close reading of clause 4.c of the High Court's order would indicate that the time frame for 5.11.2012 is mentioned where the decree holder is directed to purchase stamp, however, in the later part of the order when direction is only to the respondents for bearing other charges are mentioned, no time limit is fixed.

16. Present is not a case where any part of the decree remains to be executed. When the entire part on the part of the decree holder has been performed in terms of the decree, merely because minuscule part of the amount towards registration fee remains to be paid by the decree holder, the law would not assist the judgment debtor as she has already received the entire sale consideration.

17. It is not a case where there is any error of jurisdiction committed by the Executing Court or that if the impugned order is allowed to remain intact, it will occasion failure of justice.

18. Considering the facts and circumstances of the case, this Court does not find any substance in the Revision Application, which fails and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve