



THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **27.09.2024**

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No. 3949 of 2024

Mr.C.Ebenezer

...Petitioner

Vs.

Mr.A.K.Stanley Rao

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Hon'ble Trial Court to number the I.A.SR.No.3080 of 2023 in O.S.No.102 of 2013 on the file of the IV Additional District and Sessions Judge, Thiruvallur @ Ponneri and decide the matter on merits.

For Petitioner : M/s.P.V.Balasubramaniam,
Senior Counsel for
Mr.S.Ranjith Kumar

ORDER

The revision has been filed seeking to direct the IV Additional District and Sessions Judge, Thiruvallur @ Ponneri to number the I.A.SR.No.3080 of 2023 in O.S.No.102 of 2013 and decide the matter on merits.

**Brief Facts:-**

2. The petitioner is the plaintiff in suit O.S.No.102 of 2013, seeking for specific performance of the sale dated 24.08.2012, directing the defendant to receive the balance sale consideration of Rs.1,30,00,000/- and to execute and register the sale deed in respect of the suit property in favour of the plaintiff and also for a permanent injunction restraining the defendant, his men, agents or subordinate in any manner creating, encumbrance or alienating the same to third parties.

3. After a full-fledged trial, the Trial Court had decreed the suit on 28.10.2021 and directed the defendant to register the sale deed in favour of the plaintiff as per the sale dated 24.08.2012, on receipt of the balance sale consideration of Rs.1,30,00,000/- from the plaintiff. The plaintiff was given two months time to deposit the balance sale consideration and thereafter the defendant was directed to execute the sale deed in favour of the plaintiff in two months.

4. The petitioner/plaintiff had filed I.A.No.11 of 2021 under Section 148 CPC read with Section 151 CPC in O.S.No.102 of 2013, seeking to enlarge the time for depositing the balance sale consideration from



27.12.2021 for another 30 days by contending that due to his old age, ill health, and due to the covid 19 pandemic, he was unable to arrange the balance amount within the prescribed period. The Trial Court, after issuing notice to the respondent, had allowed the said I.A.No.11 of 2021 and extended the time till 05.04.2022. Even after this extension, the petitioner was unable to raise funds since the order was passed during the 2nd wave of the Covid Pandemic and since there was a communication gap between the petitioner and his counsel, the conditional order was not brought to the knowledge of the petitioner/plaintiff. Meanwhile, the respondent/defendant had filed I.A.No.13/2022 in O.S.No.102 of 2013, under Section 28(2) of the Indian Contract Act read with Section 151 CPC to pass an order rescinding the contract, namely, the sale dated 24.08.2012 forfeiting the advance amount paid by the plaintiff and to dismiss the suit with exemplary costs.

5. In I.A.No.13/2022 in O.S.No.102 of 2013, the petitioner was set ex parte on 30.09.2022 and the Trial Court by an order dated 13.06.2023 had allowed the petition to rescind the sale agreement dated 24.08.2012, on condition that the respondent/defendant shall deposit an amount of Rs.60,00,000/- into the Court within a period of 30 days of the order. However, the respondent/defendant has not deposited the amount till date.



Thereby, the petitioner/plaintiff had filed an application praying to extend the time for the deposit of the balance sale consideration provided under the judgment and decree dated 28.10.2021. However, the said petition has been returned multiple times with various endorsements as follows:-

*“OS.102/13
PET U/s. 148 CPC
RIR No.279/24*

*Sd/- xxx
22.11.2023”*

“Returned:

Necessary copy given to other side (or) along with to be file process memo. Hence this petition returned. Time 2 weeks.

Sd/- xxx”

“All condition complied with and represented.

*Sd/- xxxx
Counsel for Petitioner
15/12/2023”*

*“OS.No.102/13
Pet U/s 148 CPC
RIR No. 492/23*

*Sd/-xxxx
18.12.23”*

*“O.S. 102/13
PET U/s 148 CPC
RIR No. 21/24*

*Sd/- xxxx
12/1/2024”*



“Returned

02.01.2024

WEB COPY

This petition is not maintainable which provision is maintainable in this petition. Hence this petition is returned.

Sd/-xxx
IV ADJ

The present petition is filled u/s 148 of C.P.C r/w sec 28 of specific Relief Act 1963. In the present case for the deposit of balance sale consideration the court has granted 2 months time from the date of decree. However, for the reasons stated in the present affidavit the petitioner/DH was unable to make such deposit within the time fixed under the decree. Therefore, the present application is moved u/s 148 of CPC seeking for enlargement of time granted under the decree. The said present application is the first application moved seeking for extension of time and therefore this Hon'ble Court has power to enlarge the time granted under the decree. Further as per sec 28 of specific relief Act the court has power to extend the time to deposit the balance sale consideration even after passing of final decree. The Hon'ble SC in 2007 (14) SCC pg 26 has held that court has power to extend the time. Therefore in the light of sec 148 of CPC & Sec 28 of specific relief Act and as per decision of



WEB COPY



Hon'ble Supreme Court this petition is maintainable and hence the same may be numbered and taken up on file.

*Sd/- xxx
Counsel for Petitioner /D.H.
11/1/2024”*

“Returned

20/2/24

Already suit decreed as on 28.10.2021 and you have given 2 times of opportunity but you have not complied such circumstance of this court order. Hence this petition is returned.

*Sd/- xxx
20/2/24*

“Compliance of Return:

The defendant had filed an I.A. No. 13/2022 seeking for rescinding of contract since the plaintiff has not deposited the balance sale consideration within the time fixed as per decree dated 20.10.2022. The said I.A. No. 13/2022 filed by defendant was allowed by this Hon'ble Court by order dated 13.06.2023 and defendant was directed to deposit the advance sale consideration of Rs.60,00,000/- received by him from the plaintiff. However the defendant has not deposited advance sale consideration



till date. Under such circumstances since the plaintiff is ready with the balance sale considerations & seeking permission of this Hon'ble Court to deposit the same the present application has to be considered and decided on merits. Further the circumstances in which the plaintiff was not able to deposit the balance sale consideration into the Hon'ble Court and the subsequent development which occurred in I.A.No.11 of 2022 & I.A.No.13 of 2022 all come to the knowledge of the petitioner plaintiff only recently and the same has been explained in details in support of additional affidavit filed by the petitioner along with present application. If the present application is not numbered and decided on merit the plaintiff would be left remediless.

Therefore considering the circumstance and facts in additional affidavit the Hon'ble Court may be pleased to number the above I.A. & decide the same on merits & thus render justice.

*Sd/- xxx
Counsel for petitioner
22/7/2024”*

“Returned

2/8/24

Already suit decreed on 22.10.2021 and you have given 2 times of opportunity but you have not complied such of circumstances of this order. And how this petition maintainable to be clarified. Hence this petition returned.



Sd/- xxx”

Challenging the above returns, the present revision has been filed.

6. Since the revision is filed against the returns of the petition by the Court without numbering it, the dispute is strictly a matter between the Court and the petitioner and therefore, this court is of the view that no notice is required to be sent to the respondent in the present civil revision petition.

7. Heard Mr.P.V.Balasubramaniam, learned Senior Counsel for the petitioner/plaintiff. He made the following submissions:-

i) The petitioner/plaintiff was unable to comply with the conditional order since the order was passed during the 2nd wave of covid and further it was also not brought to the knowledge of the petitioner/plaintiff by his counsel due to communication gap.

ii) Despite the Court allowing the petition filed by the respondent\defendant to rescind the and directing him to deposit the advance amount of Rs.60,00,000/-, the respondent\defendant has failed to comply with the order.



iii) The suit for specific performance is only a discretionary relief and the Court has to pass orders either in favour of the plaintiff or in favour of the defendant as per Section 28(1) of the Specific Relief Act.

iv) It is clear from Section 28(1) of the Specific Relief Act that the Court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes functus officio. The very fact that section 28 of the Specific Relief Act itself confers power on the Trial Court to grant order of rescission of the contract 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 and the Court has power to enlarge the time in favour of the parties to perform the conditions mentioned in the decree for specific performance. The Court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance and it is only an extension time which can be granted vice versa.

v) When the respondent/defendant has not complied with the conditional order of payment of Rs.60,00,000/- at the time of rescission of , the Court ought to have numbered the petition, heard the parties and pass orders instead of simply returning the petition and thereby the order of



return has to be set aside, the petition has to be taken on file and orders have to be passed on merits. In support of his contentions, the learned Senior counsel would rely on the following judgments:-

(a) (1997) 9 SCC 217 - Sardar Mohan Singh Vs. Mangilal alias Mangtya.

(b) 2023 SCC Online SC 184 - P.Shyamala Vs. Gundlur Masthan.

8. The petitioner is the plaintiff in the suit O.S.No.102 of 2013 filed for specific performance. The Trial Court had decreed the suit on 28.10.2021 and had directed the defendant/respondent to register the sale deed in favour of the plaintiff/petitioner as per the sale dated 24.08.2012 on receipt of the balance sale considering of Rs.1,30,00,000/- from the plaintiff/petitioner. Due to the Covid pandemic and mis communication the petitioner/plaintiff was unable to comply with the conditional order despite extension of time granted by the Trial Court. Subsequently, the respondent/defendant had filed an application under Section 28 (2) of the Specific Relief Act seeking for rescission of contract, namely, the Sale dated 24.08.2012. The Trial Court, while allowing the petition for rescission of the Sale , had imposed a condition directing the respondent/ defendant to deposit the advance amount of Rs.60,00,000/- before the Court. The



respondent/defendant had also failed to comply with the condition.

Admittedly, both parties have failed to comply with the conditional orders passed by the Trial Court. In such circumstances, the petitioner/plaintiff has filed the petition seeking for extension of time for deposit of the balance sale consideration provided under the judgment and decree dated 28.10.2021, whereas, the Trial Court had returned the petition without numbering it holding that it is not maintainable. Challenging the correctness of the same, the present revision has been filed by the decree holder.

9. The Courts have repeatedly held that suit for specific performance is only a discretionary relief and the Court has to pass order either in favour of the plaintiff or in favour of the defendant. In the case of ***Sardar Mohan Singh Vs. Mangilal alias Mangtya (cited supra)***, a Full Bench of the Apex Court had held that the Court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes functus officio. The Apex Court had further held that the very fact that Section 28 of the Specific Relief Act itself gives power to grant order of rescission of the decree. It 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. The Court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance.

10. Further, in the case of ***P.Shyamala Vs. Gundlur Masthan*** (cited supra), the Apex Court has held as follows:-

“22.Now so far as the reliance placed upon the decision of this Court in the case of Kishor Ghanshyamsa Paralikar (D) through Lrs. (supra), relied upon on behalf of the respondent is concerned, it is required to be noted that in the said case before this Court, the total sale consideration was Rs. 8,78,500/-. The vendee paid a sum of Rs. 7,31,000/- immediately. He was required to pay the remaining amount of Rs. 1,47,500/- within a period of one month from the date of the compromise decree. There was a delay of five days only in paying the remaining amount of Rs. 1,47,500/-. Therefore, in exercise of powers under Section 28 of the Specific Relief Act, this Court allowed the extension of time in favour of the decree holder to deposit the balance sale consideration. In the said decision, in paragraph 11, it is observed as under:

“11.This section gives to the vendor or the lessor the right to rescission of the contract for the sale or lease of the immovable property in the same suit, when after a suit for



WEB COPY



specific performance is decreed, if the vendor or the lessor fails to pay the purchase money within the period fixed. This section seeks to provide complete relief to both the parties in terms of a decree of specific performance in the said suit without having resort to a separate proceeding. Therefore, a suit for specific performance does not come to an end on the passing of a decree and the court which has passed the decree for specific performance retains control over the decree even after the decree has been passed. Section 28 not only permits the judgment-debtors to seek rescission of the contract but also permits extension of time by the court to pay the amount. The power under this section is discretionary and the court has to pass an order as the justice of the case may require. It is also settled that time for payment of sale consideration may be extended even in a consent decree. This Court in Smt. Periyakkal and ors. Vs. Smt. Dakshyani I, speaking through Chinnappa Reddy, J. observed that even in a compromise decree, the court may enlarge the time in order to prevent manifest injustice, and to give relief to the aggrieved party against a forfeiture clause. The Court observed the following:

“4..... The parties, however, entered into a compromise and invited the court to make an order in terms of the compromise, which the court did. The time for deposit stipulated by the parties became the time allowed by the court and this gave the court the jurisdiction to extend time in appropriate cases. Of course, time would not be extended ordinarily, nor for the mere asking. It would be granted in rare cases to prevent manifest injustice. True the court would not rewrite a contract between the parties but the court would



WEB COPY



relieve against a forfeiture clause; And, where the contract of the parties has merged in the order of the court, the court's freedom to act to further the ends of justice would surely not stand curtailed.”

23. Therefore, as observed by this Court, the power under Section 28 of the Specific Relief Act is discretionary and the Court has to pass an order as the justice may require.”

11. The law laid by the Apex forum clarifies that the legal provision viz., Section 28 of the Specific Relief Act seeks to provide complete relief to both the parties in terms of a decree of specific performance in the said suit without having resort to a separate proceeding and a suit for specific performance does not come to an end on the passing of a decree and the court, which has passed the decree for specific performance, retains control over the decree even after the decree has been passed. The provision not only permits the judgment-debtors to seek rescission of the contract but also permits extension of time by the court to pay the amount. The power under this section is discretionary and the court has to pass an order as the justice of the case may require.

12. Coming to the case on hand, while the decree obtained by the



revision petitioner/plaintiff in O.S.No.102 of 2013, on 28.10.2021, which gave rise to the present civil revision, being one after a full fledged trial and no appeal having been filed by the defendant/respondent herein, the interlocutory application in I.A.No.13 of 2022 had been filed by the defendant/respondent herein to have the agreement of sale rescinded.

13. Whiles, in the case on hand, before ever deciding the maintainability of the interlocutory application filed by the decree holder, it is relevant to note that the Trial Court, having set the revision petitioner/plaintiff as exparte on 30.09.2022, nearly after eight months, by an order dated 13.06.2023, had allowed the petition to rescind the sale agreement dated 24.08.2012, on condition that the respondent/defendant shall deposit an amount of Rs.60,00,000/- into the Court within a period of 30 days of the order.

14. Such an order rescinding the sale agreement passed by the Trial Court with a specific direction to the decree holder/respondent herein to refund the huge amount of advance money paid by he plaintiff/decreed holder stipulating a time limit of thirty days for such payment shows the persistence of Trial Court's control over the dispute or rather resumption of



cause of action. Whiles, the respondent/judgment debtor has not bothered to refund the advance amount to the revision petitioner/deGREE holder neither within the period of thirty days stipulated by the Trial Court while passing the order rescinding the sale agreement nor even till date.

15. To have a better understanding about the issue, it would be appropriate to have a perusal of Section 28 of the Specific Relief Act, 1963 and thereby, it is extracted hereunder for ready reference:-

"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,



WEB COPY



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,***



WEB COPY



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. "

16. A conjoint reading of Sub-sections (1), (3) and (4) of Section 28 of the Specific Relief Act would prove the intent of the said legal provision. Though Section 28 speaks of Rescission of contracts, the words "**or such further period as the court may allow**" employed in sub-Section (1) throw some light on the issue when they are read together with sub-section (3),



which speaks about the right of the purchaser to claim for conveyance of the property on payment of purchase money. Further, the specific and prohibitive clause in sub-section (4) that no separate suit will lie in respect of any relief shows the intention of the legislature to curtail the multiplicity of proceedings on the same cause of action and to give a quietus to the issue in the same proceedings.

17. In such circumstances, this court is of the view that the right of the revision petitioner/plaintiff to pursue the decree obtained by him after a full-fledged trial cannot be taken away by an ex parte order rescinding the sale agreement itself, when he comes out with justifiable cause for his absence and the delay in pursuing the matter, especially, when the respondent/defendant had failed to comply with the direction of the Trial Court to refund the advance money paid by the plaintiff within a period of thirty days.

18. However, the hyper technicality in the present case is that the interlocutory application in question viz., I.A.No.3080 of 2023 had been filed before the Trial Court by the newly engaged counsel on behalf of the revision petitioner/decreed holder under Section 148 CPC seeking extension



of time to comply with the direction in the decree for specific performance for payment of the balance purchase money, without realising that such an Application is a second one and a similar Application had been filed on an earlier occasion, wherein a week's time was granted.

19. Section 148 CPC, under which the revision petitioner had filed the interlocutory petition in I.A.No.3080 of 2023, reads as under:-

*"Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, **from time to time**, enlarge such period, **not exceeding thirty days in total**, even though the period originally fixed or granted may have expired."*

20. While the Specific Relief Act, being a special enactment, prevails over the Code of Civil Procedure and provides relief to both vendor and vendee under Section 28, the fact remains that Section 148 CPC itself provides for enlargement of any period fixed or granted by the court not exceeding thirty days in total and a week's time alone had been extended on the previous occasion.



21. However, the ground reality is that in an Application filed by the judgment debtor in I.A.No.13 of 2022, an order dated 13.6.2023 had been passed by the Trial Court rescinding the sale agreement itself, against which, the revision petitioner ought to have filed an Application seeking to set aside, after condoning the delay in approaching the court as the matter could be further pursued only after the said order is set aside, but, due to some miscommunication, an application under Section 148 CPC had been filed and the returns made therein had been put to challenge in the revision petition and thereby, the period exhausted in pursuing such application and the civil revision is liable to be exempted.

22. In such circumstances, the revision petitioner is granted liberty to move the Trial Court with Applications,

(i) for condoning the delay in approaching the court excluding the period exhausted by him in pursuing the Application filed before the Trial Court under Section 148 CPC and the civil revision petition before this court;

(ii) for setting aside the ex parte order dated 13.6.2023 passed in I.A.No.13 of 2022; and



(iii) for extension of time to comply with the direction in the decree for payment of balance sale consideration; within a period of two weeks from the date of receipt of copy of this order. In such event, the Trial Court shall consider the same after affording opportunity to the other side and pass orders on merits and in accordance with law, within a period of four weeks from thereafter.

23. The Civil Revision Petition is ordered accordingly. No costs. The Registry is directed to return the original papers to the petitioner to enable him to re-present the same before the Trial Court.

27.09.2024

shr/ssk.

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

To:-

The IV Additional District and Sessions Judge,
Thiruvallur @ Ponneri.



WEB COPY

C.R.P.No. 3949 of 2



A.D.JAGADISH CHANDIRA, J.

shr/ssk.

C.R.P.No. 3949 of 2024

27.09.2024