



C.R.P (MD) No.198 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) No.198 of 2019

and

CMP (MD) No.883 of 2019

1.P.Rajasekaran

2.Thilagavathi

... Petitioners

Vs

C.Kumar

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the judgment and decree passed in I.A.No.789 of 2015 in O.S.No.490 of 2009 dated 09.01.2018 on the file of the Principal Sub Court, Madurai by allowing this civil revision petition.

For Petitioners : Mr.H.Arumugam

For Respondent : Mr.J.Alaguram Jothi



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ORDER

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This Civil Revision Petition is filed as against the fair and decreetal order passed in I.A.No.789 of 2015 in O.S.No.490 of 2009 dated 09.01.2018 by the learned Principal Sub Judge, Madurai.

2.The petitioners are the defendants in the suit in O.S.No.490 of 2009, which was filed by the respondent for specific performance based on a contract entered into between the petitioners and the respondent. The suit was decreed on 29.11.2010 and the appeal filed by the petitioners before the I Additional District Court, Madurai in A.S.No.3 of 2011 was also dismissed on 23.08.2011.

3.By claiming that the respondent/ decree holder neither paid the decree amount nor deposited the amount before the Court, the petitioners/ judgment debtors filed an application in I.A.No.789 of 2015 to rescind the contract as per Section 28 of the Specific Relief Act, 1963, before the learned Principal Sub Judge, Madurai and it was dismissed by order dated 09.01.2022. Aggrieved over

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the same the civil revision petition is filed.

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4.The learned Counsel for the petitioners submits that the respondent / plaintiff has entered into a sale agreement dated 20.04.2006 with the petitioners to purchase the suit property for sale consideration of Rs.2,86,646/- within a period of four months. The plaintiff filed the suit and it was decreed by the trial Court on 29.11.2010 with a direction to the defendants to receive the balance sale consideration of Rs.46,146/- as per the sale agreement dated 20.04.2006 within a period of two months and thereafter execute a sale deed in favour of the plaintiff/respondent, failing which the plaintiff could get the sale executed through Court. Against the same, the defendant has filed appeal in A.S.No.3 of 2011 before I Additional District Court, Madurai.

5.The learned Counsel further submits that since the respondent/plaintiff did not pay the balance sale consideration as directed in the decree, the petitioners/defendants filed the above petition to rescind the contract as per Section 28 of the Specific Relief Act, 1963.



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6. Though the respondent claim that the notice dated 28.01.2011 sent to the petitioners/defendants was returned as left no instruction on 30.11.2011, the petitioners have filed an appeal on 20.01.2011, wherein the address of the petitioners/defendants showing their address at Dindigul. Therefore even before the respondent sending the notice, the petitioners/ defendants filed an appeal. The plaintiff should have paid the amount within the time. The direction to the defendants to receive the balance sale consideration and to execute sale deed against the defendant is a condition precedent for execution of the sale deed. Even if the decree does not fix any time limit for depositing of the balance sale consideration, the provisions of Section 28 of the Specific Relief Act, 1963 would apply.

7. The learned Counsel further submits that sending notice is not at all necessary and the plaintiff should have deposited the balance sale consideration within the time. Further the petitioners / defendants left from the address shown in the plaint. Even this is evidence from the appeal filed by the petitioners showing their present residential address at Dindigul and the defendants cannot



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be be found fault. Therefore, when the plaintiff has failed to deposit the amount, sending notice to the petitioners is of no use. The learned Counsel for the petitioners relied on the following decisions in support of his arguments:

1.Chanda (Dead) through Lrs Vs Rattni and Another, reported in 2007(14) SCC 26;

2.Raju Naidu Vs M.Kolandaisamy and another reported in 1998 (2) CTC 585

3.Narasimhan Vs Balammal reported in 1988(2) MLJ 211

8.The learned counsel for the respondent submits that the trial Court has not prescribed any time limit for depositing the amount. The respondent/plaintiff has also sent a notice to the petitioners / defendants on 28.01.2011 asking them to receive the balance amount and to execute the sale deed, but the same was returned on 30.11.2011 with an endorsement left no instruction. When the time is not prescribed in the decree, Article 137 of the Specific Relief Act will apply. Therefore the period of limitation shall be three years. These petitioners have filed this application under Section 23 of the Specific



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Relief Act, after a period of five years from the date of the decree by the trial Court. Therefore, the Court has rightly rejected the application filed by the petitioners.

9.The respondent has also relied on the decision of the Telengana High Court in **Razia Begum and others vs N.Hanumanth Reddy** and another reported in **2022 0 Supreme (Telengana) 56**, wherein it has been held as follows:

"27.Having regard to the above settled position and also the law laid down by the Hon'ble Supreme Court that an application under Section 28 can only be filed within three years from the date when the right to apply for recession accrues, as discussed above, this Court is of the opinion that the impugned order passed by the trial Court is in consonance with the provisions of the At and also the well established principles of law and there is no illegality or perversity in the impugned order warranting interference under Article 227 of the Constitution of India."



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10. In reply to the same, the learned Counsel for the petitioners submits that though the respondent claims that he has sent notice on 28.01.2011 and the same was returned on 30.11.2011 with an endorsement left no instruction, at the relevant point of time, the petitioners have preferred an appeal as against the judgment and decree dated 29.11.2010, before the I Additional District Court, Madurai in A.S.No.3 of 2011 on 20.01.2011 itself. This notice said to have been sent by the respondent/plaintiff on 28.01.2011 is, after the appeal was filed and it was returned on 30.01.2011 with an endorsement left no instruction. Even after the receipt of the summons in the appeal, he has not taken any step to seek extension of time to pay the balance consideration and also did not deposit the amount.

11. The learned Counsel for the petitioners submits that when the limitation is not fixed, then limitation has to be calculated as per Article 137 of the Limitation Act and the period is three years. However the time from which the period begins to run is, from the right of the party accrues and therefore Article 137 of the Limitation Act



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will not be applicable for this case. When the respondent/plaintiff can seek extension of time for depositing the contract amount by filing necessary application, he did not take any such step and therefore, he cannot rely on Article 137 of the Limitation Act.

12.This Court has considered the rival submissions and perused the materials placed on record.

13.The respondent herein filed the suit in O.S.No.490 of 2009 as against the petitioners for specific performance based on the sale agreement dated 20.04.2006. Total sale consideration as per the agreement is Rs.2,86,646/- and the period for execution is fixed as four months. The balance sale consideration to be paid is Rs.46,146/-. The petitioners / defendants have not denied the agreement. However the respondent was never ready to pay the balance amount within the time limit fixed. The suit was decreed on 29.11.2010 by the trial Court directing the defendants to receive the balance Rs.46,146/- as per the sale agreement dated 20.04.2006 within period of two months and to execute the sale in favour of the



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plaintiff, failing which the plaintiff can get the sale executed through the Court. The appeal filed by the petitioners in A.S.No.3 of 2011 was also dismissed by the appellate Court on 23.08.2011. The respondent/ plaintiff has not taken any steps to execute the orders passed by the trial Court in O.S.No.469 of 2009. Taking advantage of the same, the petitioners/ defendants has filed an application in I.A.No.79 of 2015 under Section 23 of the Specific Relief Act and the same was dismissed by the Court. Aggrieved over the same, the present civil revision petition is filed.

14.The suit was decreed on 29.11.2010. The petitioners filed the above appeal on 20.01.2011. The respondent has sent a notice dated 28.01.2011 asking the defendants to receive the balance sale consideration and to execute the sale deed, but the same was returned on 30.01.2011 as 'left no instruction'. Though the same was returned on 30.01.2011, even before the petitioners/defendants have filed an appeal. The respondent/ plaintiff received the notice in the appeal and the appeal was finally dismissed on 23.08.2011 after hearing the respondent.

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Even thereafter, the respondent/ decree holder has not taken any steps either to issue further notice or to execute the decree or to deposit the amount before the Court. The suit was decreed by the Court with a direction to the petitioners / defendants to receive the balance sale consideration as per the sale agreement, within a period of two months and to execute the sale deed in favour of the plaintiff and even permitted the respondent / plaintiff to get the sale deed executed through the Court. The respondent / plaintiff has not taken any steps to get the sale deed executed through court.

15.The Hon'ble Supreme Court in **Chanda (Dead) through LRS Vs Rattni and another** reported in **(2007) 14 SCC 26** has held as follows:

“Respondents entered into an agreement dated 25.3.1989 to sell land measuring 54 Kanals 3 Marlas to the original plaintiff-Chandu and received Rs.56,000/- as earnest money. The sale deed was to be executed on or before 15.6.1989 on payment of the balance sale consideration of Rs.1,39,000/-. Since the defendants did not execute the sale deed within the time specified



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in the agreement, the plaintiff-appellant instituted a suit on 24.1.1990 for specific performance of the agreement to sell. The suit was decreed ex parte on 1.5.1992 and it is common case of the parties that the decree has become final between them. Para 6 of the judgment of the trial court decreeing the suit reads as under:-

"For the reasons discussed above, the suit succeeds. A decree for possession of the suit land by way of specific performance is hereby passed in favour of the plaintiff and against the defendants with costs.

Defendants are directed to execute the proposed sale deed on payment of the balance sale price of Rs.1,39,000/- and get it registered within a period of two months from the date of this decree failing which the plaintiff shall be at liberty to get the sale deed executed and registered under Order 21 Rule 12 Code. Decree be drawn up accordingly and file be consigned to the record room."

The plaintiff did not deposit the balance sale price within two months from the date of the decree, and the defendants did not execute the sale deed. Plaintiff then moved an application on 10.10.1992 for the execution of



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the decree pleading therein that since the judgment debtors-respondents had failed to execute the sale deed the same was to be executed through court and that he (plaintiff) be allowed to deposit the balance sale price in court. During the pendency of this application, one Sarup Singh through his general attorney moved an application for being impleaded as a party in the execution proceedings on the plea that he was the owner in possession of the suit land on the basis of a decree dated 26.7.1991 which the defendants are alleged to have suffered in his favour. The executing court as per its order dated 14.8.1995 allowed the applicant to be impleaded in the execution proceedings. Sarup Singh then filed objections to the execution application which were dismissed as per order dated 10.9.1998 and it was held that he was not a bona fide purchaser of the suit land. On 8.9.1998, the judgment debtors-respondents moved an application under [Section 28](#) of the Specific Relief Act, 1963 (for short the 'Act') with a prayer that the agreement to sell dated 25.3.1989 be rescinded since the plaintiff-appellant had failed to deposit the balance sale consideration within the time allowed by the court. This application was contested by the appellant-



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plaintiff and on a consideration of the contentions advanced by the counsel for the parties the trial court as per its order dated 15.9.1998 allowed the application and rescinded the original contract dated 25.3.1989 holding that the plaintiff had failed to deposit the balance sale consideration within the time allowed by the Court. The execution application filed by the plaintiff-appellant was consequently dismissed. The said order was assailed in the revision petition filed before the High Court.

Before the High Court the stand of the appellant was that the order of the Trial Court was not sustainable as the court while decreeing the suit for specific performance had directed the defendants-respondents to execute the sale deed within two months from the date of decree and since they failed to do so the plaintiff was entitled to have the sale deed executed through the court. According to him, there was no specific direction given to the plaintiff to deposit the balance share consideration within stipulated period and, therefore, the Trial Court was not justified in rescinding the contract on account of non-deposit of the balance sale price by the plaintiff. It was also



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contended that several imposters were set up which disentitled the applicant from any relief. The High Court found that para 6 of the judgment of the Trial Court as quoted above, clearly indicated that the defendants had been directed to execute the sale deed within two months from the date of the decree on payment of the balance sale price of Rs.1,30,000/-. The same was, therefore, a condition precedent for execution of the sale deed. It was implicit in the direction that the plaintiff was required to deposit the balance consideration within a period in the first instance and it was only then defendants were required to execute the sale deed. Since the plaintiff did not deposit the balance amount, the order of court below was perfectly in order. Revision petition was accordingly dismissed.

Section 28 of the Act reads as follows:

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,



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within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, 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.

(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 the lessee as earnest money or deposit in connection with the contract.



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(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."



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16.The above decision of the Hon'ble Supreme Court squarely applies to the case on hand. As rightly pointed out by the learned Counsel for the petitioners the time shall be calculated from the right accrues on the petitioners as per Article 137 of the Limitation Act and by filing necessary application, the time can also be extended.

17.In view of the above, this civil revision petition stands allowed and the impugned order is set aside. No costs. Consequently connected miscellaneous petition stands closed.

02.09.2022

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To
The Principal Sub Judge,
Madurai.



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B.PUGALENDHI, J.

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