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C.R.P.(NPD)Nos.3211 to 3213 of 2017 & 300



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(NPD)Nos.3211 to 3213 of 2017 & 300 of 2020
and C.M.P.Nos.1993 of 2018, 1522 & 1523 of 2020**

R.Shankar

... Petitioner in all the
four CRPs.

Vs.

S.Manogari

... Respondent in all the
four CRPs.

Common Prayer in C.R.P.Nos.3211 to 3213 of 2017: Civil Revision Petitions are filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 11.04.2017 made in I.A.Nos.818 to 820 of 2017 in O.S.No.2788 of 2009 on the file of the learned XII Assistant City Civil Court, Chennai.

Prayer in C.R.P.No.300 of 2020: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.09.2019 made in E.P.No.3470 of 2017 in O.S.No.2788 of 2009 on the file of the learned X Assistant City Civil Court, Chennai.



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In all the CRPs.

For Petitioners : Mr.M.Rajaraman

For Respondents : Mr.J.Kamaraj

COMMON ORDER

C.R.P.(NPD)No.300 of 2020 has been filed against an order of the Executing Court directing the execution of the sale deed by the judgment debtor in favour of the judgment creditor.

C.R.P.(NPD)Nos.3211 to 3213 of 2017 arise against an order passed in I.A.Nos.818 to 820 of 2017.

2. The issues involved in all the Civil Revision Petitions are one and the same and hence, they are disposed of by this common order.

3. The primary application is I.A.No.818 of 2017, which was filed under Section 28(2)(b) of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act'). If that application is allowed, consequently, all the other applications will stand allowed. On the contrary, if that application is dismissed, other applications will also stand dismissed. The learned XII Assistant Judge, City Civil Court, Chennai,



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dismissed I.A.No.818 of 2017 and consequently, the other applications. Aggrieved by the same, C.R.P.(NPD)Nos.3211 to 3213 of 2017 have been preferred by the civil revision petitioner/defendant/judgment debtor.

4. The undisputed facts are, a suit O.S.No.2788 of 2009 for specific performance of an agreement of sale with respect to the superstructure of the property was filed by the respondent/plaintiff/judgment creditor on 03.04.2009. The said suit was decreed after contest on 22.12.2009. This decree was appealed against in A.S.No.239 of 2010 before the City Civil Court, Madras. The said Appeal Suit was also dismissed on 06.07.2012. Aggrieved by the concurrent findings, a Second Appeal was presented by the civil revision petitioner before this Court in S.A.No.972 of 2012. The Second Appeal was also dismissed on 17.10.2012.

5. Thereafter, an application was filed by the civil revision petitioner/judgment debtor in I.A.No.15947 of 2015 seeking to withdraw the amount deposited by the judgment creditor into Court i.e., to the credit of O.S.No.2788 of 2009. The said application was dismissed by the trial Court on 08.06.2016 holding that if the judgment debtor wants the purchase money deposited by the judgment creditor into Court, then he shall first execute the sale deed and thereafter, receive the amount. There is no dispute that as per the decree, the sale consideration was deposited into Court before the time fixed by the Court. The suit was decreed on 22.12.2009 and one



month's time was granted to deposit the amount. The said amount was deposited before one month's time i.e., 22.01.2010.

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6. Mr.M.Rajaraman, the learned counsel appearing for the civil revision petitioner/judgment debtor would submit that he took out an application under Section 28 of the Act, since the judgment creditor did not call upon the judgment debtor to come and execute the sale deed. According to him, Section 28 of the Act will cover instances not only as specifically stated under Section 28(1) of the Act, but would also include other circumstances as seen from the marginal notes in the statute. He would want me to extend Section 28 of the Act to cover instances where, even after the decree and after the deposit, the judgment creditor should have called upon the judgment debtor to execute the sale deed and in case, he does not do so, it shows that the judgment creditor is the defaulting party and therefore, Section 28 of the Act will apply. In support of his propositions, the learned counsel would refer to the following judgments:

(i) *Sunity Chandra Bose vs. Nil Ratan Sinha AIR 1985 Calcutta 282*

Division Bench;

(ii) *S.P.Gupta and others vs. President of India and others AIR 1982 SC 149;*

(iii) *Delhi Judicial Service Association, Tis Hazari Court, Delhi, vs. State of Gujarat and others AIR 1991 SC 2176;*



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7. The purport of the decree for a specific performance is not only a direction as against the judgment creditor to deposit the amount within the time, but also calls upon the judgment debtor to execute the sale deed. Unlike a pre-suit notice in a suit for specific performance where, the proposed plaintiff calls upon the proposed defendant to execute the sale deed, no such procedure is contemplated under the Code of Civil Procedure or under the Specific Relief Act, in situations post decree. It is expected that the judgment debtor will comply with the decree once the judgment creditor performs her part of the contract.

8. Reading the decree in this case, the duty on the judgment creditor was to deposit a sum of Rs.1,00,000/- on or before 22.01.2010. There is no dispute that the said amount was also deposited within the time granted by the trial Court. Therefore, the judgment creditor had performed her part of the contract. It was up to the judgment debtor to perform his part of the contract namely, execution of the sale deed. Without executing the sale deed, the judgment debtor wanted to withdraw the amount. On that ground, it was opposed by the judgment creditor stating that unless and until the sale deed is executed, he is not entitled to the amount. The learned trial Judge in I.A.No.15947 of 2015 dated 08.06.2016 passed an order and it reads as follows:

“Unless and until the petitioner/defendant executes the sale deed in favour of the respondent/plaintiff he is not entitled to withdraw the



amount of Rs.1,00,000/- . After executing the sale deed in favour of the respondent/plaintiff, the petitioner shall withdraw the balance sale consideration of Rs.1,00,000/- which is lying on the account of this Court.”

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9. This makes it clear that the Court had cast upon a duty on the judgment debtor to execute the sale deed, but till date, unfortunately, he has not done so. Being left with no other option, the judgment creditor has moved the Court and has shown her intention to put the decree into execution by filing E.P.No.3470 of 2017.

10. Mr.M.Rajaraman, would argue taking reliance upon the judgment of the Division Bench of the Calcutta High Court in the case of ***Sunity Chandra Bose vs. Nil Ratan Sinha AIR 1985 Calcutta 282***, that since the judgment creditor prevented the judgment debtor from withdrawing the amount, Section 28 of the Act would apply.

11. A careful reading of the judgment of the Division Bench of the Calcutta High Court cited supra shows that the defendant in that case was hard pressed for money to perform his daughter's marriage and therefore, took out an application for withdrawal of the amount. That was prevented by the plaintiff in the suit and therefore, the Court came to a conclusion that though the defendant was willing to receive the amount and proceed with the agreement of sale, it was the plaintiff, who prevented the performance of the contract. I should also note, it was not a situation



post the decree, but it was the situation, which arose pending the Appeal Suit. That fact makes a lot of difference between both the situations. As held by the Calcutta High Court, if the plaintiff had wanted the agreement of sale to be converted into a sale deed and when the defendant was ready to receive the amount, the plaintiff should have readily permitted the defendant to withdraw the amount and ensure that a sale deed is executed.

12. On the contrary, in this particular case, the judgment creditor had performed all that she had to do namely, filed a suit to convert the agreement of sale into a decree and thereafter, in compliance with the decree, also deposited the amount into Court. The judgment debtor need not have waited till filing of execution for the purpose of receipt of the amount. If the sale deed had been executed by the judgment debtor in favour of the judgment creditor and still the judgment creditor had opposed the withdrawal of the application, that would have certainly made her a party at default within the meaning of Section 28 of the Act. However, in this particular case, it is the judgment debtor, who is at fault by not executing the sale deed and receiving the amount, but wanted to put a cart before the horse by withdrawing the amount without execution of the sale deed.

13. A further aspect to be noted that it is not as if the judgment debtor did not challenge the decree of the trial Court. He tried out all the measures available to him.

He is rightly entitled to take all the reliefs that are available to him. Thereafter, it is



not open to him to turn around and say that it is the judgment creditor who should comply with the decree, he would not comply with the same.

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14. The second submission of Mr.M.Rajaraman is that the marginal note of Section 28 of the Act says that the Court has the power to receive the contract “under certain circumstances”. Section 28(1) only specifies one such circumstance and therefore, it should be expanded to the circumstances, which are not contemplated under Section 28(1). The power to direct a party to execute the sale deed is one based on equity. It is traceable to the equitable jurisdiction of the English Courts. The Court always retains control over the decree and if the circumstances present, whereby injustice will be caused to one party, if the decree for specific performance is enforced as it stands, then, the Court can always rescind the decree. I am not inclined to exercise that power to the petitioner in the present case, because as already premised, it is the judgment debtor who has been at fault, he did not comply with the decree, but pushed the judgment creditor to file an execution petition. Had he executed the sale deed as directed by the decree or atleast after the disposal of the Second Appeal and still the judgment debtor was insisting on to proceed with the proceedings, perhaps it might be a circumstance to look against the judgment creditor. But that is not the situation here. The judgment creditor did all that she can do, but the judgment debtor has been dragging on the matter from the date of disposal of the Second Appeal till date.



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15. In so far as the two authorities that the marginal note must be read to include the circumstances, one cannot quarrel with the said proposition for the simple reason as I have already pointed out, sitting as a Court of equity, this Court or the City Civil Court exercising the power of specific performance always retain the power to rescind a contract, when it is shown that the application of the decree as it stands is going to result in injustice to one party. If I were to rescind the contract in the present case, injustice will result only to the judgment creditor not to the judgment debtor. Apart from that, if I were to agree with Mr.M.Rajaraman, I will be rewriting the statute, which I am not willing to do so.

16. The learned counsel would submit that there is no stay of the Execution Petition, despite the same, the Executing Court has not proceeded further with the execution.

17. The failure to execute the sale deed is not a mistake of the judgment creditor, but lies elsewhere. I will not blame the judgment creditor for not getting the sale deed executed through the Court, for there is a lot of process involved and it does not solely lie on the doors of the judgment creditor. The delay in the Court proceedings cannot enure in favour of the judgment debtor. The Executing Court is requested to proceed with E.P.No.3470 of 2017 and complete the same within a period of four months from the date of receipt of a copy of this order.



18. With the above observation, all the Civil Revision Petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

1.XII Assistant Judge
City Civil Court, Chennai.

2.X Assistant Judge
City Civil Court, Chennai.



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C.R.P.(NPD)Nos.3211 to 3213 of 2017 & 300



V.LAKSHMINARAYANAN,J.

Kj

C.R.P.(NPD)Nos.3211 to 3213 of 2017
& 300 of 2020 and C.M.P.Nos.1993 of 2018,
1522 & 1523 of 2020

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