

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 640 of 2024

Pramod Vyas Son of Late Krishna Shankar Vyas Resident of Mohalla- Bettiah Raj, Guru Chowk, Lal Bazar, Ward no 2, P.S.- Bettiah, District- West Champaran.

... .. Petitioner/s

Versus

Nand Lal Yadav Son of Late Bhiya Ram Rai Resident of Village- Shukhi Semra, Tola- Dainia, P.S.- Palanwa (Ramgarhwa), District- West Champaran.

... .. Respondent/s

with

CIVIL MISCELLANEOUS JURISDICTION No. 304 of 2024

Smt. Laxmi Vyas Wife of Pramod Vyas Resident of Mohalla- Christian Quarter, Ward no.- 21, Bettiah, P.S.- Bettiah, District- West Champaran.

... .. Petitioner/s

Versus

1. Nand Lal Yadav Son of Late Bhiya Ram Rai Resident of Village- Shukhi Semra, Tola- Dainia, P.S.- Palanwa (Ramgarhwa), District- West Champaran.
2. Pramod Vyas, Son of Late Krishna Shankar Vyas, Resident of Mohalla of Christian Quarter, Ward No.- 21, Bettiah, P.S.- Bettiah, District- West Champaran.

... .. Respondent/s

Appearance :

(In CIVIL MISCELLANEOUS JURISDICTION No. 640 of 2024)

For the Petitioner/s : Mr. Ajay Kumar Singh, Advocate

For the Respondent/s : Mr. Udit Narayan Singh, Advocate

(In CIVIL MISCELLANEOUS JURISDICTION No. 304 of 2024)

For the Petitioner/s : Mr. Ajay Kumar Singh, Advocate

For the Respondent/s : Mr. Udit Narayan Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 18-10-2024

In C. Misc. Jurisdiction No. 640 of 2024

The petitioner has filed the present petition under



Article 227 of the Constitution of India for quashing the order dated 13.10.2023 passed by learned Sub Judge-II, Bettiah, West Champaran in Execution Case No. 07 of 2003 whereby and whereunder the learned Sub-ordinate Court has granted permission to the respondent-decree holder to deposit Rs.55,000/-, towards the balance consideration amount for execution of the *ex parte* judgment dated 19.10.2001 passed in Title Suit No. 36 of 2000.

2. The conspectus of the case, as it emerges from the record, is that the respondent filed Title Suit No. 36 of 2000 seeking relief of specific performance of contract against the defendant/petitioner putting a case that plaintiff and defendant had entered into an agreement for sale in the year 1997 for a piece of land appertaining to Thana No. 128, Ward No. 3, Khesra No. 6382 and 6399, Area- 1 katha 10 dhurs for consideration amount of Rs. 2,25,000/-. The matter proceeded *ex parte* and *vide* judgment dated 19.10.2001, the suit was decreed against the defendant with direction to execute the sale deed after taking the balance amount of Rs.55,000/- within 90 days from the date of passing of the order with further stipulation that the plaintiff would be at liberty to proceed in accordance with law to get the sale deed executed in case of



failure of the defendant to abide by the direction. Subsequently, the decree holder/plaintiff/respondent filed Execution Case No. 7 of 2003 in the Court of learned Sub Judge 4th, Bettiah, West Champaran for execution of the decree dated 05.12.2001 passed in Title Suit No. 36 of 2000 against the judgment debtor/defendant/petitioner. The Execution Case No. 7 of 2003 remained pending and it appears, on 07.10.2023, the decree holder filed a petition praying therein to allow him to deposit the balance consideration money amounting to Rs.55,000/- which he could not deposit earlier. The learned Executing Court *vide* order dated 13.10.2023 allowed the petition which is under challenge before this Court.

3. Learned counsel for the petitioner submitted that the impugned order of the learned Executing Court is illegal as the same has been passed against the mandate of Section 28 of the Specific Relief Act, 1963 (in short "the Act"). The impugned order is not sustainable in view of the fact that learned Executing Court failed to see the attending circumstances including the conduct of the parties while granting permission for extension of time to deposit the consideration money. The learned Executing Court failed to take into consideration the fact that no explanation has been given by



the decree holder for not depositing the balance consideration amount in terms of judgment dated 19.01.2001 and the permission granted for extension of time amounts to committing illegality by the learned Executing Court. The learned counsel further submits that the impugned order has been passed in total non-application of judicial mind and hence, it is not sustainable. Learned counsel further submitted that Section 28(1) of the Act makes it clear that Court does not lose its jurisdiction after grant of decree for specific performance of contract and does not become *functus officio* rather the suit is deemed to be pending till execution of sale deed. Further, it is only the Court which has passed the decree can exercise power, either for rescission of contract or for granting extension of time, to deposit the amount. In the present case, admittedly learned Sub Judge 4th, Bettiah has passed the decree but the decree holder, instead of seeking permission from the Court of Sub Judge-4th, Bettiah, filed petition before the learned Executing Court to deposit the consideration money and by implication, extension of time, which allowed the same and in the aforesaid background, it can be safely asserted that order granting permission by learned Executing Court i.e, Sub Judge-II, Bettiah is wholly beyond jurisdiction and cannot be sustained in the eyes of law. The



learned counsel further submitted that the decree holder filed execution case in the year 2003, judgment was passed in October, 2001 with direction to get the sale deed executed within 90 days. Learned counsel further submitted that the filing of petition on 07.10.2023 speaks volume about the conduct of the decree holder and for deciding an application under Section 28(1) of the Act, 1963. The decree holder in fact showed his unwillingness to proceed with the matter for finalization of the contract and did not take any steps within 90 days as stipulated in the judgment and decree. Thereafter, extension of time was also not sought from the Court which passed the judgment and granted the decree. Learned counsel further submitted that in these circumstances when Title Suit No. 36 of 2000 is still pending in the Court of learned Sub Judge-4th, Bettiah since execution of sale deed has not taken place, the learned Executing Court acted beyond its authority and such order is not sustainable in the eyes of law.

4. Learned counsel referred to the decision of Hon'ble Supreme Court in the case of ***Surinder Pal Soni Vs. Sohan Lal(D) thr. L.Rs.*** reported in ***2019(4) PLJR (SC) 56*** on the proposition that the court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes



functus officio. The learned counsel pointed out that it has further been held by the Hon'ble Supreme Court that Section 28 of the Act gives power to the court either to extend the time for compliance with the decree or grant an order of rescission of the agreement. These powers are available to the trial court which passes the decree of specific performance.

5. Learned counsel further submitted that the decree holder failed to deposit the consideration amount which he was supposed to pay within 90 days and did not file any application for extension of time under Section 148 of the Code of Civil Procedure and Section 28 of the Act within a reasonable time. The learned Execution Court while allowing the petition for extension of time failed to observe that there is delay of 21 years in moving the application and there is no satisfactory explanation for such huge delay. The learned Executing Court failed to exercise its discretion judiciously and committed error of jurisdiction in exercising the discretionary power in favour of decree holder. The learned Executing Court has also not considered the fact that by his conduct, the decree holder has made the contract liable for rescission.

6. The learned counsel further referred to another decision of the Hon'ble Supreme Court in the case of **P**



Shyamala Vs. Gundhur Masthan reported in **2023(2)PLJR (SC) 72**, wherein, while considering the condonation of delay of 853 days in filing application for extension of time to deposit the balance sale consideration amount, it has been held that the trial court erred in exercising their discretion in favour of the plaintiff and erred in extending the time in favour of the plaintiff to deposit the balance sale consideration of Rs. 15,00,000/- by condoning the huge delay of 853 days, which has not been explained satisfactorily at all.

7. Learned counsel for the respondent vehemently contended that there is no infirmity in the impugned order and the same does not require any interference by this Court. The learned counsel further submitted that there is no delay on part of the respondent. After getting the decree in the year 2001, the respondent filed the Execution Case in the year 2003 and he cannot be faulted on this account that he did not move within reasonable time for execution of the decree. The learned counsel further submitted that moreover, in the judgment and decree of the learned trial court, time of 90 days was granted to the defendant to come forward and accept the remaining consideration amount from the plaintiff and execute the sale deed but the defendant did not abide by the orders of the learned



trial court and as the matter has been proceeding before the learned Executing Court and hence, the decree holder rightly moved for extension of time before the said Court. No time limit has been given to the plaintiff for making payment of the balance consideration amount. The learned counsel further submitted that there was no direction to the plaintiff to deposit the balance amount in the trial court and rather it was ordered that if the defendant failed to accept the balance amount and execute the sale deed, the plaintiff would proceed in accordance with law. The learned counsel further submitted that the defendant appeared in the Execution Case at a very late stage and sought adjournments in order to linger the matter. Since the defendant was not willing to receive the balance consideration amount, the decree holder rightly moved before the learned Executing Court seeking permission to deposit balance consideration amount of Rs.55,000/- which was allowed and hence, there is no error in the order. Learned counsel for the respondent further submitted that the defendant did not take any steps for rescission of contract and for this reason the decree holder/plaintiff was within his rights to approach the learned Executing Court for allowing him to make the payment of remaining amount in terms of the agreement of the sale. Thus,



the learned counsel submitted that there is no illegality or perversity in the impugned order as the respondent moved before the learned Executing Court in terms of the orders of the learned trial court whereby the plaintiff/respondent was given liberty to proceed in accordance with law to get the sale deed executed in case the defendant failed to abide by the orders of the learned trial court.

8. By way of reply, learned counsel for the petitioner referred to the decision of the Hon'ble Supreme Court in the case of *Prem Jeevan Vs. K. S. Venkata Raman and Anr.* reported in *(2017) 11 SCC 57* wherein the Hon'ble Supreme Court held that failure of judgment debtor to seek rescission of the contract in terms of Section 28 of the Specific Relief Act does not imply that decree remains executable in spite of expiry of period for deposit, with the only obligation on the part of the decree-holders to pay interest. Hon'ble Supreme Court further held that there is no doubt that Section 28 of the Specific Relief Act permits the judgment debtor to seek rescission of contract and also permits extension of time by the Court but merely because rescission of contract is not sought by the judgment-debtor, it does not automatically result in extension of time. Thus, the learned counsel for the petitioner again submitted that



the impugned order is beyond jurisdiction of the learned Executing Court and has also been passed without considering the attending circumstances and the law applicable and hence, the same is perverse and needs to be set aside.

9. I have given my thoughtful consideration to the rival submission and also perused the record. The short question which arises before this Court is whether the learned Executing Court acted within its jurisdiction in allowing the application of the decree holder to deposit the balance amount of Rs.55,000/- in terms of the agreement of sale between the parties. Further question which arises is that whether the learned Executing Court could have allowed the application without considering the delay in moving the application. From the record it transpires that the judgment in Title Suit No. 36 of 2000 was delivered on 19.10.2001 and decree was sealed and signed on 05.10.2001. The decree reads as under:-

“The suit is decreed Exparte against defendant who is directed to execute the sale deed after taking the balance amount of Rs. 55,000/- from the Plaintiff within 90 (Ninety) days from the date of the Passing of the order failing which the Plaintiff is at liberty to proceed in accordance with law to get the sale deed executed.”

Evidently, the defendant did not come forward to receive Rs. 55,000/- from the plaintiff within 90 days. It is also a



fact that the decree was passed *ex parte* against the defendant. Bare perusal of the operative part of the judgment and decree shows a duty has been cast upon the defendant to take the balance money and to proceed to execute the sale deed within 90 days. But it was an *ex parte* decree and the plaintiff was equally obliged to make the payment of the balance amount to the defendant within the period of 90 days and if the defendant refused, the plaintiff was at liberty to proceed in accordance with law to get the sale deed executed. It has been the contention of the learned counsel for the decree holder/ plaintiff/ respondent that the decree holder/plaintiff/respondent was not under any obligation to seek extension of time and the time period stipulated in the case i.e., 90 days was not applicable for the decree holder / plaintiff / respondent. I think it is wrong reading of the judgment and decree of the learned trial court as it has already been observed that it was an *ex parte* decree and it was not expected from the defendant that he would come forward to adhere to the time limit of 90 days. This means the plaintiff was required to do the needful in approaching the defendant and paying him the money for execution of the sale deed and in case the defendant refused to accept the money and execute the sale deed, then plaintiff could have taken recourse of



law to get the sale deed executed. The decree holder/plaintiff/respondent was supposed to move for the same within a reasonable time period even if the contention of the learned counsel for the respondent is accepted for the sake of argument. No doubt the plaintiff filed for execution of the decree of the learned trial court but it is surprising that the plaintiff did not approach the learned trial court either for depositing the money or seeking extension of time. The learned Executing Court could not have gone beyond the decree and the jurisdiction of the trial court in such circumstances is settled. Unlike other suits, in a suit for specific performance of contract the trial court continues to have jurisdiction even after it has delivered the judgment and passed the decree.

It would be apposite to refer to the relevant provisions of law in this regard. Section 28 of the Specific Relief Act reads as under:

"Section 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, 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.

(3) If the purchase 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."

Bare perusal of the aforesaid provision makes it clear



as crystal that the Court does not lose its jurisdiction even after the grant of decree for specific performance nor it becomes functus officio. It also makes it clear that the provision empowers the Court to extend the time to make the payment towards performance of contract.

10. The Hon'ble Supreme Court in the case of ***Surinder Pal Soni*** (supra) held in paragraph 19 and 20 as under:

"19. Interpreting the provisions of Section 28 of the Specific Relief Act, a three judge Bench of this Court held in Sardar Mohar Singh(supra):

"4. From the language of sub-section (1) of Section 28, it could be seen that the court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes functus officio. The very fact that Section 28 itself gives power to grant order of rescission of the decree would indicate that till the sale deed is executed in execution of the decree, the trial court retains its power and jurisdiction to deal with the decree of specific performance. It would also be clear that the court has power to enlarge the time in favour of the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, in spite of an application for rescission of the decree having been filed by the judgment-debtor and rejected. In other words, the court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance..." In Bhupinder Kumar v Angrej Singh¹⁰, this Court held thus:

"21. It is clear that Section 28 gives power to the court either to extend the time for compliance with the decree or grant an order of rescission of the agreement. These powers



are available to the trial court which passes the decree of specific performance. In other words, when the court passes the decree for specific performance, the contract between the parties is not extinguished. To put it clearly the decree for specific performance is in the nature of a preliminary decree and the suit is deemed to be pending even after the decree.

22. Sub-section (1) of Section 28 makes it clear that the court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes functus officio. On the other hand, Section 28 gives power to the court to grant an order of rescission of the agreement and it has the power to extend the time to pay the amount or perform the conditions of decree for specific performance despite the application for rescission of the agreement/decreed. In deciding an application under Section 28(1) of the Act, the court has to see all the attending circumstances including the conduct of the parties.”

20. Learned Counsel appearing on behalf of the respondents placed reliance on the decision in V S Palanichamy Chettiar Firm V C Alagappan¹¹. While adverting to the decision of this Court in Ramankutty Guptan V Avara¹², the two judge Bench held:

“15. ...This Court observed that when the decree specifies the time for performance of the conditions of the decree, on its failure to deposit the money, Section 28(1) itself gives power to the court to extend the time on such terms as the court may allow to pay the purchase money or other sum which the court has ordered him to pay. The Court held, after noticing the conflict of decisions by the Bombay High Court and the Andhra Pradesh High Court, that when the court which passed the decree and the executing court is the same, application under Section 28 can be filed in the executing court. However, where a decree is transferred for execution to a transferee executing court then certainly the transferee



court is not the original court and the executing court is not the “same court” within the meaning of Section 28 of the Act.

But when an application has been made in the court in which the original suit was filed and the execution is being proceeded with, then certainly an application under Section 28 is maintainable in the same court...”

Therefore, any application for deposit of money or extension of time for the same is to be filed before the same Court even when an execution is being proceeded with. The aforesaid authority makes it clear that if the Executing Court and the Court which passed the decree are the same, the application under Section 28 can be filed in the Executing Court but when these two Courts are different then the Executing Court is not the same court within the meaning of Section 28 of the Act and an application before it would not be maintainable. Reliance could be placed on the decision of Hon’ble Supreme Court in the case of ***Ramankutty Guptan Vs. Avara*** reported in ***AIR 1994 SC 1699*** wherein it further held that the period for deposit of money can be extended by the original court or by the appellate court. Therefore on this aspect of the matter, I find merit in the submission of learned counsel for the petitioner.

11. So far as contention of the learned counsel for the respondent about there being no time limit is concerned, the



time period could not be left open without any limit and it must be some reasonable time if we accept that the stipulated period of 90 days was not applicable to the plaintiff. In these circumstances, reasonable period could be held to be 3 years as provided under Article 137 of the Limitation Act, 1963 but no such application was preferred within the period of three years except for filing the case for execution. But that is not the same thing as moving before the “same court” for making application for payment of the balance amount or seeking extension of time. Therefore, the impugned order of the learned Executing Court suffers from patent illegality.

12. From further perusal of the impugned order, I find that the learned Executing Court has not recorded any reasons for allowing the decree holder to deposit Rs. 55,000/- after lapse of 21 years of the case before it. The learned Executing Court was supposed to record its reason for allowing the application for making the payment. It goes without saying that reason is the soul of a decision. There is nothing on record to show that what steps have been taken by the plaintiff/decreed holder during this long period to execute the sale deed. If no reasons were forthcoming from the sides by the decree holder such applications should not have been entertained at the first



instance and reliance could be placed in the case of **P.**

Shyamala(Supra), paragraph no. 8 of which reads as under:

"8. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand and considering Section 28 of the Specific Relief Act, we are of the opinion that the trial Court erred in exercising the discretion in favour of the plaintiff and erred in extending the time in favour of the plaintiff to deposit the balance sale consideration of Rs. 15,00,000/- by condoning the huge delay of 853 days, which as observed hereinabove has not been explained sufficiently at all. As observed hereinabove, after the plaintiff was directed to deposit the balance sale consideration of Rs. 15,00,000/- within a period of two weeks from the date of ex-parte judgment and decree dated 12.10.2013, which the plaintiff failed to deposit/pay, even no application for extension of time under Section 148 CPC and Section 28 of the Specific Relief Act was made thereafter within a reasonable time and was made after a period of 853 days. Nothing is on record that in between any notice was given to the defendant to execute the sale deed as per the judgment and decree on deposit of the balance sale consideration. The application filed by the plaintiff under Section 148 CPC and Section 28 of the Specific Relief Act seeking extension of time to deposit the balance sale consideration was hopelessly delayed. As observed hereinabove, Section 28 of the Specific Relief Act seeks to provide complete relief to both the parties in terms of a decree of specific performance. Therefore, the trial Court failed to exercise the discretion judiciously in favour of the defendant and erred in exercising the discretionary power in favour of the plaintiff, that too with a delay of 853 days. The High Court has erred in confirming the same and dismissing the



revision applications. Under the circumstances, the order passed by the trial Court allowing the application of the plaintiff being I.A. No. 732/2016 seeking extension of time to deposit the balance sale consideration deserves to be dismissed and I.A. No. 914/2017 filed by the defendant – appellant under Section 28 of the Specific Relief Act to rescind the agreement to sell dated 9.5.2012 deserves to be allowed.

However, at the same time, to strike the balance between the parties the amount of Rs. 8,00,000/- paid by the plaintiff as an advance is to be returned to the plaintiff with 12% interest per annum from 9.5.2012 till the actual payment, within a period of six weeks from today, failing which it shall carry interest @ 18% per annum."

13. So far as the contention of the learned counsel for the respondent about fault on part of defendant in not taking steps for rescission is concerned, the said contention is simply not acceptable in the light of the decision of the Hon'ble Supreme Court in the case of ***Prem Jeevan*** (Supra).

14. Thus, in the light of the discussion made hereinbefore, I am of the considered opinion that the impugned order dated 13.10.2023 is not sustainable and hence, the same is set aside.

15. Accordingly, the present petition stands allowed.

16. However, the parties are at liberty to agitate their



grievance before appropriate forum in accordance with law.

In C. Misc. Jurisdiction No. 304 of 2024

17. The present petition has been filed under Article 227 of the Constitution of India seeking the following reliefs:-

“(i) For quashing the order dated 09.02.2024 passed by Ld. Sub-Judge- 2nd Bettiah, West Champaran in Execution Case No. 7/2003, whereby petition dated 07.11.2023 filed by the present petitioner for fixing the Execution Case on 29.01.2023 along with Miscellaneous Case No. 1/2023 as well as to stay further proceeding of the Execution Case No. 7/2023 has been rejected.

(ii) For further to stay the further proceeding of Execution Case No. 7 of 2023 pending in the court of Ld. Sub-Judge II, Bettiah, West Champaran till disposal of present miscellaneous case.

(iii) For any other relief / reliefs for which the petitioner is found entitled in the facts and circumstances of the case.”

18. The petitioner is the wife of Pramod Vyas who is the petitioner of Civil Misc. No. 640 of 2024 and from the aforesaid relief it is clear that the present petitioner wants stay on the execution proceeding. Now, execution proceeding in Execution Case No. 07 of 2003 has been the subject matter in Civil Misc. No. 640 of 2024 and, for this reason, both the matters have been heard together.

19. The petition of Civil Misc. No. 640 of 2024 has



been allowed in terms of aforesaid judgment.

20. In the light of disposal of Civil Misc. No. 640 of 2024, obviously, the reliefs sought by the petitioner in the present case have become infructuous.

21. Therefore, the instant petition of Civil Misc. No. 304 of 2024 is disposed of as having become infructuous.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	AFR
CAV DATE	17.09.2024
Uploading Date	21.10.2024
Transmission Date	N/A

