

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 1969 of 2017

M/s. Admako Seasons (P) Ltd.

Vs.

Smt. Beauti Shome & Ors

For the Petitioner : Mr. Aniruddha Chatterjee
Mr. Kushal Chatterjee,
Mr. Oishik Chatterjee

For the Opposite Parties : Mr. S.P. Mukherjee
Mr. Shubajit Bose

For the Respondent No.2 : Mr. Biswajyoti Mitra
Mr. Biplab Mazumdar

Heard on : 04.03.2024

Judgment on : 18.04.2024

Ajoy Kumar Mukherjee, J.

1. Order dated 4th April, 2017 passed by the learned 4th Court of Civil Judge (Senior Division), Alipore in the Misc. Case no 6274 of 2012 (arising out Title Suit no. 102 of 1983) has been assailed in the present application.

2. The predecessor-in-interest of the opposite party herein namely Promotho Ranjan Shome became a tenant in respect of the 2nd floor flat since the year 1943 under one Charu Chandra Sinha and after his death his son Jyotish Chandra Sinha became owner of the suit premises. Said Jyotish

Chandra Sinha entered into a registered agreement for lease for a period of 99 years with effect from 01.01.1978. As per stipulation of said deed aforesaid Promotho Ranjan (since deceased) would be entitled to purchase the property within five years from the date of entering into the said lease for a total value of Rs. 60,000/- and said lease was executed on 26.12.1977. As per lease deed on payment of the aforesaid amount, the lessee shall be deemed to be full owner of the suit premises and lessor shall be bound to execute necessary deed of conveyance at the agreed purchase price.

3. It is alleged by the opposite party herein that Jyotish having refused to execute the deed in terms of lease, aforesaid Promotho filed Title Suit, being no. 102 of 1983. Upon contested hearing the suit was decreed in favour of plaintiff on 14.12.1987. While passing the judgment, Trial Court directed the plaintiff to deposit the residual consideration amount within a period of one month and the judgment debtor to execute the deed of conveyance in favour of the decree holder. The decree was drawn on 14.01.1988.

4. Being aggrieved by the judgment and decree dated 14.12.1987 passed in aforesaid Title Suit no. 102 of 1983, said Jyotish preferred an appeal before the High Court which was registered as F.A. no. 198 of 1990. Thereafter the appeal was dismissed as withdrawn on 29.06.2007 and as such thereafter there was no stay of operation of the judgment and decree and accordingly execution application was filed by plaintiff /decree holder on 26.08.2007, being Title Execution no. 78 of 2007, (renumbered as T.Ex. 13 of 2007) seeking for execution and registration of the deed of conveyance through court process.

5. It has been contended that stay granted by this Appellate Court in respect of said suit, continued till 29.06.2007. Admako Seasons Pvt. Ltd. (hereinafter called as Admako company) filed an application under section 28 of the Specific Relief Act 1963 (hereinafter called as Act of 1963). Be it mentioned that said Admako company claimed to have become sole owner in respect of the suit property by purchase on 14.01.1995. This High Court accordingly allowed the said company to be made party to the Appeal during pendency of the Appeal. Said application filed under section 28 was rejected by the court below by the impugned order dated 04.04.2017.

6. Mr. Mukherjee, learned counsel appearing on behalf of opposite party, before making submission on merit raised a preliminary objection contending that by the order impugned learned court below has disposed of the Misc. Case in connection with application under section 28 of the Act of 1963, which amounts to final disposal of the said Misc. Case and as such judgment debtors only remedy is to prefer Misc. Appeal and not the present Application under Article 227 of the Constitution of India.

7. Supporting impugned order, Mr. Mukherjee strenuously argued that within the meaning of section 28 (1) of the Act of 1963 the court below has the authority to extend time for deposit of money, even belatedly and that too without a formal application. It is perfectly open to the court below who is in control of the suit to extend time for deposit of purchase money. Accordingly by the impugned order the court below has been pleased to grant extension of time and further held that, decree holder has paid the residual amount in court and as such question of recession of agreement of contract cannot arise.

8. In this context Mr. Mukherjee, further argued that the decree was passed on 14.12.1987 and the money was deposited on 03.05.2012. There is no dispute that there was stay in respect of the operation of said judgment and decree till the withdrawal of Appeal i.e. upto 29.06.2007. Therefore the allegation of delay in deposit, for a period of 20 years has got no leg to stand and again an application under order XXI rule 11 was filed before the court for the execution of the decree. The draft deed of sale was also put on record. He further argued, in view of judgement passed by the Division Bench on 29.06.2007, it was the bounden duty on the part of the judgment debtor, including Admako Company to execute the deed of conveyance in favour of plaintiff/decreed holder. Mr. Mukherjee further argued that it is not a case where the decree holder failed to pay the money but it is a case where the judgement debtor including the Adamko Company created a situation for which the deed could not be executed between the parties.

9. Furthermore the court below was pleased to extend the time by a reasoned order which is not supposed to be interfered by this High Court, invoking jurisdiction under Article 227 of the Constitution of India.

10. Mr. Mukherjee further contended that the application seeking for recession of contract is to be filed within a period of three years from the date of knowledge. Accordingly the Adamko company who claimed themselves an owner, ought to have filed application within a period of three years. They cannot take the plea that they were not aware about the situation, because they became aware of the fact, as soon as they sought to be added as a party before the High Court in 2004. But they have sought for

recession of the contract in the year 2012, though there exists no privity of contract in between Admako and Shome/decree holder.

11. Mr. Chatterjee, learned counsel appearing on behalf of petitioner submits that the impugned order dated 4.4.2017 is absolutely unreasoned perverse and had been passed without considering the material facts. Court below failed to consider the provision laid down in section 28(1) of the Act of 1963. The court below had failed to take note of the fact that as the decree holder /opposite party herein failed to deposit the balance consideration money within time as ordered by the court and there being no extension of time by the Court till date, the Misc. case filed under section 28, ought to have been allowed. In fact nowhere in the earlier order or in the order impugned, court below recorded that he had extended time.

12. The court below did not consider that the judgment was delivered on 14.12.1987 wherein the decree holder was directed mandatorily to deposit the balance consideration money within one month from the date of the judgment. In fact though an appeal was preferred against the said judgement on 11.08.1988 but the stay was granted in the said appeal only on 29.01.1990 and therefore there was no impediment on the part of the decree holder to deposit balance consideration money from 14.01.1988 till 28.01.1990. Accordingly it is clear that inspite of getting opportunity for almost two years, decree holder/opposite party herein has not deposited the balance consideration money, nor the court had extended time to deposit the balance consideration money. On the contrary the petition dated 29.01.1988 filed by the decree holder/opposite party was rejected by order

no 92 dated 23.05.1990 and as such the prayer for extension of time stood rejected.

13. He further argued, not only that after the said First Appeal stood withdrawn by the order dated 29.06.2007, the opposite parties /plaintiffs/ decree holder/ had failed to deposit the consideration money until the petitioners herein have prayed for recession of the said contract under section 28 of the Act of 1963. Be it mentioned that though nowhere, the court below had extended the time, the decree holder/opposite party herein tendered before the treasury office, out of his own whim and fancies, almost after twenty four years from the date of judgment inspite of the fact that there was no extension of time. The decree holder/opposite party has failed to offer any explanation as to why balance consideration money could not deposited during the period from 14.12.1987 till 28.01.1990 and from 01.01.2007 till 3.5.2012, when there was no stay in connection with the decree.

14. Accordingly Mr. Chatterjee, argued that in the absence of explanation by the opposite party, the impugned order is not only devoid of reason but also perverse, in not taking note of the facts as above, specially wherein the petition for extension of time stood rejected by order no 92 dated 23.05.1990.

15. Contradicting preliminary objection regarding maintainability of this application, Mr. Chatterjee further argued that the right of appeal is a creature of statue and in absence of any such right created by the statue a litigant is not entitled to the benefit of an appeal and therefore an aggrieved party in absence of any right of appeal in the statute has the remedy to

challenge the impugned decision by taking resort either under section 115 of the Code of Civil Procedure and/or under Article 227 of the Constitution of India. Accordingly order passed under section 28 of the Act of 1963 are amenable under Article 227 of the Constitution of India and therefore the present Application is very much maintainable. He concluded by saying that it is a fit case in which the High Court is supposed to interfere, invoking jurisdiction under article 227 of the Constitution of India as the Court below has passed an unreasoned, perverse order thereby occasioning travesty of justice. In this context petitioner has relied upon following judgments.

- a) (2015 (9) SCC 52) [P.R. Yelumalai Vs. N.M. Ravi]**
- b) (2019 (9) SCC 381) [Ravi Setia Vs. Madan Lal & Ors]**
- c) (2023 SCC OnLine SC 184) [P. Shyamala Vs. Gundlur Masthan]**
- d) (2008 (4) CHN 20) [Arati Das Vs Bharati Sarkar & Ors]**
- e) (2003 (6) SCC 675) [Surya Dev Rai Vs. Ram Chander Rai & Ors.]**
- f) (2021 (15) SCC 817) [K.P Natarjan & Anr. Vs. Muthalammal & Ors.)**

16. I have considered submissions made by both the parties.

17. The only question that falls for consideration before this court is whether the court below was justified in refusing to rescind the contract for sale and whether this court has jurisdiction to deal with the issue under Article 227 of the Constitution of India

18. As regards maintainability of the present Application, opposite party herein contended that against an order of such Misc. Case ordinarily Misc. Appeal lies. He further contended that under Section 2(9) of the Code of Civil

Procedure, judgment means the statement given by the judge on the grounds of a decree or order. Accordingly by the impugned order the court below has disposed of Application under section 28 by making statement on the grounds upon which the order was passed and it was final disposal of the said application, for which the Misc. Case has been filed and registered. Since the petitioner herein had efficacious alternative remedy present application under Article 227 of the Constitution of India is not maintainable. Learned counsel appearing on behalf of the petitioner submits that in the absence of any specific provisions for preferring appeal against an order passed under section 28 of the Act of 1963, the appeal does not lie and as there is no alternative remedy for the petitioner to challenge the said order, petitioner has preferred the present Application.

19. Having considered the submissions made by the parties, it appears that the Legislature has not provided any right of appeal against the adjudication mentioned in section 28 of the Act of 1963. Therefore, the decision passed upon such application, is not subject to Appeal, as the adjudication under section 28 does not amount to a “decree” as defined in the Code of Civil Procedure. Since right of appeal is a creature of statute and as statute has not created right of appeal, the litigant is not entitled to get the benefit of the appeal and as such an aggrieved party has a right to challenge the decisions passed under section 28 taking recourse to section 115 of the code or under Article 227 of the Constitution of India, provided it fulfils it’s conditions. This is because an order passed under this section granting or refusing to grant time is a “case which has been decided” within the meaning of section 115 of the code and as such revisable by the High

Court but High Court will not interfere unless a jurisdictional error has been committed by the court below or unless it is shown that court below has passed the order on irrelevant consideration or has not given due importance on relevant and germane matters.

20. It further appears from the impugned order that the opposite party herein before the court below submitted that section 28 of the Specific Relief Act propounds that it is to be registered in the suit itself and there cannot be any separate Misc. Case within the meaning of Civil Rules and Orders. If that be so then the present stand of opposite party appears to be contrary to his earlier stand. Accordingly simply because the Application under section 28 was registered as a Misc. Case by the court below overruling petitioners aforesaid objection, it cannot be said that against the said order only Misc. Appeal lies.

21. Above all, the power under Article 227 of the constitution of India is unfettered, though its exercise is subject to high decree of judicial discipline. High Court as a custodian of justice can even *suo moto* invoke it's jurisdiction under Article 227 of the Constitution of India. The power of the High Court Under Article 227 cannot be fettered on the ground as suggested by the opposite party herein because the object of superintendence under Article 227 is both administrative and judicial and is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice, in such a way as it does not bring it into any disrepute as held by the apex court in ***Kokkanda B. Poondacha Vs. K.D. Ganapathi and others*** reported in **(2011) 12 SCC 600**. Accordingly I am not agreeable with the contention

made by learned counsel for the opposite party that the present application is not maintainable before this forum, simply because the order impugned was passed in a proceeding which was registered as a Misc. Case.

22. Now let me consider whether there occasioned any jurisdictional error in passing the order impugned. Before going to further details let me reproduce at the cost of repetition, certain important dates in this context.

26.12.1977	Let Jyotish Chandra Sinha entered into a registered agreement for lease for a period of 99 years effective on 1.1.1978 with a stipulation that predecessor in interest of the opposite parties herein namely Pramatho Ranjan Shome would be entitled to purchase the property within 5 years from the date of entering into the said lease for a total value of 60,000/-.
In the year 1983	Predecessor-in-interest of the opposite parties filed T.S. No. 102 of 1983 for specific performance of the contract against Jyotish Chandra Sinha.
14.12.1987	The said suit being T.S. 102 of 1987 was decreed and the plaintiff was directed to deposit the balance consideration money within one month from the date of said judgment and decree.
11.01.1988	The judgment debtor filed an application before the trial court and an order of stay of the judgment and decree was granted till 18.01.1988.
14.01.1988	The decree in the suit was drawn up.
18.01.1988	The defendant/judgment debtor/petitioner herein filed an application seeking for time to deposit the cost and with an intimation that he intends to move before the Hon'ble High Court.
29.01.1988	The plaintiff/decreed holder/opposite party herein filed a petition with a prayer for depositing the balance consideration in court and for other reliefs.
19.02.1988	Decree holder filed an Application for disposal of the Application dated 29.01.1988, wherein decree holder sought for permission to deposit balance

	consideration price.
11.08.1988	Being aggrieved by the judgment and decree dated 14.12.1987 passed in T.S. no. 102 of 1983, said Jyotish preferred an appeal before this High court, which was initially registered as FMAT No. 2263 of 1988 and thereafter renumbered as FA No. 198 of 1990.
08.02.1989	The plaintiff/decree holder filed another application in aforesaid T.S. No. 102 of 1983, seeking direction from the court to deposit the balance consideration amount in connection with the judgment and decree dated 14.12.1987.
23.05.1990	Plaintiffs' both the applications, dated 29.1.1988 and 08.02.1989, seeking direction from the court to deposit the balance consideration amount in connection with the preliminary decree passed in aforesaid suit, were dismissed for default as plaintiff remained absent when the matter was taken up for hearing.
28.08.1990	The plaintiff decree holder filed application before the court below for setting aside aforesaid order no. 92 dated 23.05.1990 by which both the applications were dismissed.
06.01.2003	A division Bench of this Hon'ble Court was pleased to allow Admako sessions Pvt. Ltd. to be added as appellant and was permitted to carry on the challenge to the said judgment and decree dated 14.12.1987, as original sole appellant Jyotish Chandra Sinha died.
29.06.2007	Another division Bench of this court, was pleased to permit the present petitioner/added appellant/Admako Sessions Pvt. Ltd. to withdraw the appeal being FA No. 138 of 1990 and as such the said appeal stood withdrawn and dismissed and all interim orders passed therein stood vacated.
26.08.2007	Plaintiff decree/holder filed execution case being Title Execution No. 78 of 2007, seeking for execution/or registration of deed of conveyance through

	court process by appointment of receiver.
19.03.2012	The petitioner/added appellant/Admakko filed an application under section 28 of the Specific Relief Act 1983 in the said suit which was registered as Misc. Case 6274 of 2012 in the said T.S. No. 102/1983
03.05.2012	Plaintiff decree holder opposite parties herein deposited the balance consideration amount of Rs. 40,000/- by treasury challan.
21.06.2012	The decree holder opposite party herein filed objection to the said application under section 28 of the Act of 1963 before the court below.
04.04.2017	By the order impugned the judgment debtors/petitioners application under section 28 of Act of 1963 was taken up for hearing and the court below was pleased to dismiss the said application being Misc. Case no. 6274 of 2012

23. Mr. Chatterjee, learned counsel appearing on behalf of the petitioner attacked the impugned order mainly on the following grounds:-

- (i)** Admittedly by the judgment dated 14.12.1987 the decree holder was mandatorily directed to deposit the balance consideration money within one month from the date of the judgment.
- (ii)** It is true that judgment-debtor preferred an appeal before this High court on 11.08.1988 but stay in connection with said appeal was granted on 29.01.1990. Therefore, there was no impediment on the part of the decree holder to deposit the balance consideration money from 14.01.1988 till 28.01.1990. Though the court below had not extended time to deposit the balance consideration money, still the decree holder/opposite party herein did not explain what prevented them from deposit the balance consideration money

during that period. He further contended that by the order dated 23.05.1990, both the applications filed by opposite parties for deposit of balance consideration amount was rejected and as such the prayer for extension of time also stood rejected.

(iii) He further attacked the order by submitting that even after dismissal of the Appeal on 29.06.2007, the decree holder did not pay the consideration amount and he paid only when the petitioner herein filed application for recession of contract under section 28 of the Act of 1963, inspite of the fact that the court below never extended time for making such deposit. In fact the decree holder/opposite party have failed to offer any explanation as to why the balance consideration money would not have been deposited firstly during the period from 14.12.1987 till 28.01.1990 and secondly for the period from 01.01.2007 till 03.05.2012. The order impugned is thus devoid of reasons and as such perverse, which calls for interference by this court.

24. It is not disputed that stay in connection with the decree was granted by the High Court which continued from 28.01.1990 till withdrawal of the suit i.e. on 29.06.2007.

25. Now the question is once date was fixed by the court regarding deposit of consideration price and when plaintiff/decreed holder's prayer for extension of time was rejected, whether court below had any authority or jurisdiction to reject the prayer for recession of contract of sale as prayed by the petitioner in his application under section 28 of the Act of 1963.

26. Court below while rejecting the petitioners aforesaid prayer under section 28 has supported his order by observing as follows:-

“A plain reading of Sec. 28 of the Specific Relief Act 1963 reveals that if the plaintiff/purchaser fails or neglects to deposit the balance consideration amount within the prescribed period, the vendor/defendant has right to apply to the Court to have the contract rescinded.

The relief for a recession of contract is discretionary but the discretion must be exercised judiciously and there must be a clear case or default for the Court to exercise this power.

In the case before us the plaintiff/D.hr obtained the decree for Specific Performance of Contract in respect of the suit property on payment of the balance consideration amount i.e. Rs. 40,000/-. It appears from the record that after passing of the judgment the defendant/j.dr/applicant preferred appeal being Title Appeal No. 138/1990 before the Hon'ble High Court, Calcutta and during the pendency of the appeal Admako Sessions Pvt. Ltd. was added as a party. It reveals that there was an order of stay passed by the Hon'ble High Court Calcutta in the said appeal for a considerable period of time. Subsequently, on 26.6.2007 the said appeal was dismissed being withdrawn by the appellant and all the interim orders passed by the Hon'ble Court were vacated. It reveals further that after disposal of the said appeal the D.hr/O.P. filed execution case being T.Ex 13/2007 on 28.8.07. That clearly goes to show that after passing the decree for specific performance of contract, the defendant/J. dr/applicant preferred appeal before the Hon'ble High Court, Calcutta and there was an order of stay of all further proceedings in connection with the said suit. Subsequently, the said appeal was dismissed as withdrawn and the d.hr. filed T. Execution case being no. 13/07. That being the position, I am not in agreement with the ld Advocate for the applicant/J. dr. that there was intentional latches/default on the part of the D.hr/O.P. in complying with the order of the Court. Moreover, it appears from the challan that the D. hr./O.P. has already deposited the balance amount. i.e. Rs. 40,000/- as per the decree in connection with T.Ex no. 13/2007 arising out of T.S. No. 102/1983 in Civil deposit. Thus, in the light of my above observations I am not inclined to allow the application u/sec 28 of the Specific Relief Act.

Hence, it is

Ordered

That the Misc. Case u/sec 28 of the Specific Relief Act be and the same is dismissed on contest but without cost.”

27. In view of above let me now consider whether such finding suffers from perversity or impropriety, so that this court may invoke jurisdiction under Article 227 of the Constitution of India. The words “*or such further period as the court may allow*” used in section 28 clearly indicates that in a decree for specific performance of a contract for sale, power vests in the court which had passed the decree to enlarge the period. Section 28 of the

Act of 1963 permits the deposit to be made within such period as the court may allow the time even after its expiry. In the present context the petitioner has taken the plea that the court below has not formally recorded that the period of time to deposit balance consideration money has been extended. However, the court below accepted deposit made by the decree holder even after filing of the application under section 28 of the Act.

28. It is well settled that mere delay on the part of the decree holder to deposit the money does not render the decree ineffective or release the judgment- debtor from his liability to satisfy the decree. It is only when there appears to be wilful default on the part of the decree holder to make the deposit, that the court would be justified in refusing extension of time. From the above-quoted observation of the court below it is quite clear that the court below did not find any wilful default on the part of the decree holder in the present case and as such the court below has invoked his power and authority to extend the time, though the deposit was made at a belated stage.

29. In view of the judgment of ***K. Kalpana Sarasawathi Vs. P.S.S.S. Chettiar*** reported in **AIR 1980 SC 512** it can be said that there exists power on the part of the executing court to extend the time without application. In the present context while the judgment was passed, admittedly there is no default clause and since this is a suit for specific performance for contract the suit is deemed to be pending even after passing the preliminary decree. Aforesaid decree for specific performance is in the nature of a preliminary decree and the original court keeping control over

the action and having full power to make any just and necessary orders therein including in appropriate cases the extension of time. In ***H. I. Trust Limited Vs. Haridas Mundhra and others*** reported in **AIR 1972 SC 1826** it was held that the court which passes a decree for specific performance, retains control over the decree even after the decree has been passed.

30. It is also well settled that the power under section 28 of the Act of 1963 is discretionary. The court cannot exercise its power on a flimsy ground to annul the decree once passed by it. A clear case of intentional default has to be established in order to give relief of rescission of contract, so as to nullify the decree of specific performance. In the present context it is a fact that immediately after passing the decree the judgment debtor preferred appeal before the High Court. It is also true that the stay was not immediately granted but since an appeal has been filed before the High Court, it could have discouraged the decree-holder to deposit the consideration price immediately when Appeal was preferred. However it is submitted that the decree holder twice filed applications on 29.01.1988 and 08.02.1989 i.e. before and after preferring the appeal with a prayer to give permission to deposit the balance consideration amount in respect of the judgment and decree dated 14.12.1987 and thereafter also filed application on 19.2.1988 for disposal of application dated 29.1.1988, though ultimately said applications were dismissed since petitioner failed to take steps later on. However after the dismissal order decree holder/opposite party filed application for recalling the said order. It also appears that immediately after withdrawal of the Appeal on 29.06.2007, the decree holder filed the Title Execution case being T.Ex. 78 of 2007 on 26.08.2007. Aforesaid series of

conduct of the decree holder, hardly suggest that he never had any intention to get the deed executed on payment of balance consideration price.

31. The other aspect of the matter is that with the withdrawal of appeal the preliminary decree passed by the court below became absolute. In ***Hari Vs. Mahadu Kerba Tekale***, reported in **AIR 2006 Bom 327** a coordinate Bench of Aurangabad Bench observed that the time permitted in a decree passed by the Trial court or an Appellate Court in a suit for specific performance and when it mentioned the date of payment for purchase price, the date merely an incidental direction in favour of the plaintiff and it is not the contingency that such date cannot be extended at a subsequent stage by the Trial Court, though the court shall always carefully examine the reasonableness and adequacy of the ground raised in such a request for extension of time. Here in the present case the court below had allowed the extension of time in its wisdom and the language used in sub section (1) of section 28 makes it clear that the court does not loss its jurisdiction after the grant of decree for specific performance nor it became *functus officio*. In fact Section 28 itself indicates that till the sale deed is executed by execution of the decree, the Trial Court retains its power and jurisdiction to deal with the decree of specific performance. Accordingly if the trial court had the jurisdiction to extend time, I find no material for holding that there was any illegality or impropriety in exercising the jurisdiction.

32. In fact where a court fixes time to do a particular act, it retains control over the matter and in the exercise of it's' discretion can extend time. Trial court in compliance with Order XX, Rule 12A specified the period, within

which the payment ought to have made. Appeal was preferred against that order but when said appeal was dismissed as withdrawn, no fresh time to deposit the amount was specified. Section 28(1) itself gives power to the court to extend the time. Here court below deemingly enlarged the time after accepting the deposited balance consideration and as such the decree is executable.

33. Mr. Chatterjee, on behalf of the petitioner referring case laws further argued that decree holder/opposite party failed to establish his readiness and willingness by convincing evidence during the period when there was no order of stay by the High Court. In this context I am of the view that while exercising jurisdiction under Article 227 of the Constitution of India, the High Court would not be justified in interfering of the order of the Trial court only on the ground that from the facts elicited before this court, a different view can also be arrived at that the decree holder might not had readiness or willingness to perform the contract at the relevant transitional period. Law hardly permits this approach while exercising jurisdiction under Article 227. Since the order impugned has not resulted gross or manifest failure of justice, this High court is not supposed to interfere with the order of the court below as a matter of routine, nor this power can be taken as a right of appeal. In view of above, since I find nothing illegality, irrationality or procedural impropriety in the order impugned nor it suffers from any jurisdictional error, I am not inclined to interfere with the order impugned, invoking jurisdiction under Article 227 of the Constitution of India.

34. The case relied by the petitioner reported in **(2015) 9 SCC 52** is factually different since in the said case plaintiff neither deposited the amount within the prescribe period nor made any application for extension of time. The suit stood dismissed for non-compliance with the decree and the plaintiff/byeer also failed to make out a case for condonation of delay. The other case relied by the petitioner in **(2019) 9 SCC 381** is also distinguishable in view of the fact that the execution case did not succeed and no sufficient explanation was given as to why the consideration money was not deposited. In that case plaintiff in fact failed to prove readiness and willingness to perform it's obligation, which is not the case in the present context. Similarly in **2023 SCC online 184** in paragraph 20, it was clearly held that the explanation which was given by the plaintiff was held to be insufficient explanation as to why plaintiff did not pay the balance consideration price as per the judgement and decree and what prevented him to make an application within a reasonable time under section 148 of the C.P.C. In the present case the decree holder made application for granting permission for the deposit of money, however at a later stage judgement debtor preferred the appeal before the High Court and the stay was granted by the High Court on 29.01.1990. Said applications got dismissed on 23.05.1990. Decree-holder even then showed his dilligency in praying for recalling the said order. Accordingly the judgments are factually distinguishable and are not squarely applicable in the present context.

35. In such view of the matter **C.O 1969 of 2017** stand dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)