

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.584 of 2017

- 1.1. Lalti Devi W/o Late Mohan Lal R/o- North Mohalla- Mirganj, P.O. and P.S.- Kharpakwa, Distt.- Gopalganj.
- 1.2. Anil Kumar S/o Late Mohan Lal R/o- North Mohalla- Mirganj, P.O. and P.S.- Kharpakwa, Distt.- Gopalganj.
- 1.3. Sunil Kumar S/o Late Mohan Lal R/o- North Mohalla- Mirganj, P.O. and P.S.- Kharpakwa, Distt.- Gopalganj.
- 1.4. Seema Devi D/o Late Mohan Lal R/o- North Mohalla- Mirganj, P.O. and P.S.- Kharpakwa, Distt.- Gopalganj.
- 1.5. Manorma Devi D/o Late Mohan Lal R/o- North Mohalla- Mirganj, P.O. and P.S.- Kharpakwa, Distt.- Gopalganj.
- 1.6. Shilpi Devi D/o Late Mohan Lal R/o- North Mohalla- Mirganj, P.O. and P.S.- Kharpakwa, Distt.- Gopalganj.

... .. Petitioners

Versus

Hari Om Kumar S/o Bhagwati Prasad, R/o Sabzi Mandi, Mirganj, P.S.-
Mirganj, Distt.-Gopalganj

... .. Respondent

Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Dwivedi, Sr. Advocate Mr. Ranjan Kumar Dubey, Advocate Mr. Parth Gaurav, Advocate
For the Respondent/s	:	Mr. Rajesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date :12-06-2024

The present civil misc. petition has been filed under Article 227 of the Constitution of India against the order dated 06.03.2017 passed by the learned Subordinate Judge-I, Gopalganj in Misc. Case No. 304 of 2016 rejecting the prayer of the petitioner made under Section 28 of the Specific Relief Act, 1963.

02. The conspectus of the case, as it appears from the record, is that the respondent file Title Suit No. 511 of 2002



against the original petitioner for grant of a decree for specific performance of contract with respect of 12 *dhurs* of land out of Plot No. 1069, *Khata* No.249 in the town of Mirganj Bazar, District-Gopalganj. The plaintiff/respondent contended that the defendant/petitioner contracted to sale the disputed land for a sum of Rs. 1,20,000/-. The petitioner took earnest money of Rs. 65,000/- from the respondent and agreed to execute the sale-deed on receipt of the rest amount of Rs. 55,000/-. The suit was decreed and the operative part of the said order reads as under:-

“Under the aforesaid facts and circumstances, it is ordered that the suit is decreed in favour of the plaintiff and defendant is directed to receive the remaining consideration money of *Mahadanama*, Rs. 55,000/- from the plaintiff and execute the sale deed within a month in favour of plaintiff failing which the plaintiff shall be entitled to get the same executed and registered through the process of the court on depositing the balance amount of Rs. 55,000/- at his cost, which shall be binding upon the defendant/applicant.”

However, it appears that the balance amount of Rs. 55,000/- was not tendered to the defendant/petitioner who filed Title Appeal No. 48 of 2005 in the court of District Judge, Gopalganj and the said appeal came to be dismissed vide



judgment and decree dated 01.12.2015 passed by learned 3rd Additional District Judge, Gopalganj. Against the said judgment and decree, the petitioner preferred Second Appeal No. 37 of 2016 before this Court, which is still pending. It further transpires from the record that during pendency of the first appeal, the respondent filed Execution Case No. 108 of 2015 in the court of learned Subordinate Judge-I, Gopalganj on 11.06.2015 for execution of decree dated 23.03.2005 passed in Title Suit No. 511 of 2002. However, in the said execution case, nothing was said about tendering of the balance amount. However after eight months of filing the execution case, the respondent moved for amendment of prayer seeking fresh direction against the petitioner to accept Rs. 55,000/-. But, this sum of Rs. 55,000/- was not deposited by the opposite party in the suit or in the execution case. Thereafter, on 07.04.2016, the respondent filed an application before the learned executing court seeking permission to deposit Rs. 55,000/-. The petitioner filed objection under Section 28 of the Specific Relief Act, praying to dismiss the execution case treating the contract of sale as having been rescinded on the ground mentioned in the application. Further case of the petitioner(s) is that as the execution court was not passing order on the petition of the



petitioner filed under Section 28 of the Specific Relief Act and an objection was taken about not filing the suitable petition in the suit, the petitioner filed Misc. Case No. 304 of 2016 in the court of learned Subordinate Judge-I, Gopalganj on 14.09.2016 under Section 28 of the Specific Relief Act with a prayer to rescind the contract. Even before admission of misc. case, an objection was filed by the decree-holder on 03.01.2017 contending that the petition of the petitioner filed under Section 28 of the Specific Relief Act was not maintainable. After hearing the parties, the learned Sub Judge-I, Gopalganj rejected the petition filed on behalf petitioner/judgment debtor.

03. Learned senior counsel appearing on behalf of the petitioners submitted that a person seeking specific relief must prove his readiness and willingness to perform his part of contract at all stages of the litigation which continues even after getting the decree in his favour, till he has complied and fulfilled his part of contract. This is the mandate of Section 16(c) of the Specific Relief Act. Learned senior counsel further submitted that in the instant case, on 23.03.2005, while granting a decree in favour of the plaintiff, the court directed the defendant to receive Rs. 55,000/- from the plaintiff and then to execute the deed and the defendant was further ordered that after taking the



balance amount of Rs. 55,000/-, he would execute the sale deed within a month. So, this was also a direction to the plaintiff to pay the amount within a period of one month. Admittedly, this amount was never paid to the defendant in the suit at any of its stages although such deposit was required to be made in the suit itself. Thereafter, title suit was dismissed on 01.12.2015 and second appeal was filed in this Court and no deposit or no prayer for extension was made and no extension was even granted by the appellate court. On 11.06.2015, during pendency of the appeal, execution case bearing No. 108 of 2015 was filed for execution of sale deed and delivery of possession by breaking open the locks, still no deposit was made. After eight months, prayer was amended to accept deposit and on 07.04.2016, a petition to deposit Rs. 55,000/- was made, but again no prayer for extension of time was made. Subsequently, the balance amount was deposited on 15.03.2017. Learned senior counsel further submitted that Section 148 of the Code of Civil Procedure provides for enlargement of time but the same cannot exceed 30 days in total. Similarly, Order XX Rule 12(A) of the Code also provides where a decree for specific performance of a contract for the sale of immovable property orders that the purchase-money or other sum be paid by the



purchaser, it shall specify the period within which the payment shall be made. In support of his submission, Mr. Dwivedi relied on the decisions of Hon'ble Supreme Court in the case of ***Chanda (dead) through LRs. Vs. Rattni and Anr.***, reported in ***(2007) 14 SCC 26*** wherein rescission of sale of contract was held to be proper when the purchaser failed to pay the balance consideration for 6 years and no specific prayer for deposit of balance amount or extension of time in relation thereto was made before the court below. Further, the plea that there was no direction to pay the amount within a particular time was held to be unsustainable and untenable. In case of ***Prem Jeevan Vs. K. S. Venkata Raman and Anr.***, reported in ***(2017) 11 SCC 57***, the Hon'ble Supreme Court held in Paras-8, 9 and 10 as under:-

8. Reference to Order 20 Rule 12-A CPC shows that in every decree of specific performance of a contract, the court has to specify the period within which the payment has to be made. In the present case, the said period was two months from the date of the decree.

9. In absence of the said time being extended, the decree-holder could execute the decree only by making the payment of the decretal amount to the judgment-debtor or making the deposit in the court in term of the said decree. In the present case, neither the said deposit was made within the stipulated time nor extension of time was sought or granted and also no explanation has been furnished for the delay in the



making of the deposit. No doubt, as contended by the learned counsel for the decree-holders, relying on judgment of this Court in Ramankutty Guptan v. Avara, in an appropriate case the Court which passed the decree could extend the time as envisaged in the Specific Relief, 1963. In the present case no such steps have been taken by the decree-holders.

10. In above circumstances, the contention, advanced on behalf of the decree-holders, respondents herein, that unless the judgment-debtor seeks rescission of the contract in terms of Section 28 of the Specific Relief Act, the 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, cannot be accepted.”

Apart from this, learned senior counsel also relied on the decision of this Court (Ranchi Bench) in the case of ***Bansi Sao Vs. Jageshwar Prasad Sao***, reported in ***(1997) 1 PLJR 1017*** on the situation what would happen if the payment was not made within the stipulated period. Mr. Dwivedi further submitted that no explanation has been put forward by the plaintiff/respondent for non deposit of the amount either before the trial court or first appellate court or second appellate court. Further, no petition with prayer for extension of time has been filed. Thus, there was no readiness or willingness on the part of decree-holder/respondent to perform his part of contract and in these



circumstances, Section 28 of the Specific Relief Act would come into play and render the decree to be *non est* and inexecutable in the eyes of law.

04. Countering the contention of the learned senior counsel of petitioners, learned counsel for the respondent submitted that the present petition is not maintainable as there is no infirmity in the impugned order and the same requires to be affirmed. Learned counsel further submitted that in terms of orders of the learned trial court, the plaintiff/respondent had always been ready to pay Rs. 55,000/- to the judgment debtor, who refused to receive the money and was not ready to execute the sale deed. For this reason, the plaintiff/respondent deposited the consideration amount of Rs. 55,000/- by *chalan* in the name of judgment debtor and thereafter, the sale deed was executed by the process of court on 30.03.2017. The judgment debtor/petitioner(s) by his own act delayed the execution of the sale deed and refused to accept the money and there was no fault on part of the decree-holder/respondent. Learned counsel further submitted that the natural corollary of execution of sale deed is handing over of the possession and the learned trial court was perfectly within its rights to direct for delivery of possession. Learned counsel further submitted that Section 16(c) of Specific



Relief Act has no role to play in the present case as the decree-holder/respondents has always been ready and willing to perform his part of the contract, but it was the judgment debtor who has been refusing to accept the payment and for this reason, the decree-holder/respondent was compelled to deposit the money through *Chalan* by the orders of the court. Learned counsel further submitted that the explanation attached with Section 16(c) of the Specific Relief Act, makes it clear that in a contract involving the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court. Learned counsel further submitted that there was no direction to the plaintiff to deposit money within any stipulated period though the defendant was directed to execute the sale deed within a month of tendering the money by the plaintiff. So, there is no fault on the part of the decree-holder/respondent and the learned trial court has rightly passed the impugned order and hence, there is no infirmity in the impugned order and the same needs to be sustained.

05. I have given my thoughtful consideration to the rival submission of the parties as well as facts and circumstances of the case. The judgment and decree in Title Suit No. 511 of



2002 was passed on 23.03.2005. While passing the orders, the learned trial court directed the defendant to receive the remaining consideration money of *Mahadnama*, i.e., Rs. 55,000/- from the plaintiff and to execute the sale deed within a month in favour of the plaintiff. However, it appears, for about 11 years, no petition has been filed for depositing the money in terms of judgment and decree dated 23.03.2005, as the petition to deposit the money was filed on 07.04.2016. No doubt, the learned trial court did not specify or stipulate a time period withing which the plaintiff was required to make the payment of balance amount to the defendant, still it could only be a reasonable time and more so when the defendant was directed to execute the sale deed within a month of receiving the money from the plaintiff and by no stretch of imagination the reasonable period could be 11 years. When no period has been mentioned in the judgment and decree of the learned trial court for making the payment, the reasonable time period could not stretch beyond the period of three years. It is also pertinent to note here that there has been never any application for extension of time for making the payment.

06. The dates and events as discussed in preceding paragraph clearly show lack of commitment on the part of the



decree-holder to get the decree executed. The chronology reflects very poorly regarding the conduct and willingness of the decree holder to perform his part of contract. After passing of the judgment in the year 2005, nothing was done for 11 years by the decree-holder/respondent. If there was any willingness, it is not reflected from the record. When the decree-holder/respondent kept silent for 11 years in getting the sale-deed executed, his conduct shows gross negligence and, in fact, rather waiver of his claim. Even if the contention of the learned counsel for the petitioner is taken into consideration that the judgment-debtor refused to accept the balance consideration amount, nothing could have prevented the decree holder to get the sale-deed executed through the process of court by depositing said amount in the court itself. This was also one of the directions of the learned trial court which passed the decree for specific performance. There is not an iota of material to show that the decree-holder took any step towards the same. Ground of pendency of appeal could not help the case of decree-holder as perusal of impugned order shows the learned trial court placed much reliance on pendency of the appeal which was later on dismissed. If there was no stay by the appellate court against the judgment and decree or the proceeding to be



taken for enforcement of decree, the pendency of appeal is immaterial. Therefore, the consideration of learned trial court in this regard is completely erroneous.

07. In the case of *Ramankutty Guptan v. Avara*, reported in *AIR 1994 SC 1699 : (1944) 2 SCC 642*, the Hon'ble Supreme Court held that in a suit where a decree for specific performance of contract for sale of immovable property has been made and time has been prescribed for performance, it should be complied within time. On its default, power has been given to the court that passed the decree to further extend the time as the court may allow and the purchase money or any other sum needs to be paid within the extended time. Now, remedy under Section 28(1) of the Specific Relief Act for extension of time would require the affected party to approach the same court by moving application which ought to be treated as an interlocutory application on the original side and ought to have been disposed of in accordance with law. However, no such application has been filed seeking extension of time. Article 137 of the Limitation Act prescribes a time period of three years for filing any such application. If the petition for depositing the remaining amount of the agreement to sale deed is taken as a prayer for extension of time, even then such deposit



could not help the cause of the decree-holder for the same reason that it was barred by the law of limitation as no extension of time was granted and even such deposit was not before the court which passed the decree. In the facts and circumstances, the present case is covered by the ratio laid down in case of *Chanda (dead) through LRs.* (supra).

08. In the light of discussion made here-in-before, I am of the considered opinion that the contract came to an end and the judgment-debtor was entitled to rescission of the contract. For the said reason, the learned trial court committed error of jurisdiction when it rejected the prayer of the petitioner made under Section 28 of the Specific Relief Act to rescind the contract. As as result, the order dated 06.03.2017 passed by the learned Subordinate Judge-I, Gopalganj in Misc. Case No. 304 of 2016 is set aside and Misc. Case No. 304 of 2016 is allowed.

09. Accordingly, the present civil misc. petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	06.05.2024
Uploading Date	12.06.2024
Transmission Date	NA

