



C.R.P.(MD).No.711 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(NPD)(MD)No.711 of 2019

and

C.M.P(MD) No.4160 of 2019

C.Venkatesan

... Revision Petitioner/Petitioner/
Plaintiff

-vs-

1. Kaaliyathal @ Kaliyammal

2. V.Saanthamani

3. E.Ranjitham

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair order and decretal order in I.A.No.393 of 2018 in O.S.No.38 of 2010, dated 27.09.2018 on the file of the District Munsif Court, Palani.

For Petitioner : Mr.S.Meenakshisundaram
Senior Counsel
for Mr.V.Karthikeyan

For Respondents : Mr.M.P.Senthil



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ORDER

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The instant Civil Revision Petition has been filed by the petitioner under Section 115 of the Civil Procedure Code, against the fair and decretal order in I.A.No.393 of 2018 in O.S.No.38 of 2010, dated 27.09.2018 on the file of the District Munsif Court, Palani.

2. The short facts which give rise to the instant Civil Revision Petition are that the petitioner is the plaintiff before the trial Court. The petitioner/plaintiff has filed a suit for specific performance in O.S.No.38 of 2010, which was ultimately decreed on 14.10.2010, directing the plaintiff to pay the balance sale consideration before the Court within a period of one month. However, it appears that the plaintiff did not pay the balance sale consideration of Rs.5,000/- (Rupees Five Thousand only) as directed by the the decretal Court. However, he filed an application on 27.04.2018 for enlargement of time under Section 148 of C.P.C, in I.A.No.393 of 2018. The reason pleaded in the petition seeking for enlargement of time is that the mother of the petitioner/plaintiff was ill for a period of five years. Therefore, the ailment of his mother compelled him to take care of her, and that he took



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his mother to various hospitals for a period of five years, and that in the interregnum, there was sort of compromise talks, and that it was believed that the issue could be resolved through negotiation. In such a background, there was a delay of eight years.

3. However, the learned counsel for the respondents had strongly objected to the pleadings put forth by the plaintiff and it is pleaded in their counter statement that the very allegation in respect of the illness of plaintiff's mother and alleged negotiation is disputed by them. He further submits that the delay of eight years cannot be condoned at all and they further stated that the very sale agreement is nothing, but, a loan transaction. It is the specific submission of the respondents that the delay of eight years in paying the balance sale consideration would only probabalise the case of the defendants that the sale agreement was executed as security for a loan transaction and it is also submitted that the petitioner did not produce any records to prove the illness of his mother.

4. After considering the submissions made by the learned counsel on either side, the learned trial Judge, by his order, dated 27.09.2018, rejected the



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prayer for the enlargement of time sought by the petitioner on the ground that the petitioner did not produce any documents to prove the illness of his mother and that even as per Section 148 of C.P.C., the delay could be condoned only for 30 days. Further, the learned trial Judge has also relied upon the judgment of this Court, dated 03.02.1999, in (***V.S.Palanichamy Chettiar Firm Vs. C.Alagappan and another***) (1999 (4) SCC 702) and ultimately, dismissed the said application.

5. Aggrieved with the order of the dismissal, the petitioner has come up with the present revision petition. The learned Senior counsel appearing on behalf of the petitioner would contend that the trial Court which has granted the decree of specific performance, is competent to extend the time granted, under Section 28 of the Specific Reliefs Act. The learned Senior Counsel has also relied upon the judgment of the Hon'ble Supreme Court reported in ***1997(9) SCC 217 (Sardar Mohar Singh, through power of Attorney Holder, Manjit Sing Vs. Mangilal @ Mangitya)*** and would submit before this Court that till the sale deed is executed in the execution of a decree, the trial Court retains its power and jurisdiction to deal with the decree of the specific performance.



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6. The learned Senior Counsel further relied upon another judgment of the Hon'ble Supreme Court reported *in (2005) 9 SCC 262 (Kumar Dhirendra Mullick and others Vs. Tivoli Park Apartments (P) Ltd.,)* and would contend that the trial Court retains control over the entire matter even after the decree. He would also rely upon the latest judgment reported in *2020 (2) LW 897 (Surinder Pal Soni Vs. Sohan Lal (D) thru L.Rs.,)* and would submit that the trial Court is competent enough to extend the time for compliance of the decree or to rescind the agreement. Hence, the learned Senior Counsel prayed for interference on the ground urged in the petition and thereby, prayed to extend the time.

7. Per contra, the learned counsel appearing for the respondents would vehemently submit that the petitioner has not proved the alleged illness of his mother, apart from that, the very reason that the illness of the mother has caused delay to the petitioner is highly unbelievable and prayed to dismiss the application.



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8. In support of his case, he has also relied upon the following judgements:

- (i) 1988 (2) MLJ 211 [Narasimhan Vs.Ballammal],
- (ii) 1998 (2) CTC 585 [Raju Naidu Vs.Kolandaisamy and another
- (iii) 1999 (4) SCC 702 [V.S Palanisamy Chettiar Firm Vs. C.Alagappan and another]
- (iv) 2009 (8) SCC 766 [Bhupinder Kumar Vs. Angrej Singh]
- (v) 2013 (4) LW 626 [G.Kesavan Vs. B.C.Raman
- (vi) 2014 (2) LW 540 [Rajinder Kumar Vs. Kuldeep Singh and others
- (vii) M.Parimanam @ Parimana Konar Vs. T.Egammai
- (viii) AIR 2019 (SC) 4791 [Ravi Setia Vs. Madan Lal and others]

9. This Court has given anxious consideration to the submissions of the learned counsel on either side.

10. From the submission of the learned Senior Counsel and the precedents which that have been submitted before this Court and as per Section 148 of C.P.C and Section 22 of the Specific Relief Act, the trial Court undoubtedly has got the power to extend time. But, now, the issue is



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whether such power could be exercised in the case, in the available factual circumstances.

11. Before embarking in to the merits of the matter, this Court deems it appropriate to discuss the judgment relied on by the learned counsel for the respondents. In **1988 (2) MLJ 211 (Narasimhan vs. Balammal)**, the learned Single Judge of this Court has held that even when the decree has not specified the time, it is expected for the decree holder that, he should perform his part within a reasonable time. The relevant portion of the judgment in paragraph No.19 is extracted as follows:

“19. On the facts of this case, the respondent has not proved her readiness and willingness to perform her part of the contract within a reasonable time after the decree. Though the decree in the present case has not specified any time to deposit the amount, it was the duty of the plaintiff to have performed her part within a reasonable time. The time taken, viz., 3 years and odd cannot be said to be reasonable by any standard. Hence, the contract has to be rescinded as prayed for by the petitioner. The Court below is wrong in dismissing the application filed by the petitioner. The application filed under Section 28 of the Specific Relief Act will have to be allowed.”



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12. The learned counsel for the respondents also relied upon the judgment of the Hon'ble Supreme Court which was referred to by the learned trial Judge reported in **1999 (4) SCC 702 (V.S.Palanichamy Chettiar Firm Vs. Calagappan and another)**. It has been held that under Article 54 of the Limitation Act, when three years time is prescribed for filing a suit for specific performance, and when the provisions to grant specific performance of an agreement is fair and stringent, if the extension of time is granted the same would run contrary to the spirit of the agreement and also contrary to the Limitation Act.

13. The learned counsel for the respondents relied on yet another judgment of the Hon'ble Supreme Court reported in **2014 (2) LW 540 (Rajinder Kumar Vs. Kuldeep Singh and others)** and the relevant of paragraph Nos.24, 25 and 31, for ready reference the same is extracted as follows:

“24. Now we shall deal with the issue regarding the approach of the High Court in dealing with the application for rescission. Apparently, the purchaser-



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Kuldeep Singh was also not quite serious in pursuing the cause. Though the decree is dated 30.04.1984, the execution petition was filed only after six and a half years on 07.11.1990. No doubt, it was within the time prescribed by the law of limitation. But the efflux of time assumes importance and seriousness in the background of the escalation of price in real estate.

25. It is very strange that no serious steps have been taken by the executing court for almost a decade. While so, only on 24.04.1999, respondents 3 to 7 and 13 filed Application – IA No.4274 of 1999 in the suit for rescinding the agreement for sale. The main ground taken in the Application for rescission of the agreement was that the plaintiff/purchaser failed to deposit the balance consideration of Rs.12,60,000/-. It was also contended that between the date of decree in 1984 and the date of filing the Application for rescission, even the notified rates in land value shot up from Rs.2,000/- per square yard to Rs.13,860/- per square meter and the unearned increase would be around Rs.50,00,000/- and, thus, it would be highly unjust, unconscionable and inequitable to compel the vendors to make the payment of the unearned increase. It was also averred that the vendors were prepared to pay a reasonable compensation to the purchaser. The purchaser-Kuldeep



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Singh in response to the Application for rescission, stated that the court had not fixed any time for deposit of the balance amount, the balance amount was payable only on the execution and registration of the conveyance deed. He also contended that execution was possible only on permission from the L&DO on payment of unearned increase by the vendors and for which the vendors are at fault in not having taken any serious steps in completing their obligations under the decree; and that the purchaser had always been ready and willing to perform his part of the agreement.

31. Having regard to the facts and circumstances which we have discussed above, we are afraid the high Court has not made an attempt to balance equity. As in the case of a decree for specific performance where equity weights with the court so is the situation in considering an application u/s.28 of the Specific Relief Act, 1963, for rescinding the contract. u/s 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,



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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.”

14. The learned Single Judge of this Court, in the order passed on 20.03.2017 in **C.R.P(MD) No.122 of 2016, (M.Parimanam @ Parimana Konar Vs.T.Egammmai)** after analyzing various Supreme Court Judgments, ultimately, culled out principle emerged from various Judgment in Paragraph No.13. The same is extracted as follows:

“13. It is well settled by number of judicial pronouncements, a decree of specific performance is in the nature of preliminary decree. It is also well settled that;

(a) the Courts have power under Section 28 of the Specific Relief Act and Section 148 C.P.C., to extend the time to deposit the balance sale consideration even after expiry of time limit fixed in the decree;

(b) if no time limit is fixed in the decree, the decree-holder must deposit the balance sale



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consideration within a reasonable time;

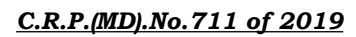
(c) the Courts have power to rescind the contract at the instance of judgment-debtor;

(d) extension of time to deposit is not automatic. The Court must consider all the facts and circumstances, while passing order either extending or rejecting the request;

(e) the decree holder must seek extension of time within three years from the time limit granted, or if no time limit is fixed within three years from the date of decree or judgment in Appeal; and

(f) Courts have no power to extend time if such request is made after the time for deposit is barred by limitation.”

15. Therefore, what emerges from the above precedent is that though the suit for specific performance was decreed, the decreetal Court which passed the decree, retains the control over the decree by construing the decree as a preliminary decree. In this case, the learned trial Judge has exercised his power, as enumerated under various precedent and rescinded the contract by not enlarging the time. On the facts of this case, though the suit was decreed



16. Besides, in the age of industrialization, and when there is high demand for the land, which admittedly could not be manufactured, that too, when the flagrant inaction on the part of the petitioner, if the extension of time is granted on the flimsy ground, then it would go counter to the principles of readiness and willingness, where the purchaser is expected to be ready and willing till he get the sale deed in his favour. Apart from that, in the interregnum, the price of the property also could have been increased in manifold. Therefore, any extension of time would definitely cause a great prejudice and loss to the defendants. It is highly unfathomable as to how the illness of his mother has kept him away from the suit proceedings. At this juncture, it is also relevant to mention here that, when in the agreement dated 28.09.2005, the period of performance was determined as two years, any extension of time even after decree being passed, it would totally becomes egregious and would undermine the confidence reposed upon the judicial proceedings.



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17. Therefore, this Court does not find any justification for the interference of the order of the learned trial Judge, as he has rightly appreciated the fact and law and arrived at a just conclusion. Therefore, this Court indubitably and irrefutably holds that the order passed by the learned trial Judge is liable to be confirmed.

18. Thus, this Civil Revision Petition is **dismissed**. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
The District Munsif Court,
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