

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

C.R.P.No.3052 OF 2019

ORDER:

This civil revision petition under Section 115 CPC is directed against the docket order dated 04.07.2019 in E.P.No.1 of 2017 in O.S.No.241 of 2006, on the file of the XVI Additional District and Sessions Judge, Ranga Reddy District, at Malkajgiri, wherein the said execution petition filed by the petitioner herein (decree holder) under Order XXI Rule 32 read with Section 151 CPC seeking to direct judgment debtor Nos.1 and 2 to register the sale deed after receiving the balance sale consideration in favour of the decree holder for registration of the EP schedule property, was dismissed.

2. Heard Mr.Vedula Srinivas, learned senior counsel for the petitioner and Mr.Police Venkat Reddy, learned counsel for the respondents. Perused the record.

3. The facts are not in dispute. A decree for specific performance was granted in favour of the revision petitioner/

plaintiff by judgment dated 25.02.2013. The operative portion of the judgment reads as under:

“In the result, the suit is decreed directing the defendant Nos.1 and 2 to execute the registered sale deed in favour of the plaintiff by receiving balance sale consideration. The suit is dismissed against the third defendant for the said relief. The plaintiff is entitled for declaration that the decree in O.S.No.103/2006 dated 07.08.2006 passed by the Lok Adalat, at L.B.Nagar, R.R. District is collusive and not binding in respect of the suit schedule property. The plaintiff is entitled for suit costs from D1. The third defendant is entitled for costs from the plaintiff”.

4. Subsequently, the petitioner filed E.P.No.1 of 2017 to direct the respondents-judgment debtor Nos.1 and 2 to register the sale deed after receiving the balance sale consideration in his favour in respect of the EP schedule property. The trial court vide docket order dated 04.07.2019 in E.P.No.1 of 2017 dismissed the said execution petition stating that no relief can be granted to the petitioner-decree holder as prayed in the execution petition.

The docket order reads as under:

“It is brought to the notice that no balance sale consideration at all paid by DHR prior to filing of the EP. On that day, counsel for DHR came up with a prayer ready to deposit the balance sale consideration and to

obtain registered sale deed. Now, in the year 2019 coming up to pay the same. In spite of objection taken at the time of filing of EP itself, no amount was paid. As no balance sale consideration is paid by DHR, within reasonable time from the decree and there is no extension of time so far to deposit the same, at present in this EP, the same cannot be considered and thereby, having no payment or sale consideration at all prior to filing and number the EP, no relief can be granted to the DHR as prayed in this EP”.

Aggrieved by the same, the revision petitioner-decree holder filed the present revision.

5. Mr.Vedula Srinivas, learned senior counsel appearing for the revision petitioner submits that the trial Court committed error in dismissing the EP on the ground that the petitioner failed to pay the balance sale consideration within reasonable time and had not made any attempt to deposit the amount. Further, the trial Court failed to consider that the revision petitioner had filed lodgment schedule on 13.08.2018 after filing of E.P.No.1 of 2017 seeking permission of the Court to issue challan so that the amount can be deposited. Learned counsel further submits that the trial Court failed to consider that the revision petitioner is entitled to see the fruits of the decree and the same cannot be denied to him on a

non-existing ground that he belatedly came forward for depositing the remaining sale consideration. Learned counsel also brought to the notice of this Court that a draft sale deed was sent to the Registrar for registration, as per docket order dated 01.05.2019 and the EP ought not to have been dismissed at this stage and the order of the trial Court is liable to set aside. He placed reliance on the decision of this court in **CHERUKURI VENKATA RAO v. BRANHMOJOSYULA BALA GANGADHARA SHARMA AND OTHERS¹**.

6. *Per contra*, learned counsel for the respondents submits that the revision petitioner had neither offered to pay the balance sale consideration nor deposited the same in the Court. Learned counsel relied on the provisions of Section 28 of the Specific Relief Act and submits that the said provision permits the respondents-judgment debtors to seek recession of contract and also permits extension of time by the Court. But, merely because the recession of contract is not sought by the judgment debtors, it does not automatically result in extension of time. On the said preposition,

¹1987(2) ALT 229 (DB)

learned counsel placed reliance on the judgment of the Hon'ble Apex Court in **PREM JEEVAN v. K.S.VENKATA RAMAN AND OTHERS**².

7. Admittedly, the suit filed by the revision petitioner in O.S.No.241 of 2006 for specific performance of the agreement of sale was decreed vide judgment dated 25.02.2013. The trial Court had not stipulated any time for payment of balance sale consideration. Subsequently, the revision petitioner filed execution petition in E.P.No.1 of 2017 claiming the relief that respondents-judgment debtor Nos.1 and 2 may be directed to execute the sale deed in his favour for registration of the EP schedule property.

8. The trial Court had dismissed the said EP on the ground that the suit filed by the revision petitioner for specific performance was decreed in the year 2013 directing him to pay the balance sale consideration and to obtain the registered sale deed, whereas the revision petitioner had come up to pay a same in the year 2019. The trial Court also held that in spite of objection being taken at the time of filing of EP, no amount was deposited. As the amount was

²AIR 2017 SC 623

not deposited within reasonable time and there is no explanation forthcoming for the delay for depositing the same, in the said circumstances, the EP was dismissed.

9. Undisputedly, no time is stipulated in the decree for payment of balance sale consideration either to the respondents or to deposit the same in the Court. There is nothing on record to indicate whether the respondents have made any demand for payment of the balance sale consideration from the petitioner. In fact, respondents 1 and 2 were set *ex parte* as is evident from the impugned order. Since the executing Court having accepted and registered the EP and as the petitioner had filed lodgment schedule on 13.08.2018 and a draft sale deed was also prepared and sent to the Registrar, as per docket order dated 01.05.2019, keeping in view the said circumstances, I am of the view that the findings of the executing Court cannot be sustained, more particularly when valuable rights are accrued to the decree holder on account of the suit filed for specific performance being decreed and they cannot be taken away on the basis of such untenable finding.

10. It appears that the executing Court proceeded as though Section 28 of the Specific Relief Act gets attracted, though it did not mention in so many words. The respondents themselves did not invoke the said provision. However, a perusal of Section 28 of the Specific Relief Act discloses that the said provision gets attracted only where (a) the Court, which passed the decree, directs the decree holder to pay the purchaser money (balance of sale consideration) within a period, stipulated by it, and (b) the decree holder failed to comply with the direction. It is then and only then, that Court can consider the feasibility of directing recession of contract.

11. Apart from the above, a reference to Order XX Rule 12A CPC shows that in every decree for specific performance of contract, the Court has to specify the period within which the payment has to be made. In the instant case, the said period was not stipulated in the decree. In the absence of the same, the decree holder could execute the decree only by making the payment of the decretal amount either to the judgment debtor or making the deposit in the Court in terms of the said decree. In the present case,

since no time is stipulated, as such the petitioner appears to have not sought for any time. Though there is no specific explanation for the delay, the revision petitioner is rightly entitled for execution of the decree and also the fruits of the decree and rightly the execution petition is maintainable. The trial Court committed patent irregularity in dismissing the execution petition without proper appreciation of the relevant provisions of law and the same is liable to be set aside.

12. In the result, the civil revision petition is allowed. The order dated 04.07.2019 in E.P.No.1 of 2017 in O.S.No.241 of 2006 is set aside. There shall be no order as to costs.

13. Miscellaneous petitions, if any pending, stand closed.

14.02.2023
Lrkm

A.SANTHOSH REDDY, J