

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.30 of 2017

In
Civil Writ Jurisdiction Case No.4967 of 2013

=====

Smt. Shobha Devi, wife of Late Om Prakash Sah, resident of Mohalla-Khagariaganj, P.S.-Khagaria, Dist.-Khagaria

... .. Petitioner/s

Versus

Suresh Prasad Sah, son of Ram Khelawan Sah, resident of Mohalla-Hajipur, Ward No. 11, Municipality Road, P.S.-Khagaria, Dist.-Khagaria

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr.Abinash Kumar, Adv.
		Mr. Susanta Kumar Roy, Adv.
For the Opposite Party/s	:	Mr. Md. Nadim Seraj, Adv.
		Mr. Ali Muqtadir Ahmad, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

14 25-09-2025 This Civil Revision application has been filed against the order dated 19.01.2013 passed by the learned Sub-Judge-Ist, Khagaria, in Miscellaneous Case No. 05 of 2011, whereby, the said Miscellaneous Case has been rejected, in view of the order dated 02.05.2011 passed in C.W.J.C. no. 13234 of 2010 which was filed for the same relief.

2. The judgment-debtor/objector is the petitioner in the present case.

3. The plaintiff/opposite party filed a suit bearing Title Suit No. 21 of 1994 for specific performance of



contract with respect to suit land against the defendant/petitioner for directing him to execute the sale deed in respect of Schedule-I property mentioned in the plaint after receiving the balance consideration money pursuant to agreement dated 14.02.1994 executed by the original defendant/petitioner. The plaintiff had alternatively prayed that if the defendant fails to execute the sale deed, the sale deed be directed to be executed through process of Court on depositing the balance consideration money of the property, in question. The said suit was decreed *vide* judgment and decree dated 30.08.1997 by the learned Sub-Judge-Ist, Khagaria, whereby, the original defendant was directed to execute the sale deed in favour of the plaintiff/opposite party in respect of the suit property after receiving the balance consideration money of Rs. 80,849/- in terms of the agreement of sale dated 14.02.1994 within two months from the date of the decree, failing which the plaintiff shall be at liberty to apply in the Court for execution of the sale deed through process of court.

4. The case of the plaintiff/opposite party/deGREE holder is that the original defendant/petitioner failed in



taking the balance consideration amount despite the repeated request made by the opposite party and also failed to execute the sale deed in favour of the opposite party. Thereafter, the opposite party was constrained to file Execution Case No. 01 of 1998. The opposite party deposited the balance consideration amount on 17.01.2004 after depositing the balance amount, the judgment-debtor/petitioner filed an objection on 11.09.2004 seeking prayer for dismissal of execution case as well as rescission of contract under Section 28 of the Specific Relief Act, 1963 due to non-payment of consideration amount within the time. The learned Executing Court after hearing the parties, dismissed the objection filed by the judgment-debtor/petitioner on 22.05.2010.

5. Being aggrieved by the order dated 22.05.2010 passed in Execution Case No. 01 of 1998 by the Sub-Judge-Ist, Khagaria, the judgment-debtor/petitioner filed writ application i.e. C.W.J.C. No. 13234 of 2010 before this Court. The same was dismissed *vide* order dated 02.05.2011 holding that there is no merit in this case. After dismissal of writ application, the judgment-debtor/petitioner again filed



a Miscellaneous Case No. 05 of 2011 under Section 28 of the Specific Relief Act, 1963, seeking the same relief in the said application. After hearing the parties, the learned Executing Court dismissed the Miscellaneous Case on 19.01.2013 and against the said order, the judgment-debtor/petitioner preferred C.W.J.C. No. 4967 of 2013. In the said writ application, on 03.05.2013, the notices were issued to opposite party and further proceeding of Execution Case No. 01 of 1998 was stayed. Subsequently, C.W.J.C. No. 4967 of 2013 was converted into the present Civil Revision application.

6. The learned counsel for the judgment-debtor/petitioner submits that the opposite party filed execution case bearing Execution Case No. 01 of 1998 on 03.04.1998 after expiry of six months, before the learned Sub-Judge-Ist, Khagaria with a wrong submission that the original judgment-debtor has neither received the balance consideration money nor executed the sale deed in favour of the opposite party. The said execution case was admitted on 25.04.1998, whereby, the opposite party was directed to file notices and *talbana* by 23.05.1998. The said direction was



not complied by the opposite party/deGREE holder. Despite the repeated orders, the opposite party failed to comply the said order, ultimately, on 20.03.1999, the opposite party filed the notices and *talbana*, which was issued on 07.04.1999. After receiving of summons, the judgment-debtor/petitioner appeared on 17.04.1999, thereafter, the petitioner filed petition dated 23.08.1999 before the Executing Court praying, therein, for issuance of direction upon the opposite party to deposit the balance consideration money and to get the sale deed executed. The opposite party neither bothered to pay the balance consideration money to the original judgment-debtor nor got executed the sale deed. It is further pleaded that the decree holder/opposite party was directed to make proper *pairvi* by the executing court on different dates, lastly on 01.04.2000, opposite party was directed to deposit the balance consideration amount by 22.04.2000. On several dates, the direction for depositing the remaining balance amount were passed but the decree holder/opposite party did not comply the said order. On 03.02.2003, a *challan* of Rs. 80,489 was submitted by the opposite party without depositing the balance consideration



money in the Treasury. Despite the specific direction to deposit the balance consideration money in Treasury, only on 17.01.2004, the opposite party deposited the balance consideration money in the Treasury. The original judgment-debtor filed objection in Execution Case No. 01 of 1998 on 11.09.2004 for dismissal of execution case as well as for rescinding the contract due to non-payment of balance consideration amount by the opposite party. It is further contended that during pendency of execution case, original judgment-debtor died on 02.09.2005. *Vide* order dated 01.10.2005, the petitioner was substituted in place of her deceased husband. After substitution, the petitioner filed her show cause on 07.07.2007 in continuation of original objection petition filed by her husband which was heard by the Executing Court. The objection petition filed by her husband as well as show cause of the petitioner was rejected on 22.05.2010, which was challenged in C.W.J.C. No. 13234 of 2010 before this Court and the same was also dismissed *vide* order dated 02.05.2011.

7. Learned counsel for the petitioner further submits that the petitioner was advised to file fresh



Miscellaneous Case in Execution Case under Section 28 of the Specific Relief Act, 1963. Accordingly, Miscellaneous Case No. 05 of 2011 was filed before the same court for rescinding the contract due to not fulfilling/complying the direction given to the opposite party by the concerned court. After hearing the parties, the learned Executing Court dismissed the Miscellaneous Case No. 05 of 2011 on 19.01.2013 only relying on earlier order dated 02.05.2011 passed in C.W.J.C. No. 13234 of 2010 by this Court. The learned court below failed to consider the provision of Section 28 of the Specific Relief Act, 1963 while passing the impugned order. Hence, the present Civil Revision application has been filed.

8. Learned counsel for the petitioner has relied upon a decision of Hon'ble Supreme Court which has dealt with Section 28 of the Specific Relief Act, whereby, the Apex Court rescinded the contract when the decree holder failed to explain the delay in-complying the judgment and decree in stipulated time or where the decree holder failed to file execution petition before the concerned court. Reliance has been placed in AIR 1999 SC 918 (V.S.



Palanichamy Firm vs. C.Alagappan & Anr.), AIR 2023 SC 1224 (P. Shyamala Vs. Gundlur Masthan) and AIR 2017 SC 623 (Prem Jeevan vs. K.S. Venkata Raman & Anr.).

9. On the other hand, learned counsel for the opposite party vehemently submits that the present Civil Revision application is not maintainable, at all, in view of the fact that the petitioner has raised the same objection before the Executing Court, who dismissed the earlier objection of the petitioner and further that the petitioner challenged the same before this court in C.W.J.C. No. 13234 of 2010 which was also dismissed *vide* order dated 02.05.2011. The said order has not been challenged by the petitioner before the Division Bench or before the Hon'ble Supreme Court. The order passed in C.W.J.C. No. 13234 of 2010 had attained finality. Learned counsel for the opposite party submits that a mis-conceived submission was made by the petitioner that the earlier proceeding in Execution Case No. 01 of 1998 and in Miscellaneous Case No. 05 of 2011 were different proceedings. The petitioner had filed both the petitions under Section 28 of the Specific Relief Act, 1963, which is barred by the principle of *res judicata*. Reliance



has been placed in the case of ***Bhanu Kr Jain Vs. Archana Kumar*** reported in (2005) 1 SCC 787, wherein, the Hon'ble Court has observed that the principle of *res judicata* shall apply not only to two different proceedings but also to different stages of the same proceeding as well. It is also submitted that the petitioner never raised any objection regarding the delay in payment of balance consideration money. The petitioner raised objection only when the opposite party had deposited the amount on 17.01.2004 and thereafter petitioner filed another objection under Section 28 of the Specific Relief Act on 11.09.2004 with an intention of lingering the matter and delaying the execution proceeding which is pending for consideration since last 26 years.

10. After considering the rival submissions and perusal of the impugned order, it is manifest that the judgment-debtor firstly filed objection petition under Section 28 of the Specific Relief Act, 1963 on 11.09.2004 after receiving the remaining consideration amount in Execution Case No. 01 of 1998 which was dismissed by the Execution Court and upheld by this Court in C.W.J.C. No.



13234 of 2010 on 02.05.2011. It is admitted fact that the order passed in C.W.J.C. No. 13234 of 2010 dated 02.05.2011 was never challenged before any superior court. Despite that the judgment-debtor/petitioner re-agitated the matter before the Executing Court in Miscellaneous Case No. 05 of 2011 and filed petition under Section 28 of the Specific Relief Act, 1963, before the same court. The said objection had already attained finality. Learned counsel for the opposite party/decreed holder has rightly relied upon the judgment in the case of ***Bhanu Kumar Jain (Supra)***, wherein, it has been held that the principle of *res judicata* shall apply not only to two different proceedings but also to two different stages of the same proceeding as well. In view of the aforesaid settled principle of law, the second objection petition bearing Miscellaneous Case No. 05 of 2011 is hit by principle of *res judicata*. The question of rescindment under Section 28 of the Specific Relief Act, 1963 has already taken finality by virtue of order passed in C.W.J.C. No. 13234 of 2010 dated 02.05.2011 by this Court.

11. Having regard to foregoing reasons, this Court



doesn't find that the learned court below has committed any error of jurisdiction or illegality in passing the impugned order.

12. Accordingly, this Civil Revision application is dismissed.

(Khatim Reza, J)

prabhat/-

U			
---	--	--	--

