D/L. 6.
February 28, 2025
MNS

CO 3723 of 2024

Veer Vikram Bahadur Singh @ Vir Vikram Singh
@ Vikram Bahadur Singh
Vs.
Sri Chaturbhuj Pandey and Ors.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Mr. R. Chowdhury,
Ms. Mili De

….for the petitioner.

Mr. Rahul Karmakar,
Mr. Sounak Mukherjee,
Mr. Lutful Haque,
Ms. Taharima Khatun

…for the opposite parties.

1. Heard learned Counsel for the parties.

2. The present application under Article 227 of the Constitution of India has been filed against an order whereby the application of the decree-holder in a suit for specific performance passed in the year 2015 for accepting the demand draft for belated payment of the balance amount, as directed to be paid by the decree holder by the decree passed in the year 2015, has been allowed.

3. Learned Counsel appearing for the petitioner contends that Order XX Rule 12A of the Code of Civil Procedure (in short "the Code") clearly empowers the court

passing the decree for specific performance to specify the period within which the payment shall be made.

4. In the present case, however, the payment was made several years thereafter. As such, it is submitted that valuable rights have accrued in favour of the petitioner in terms of Section 28 of the Specific Relief Act, 1963 (in short “the 1963 Act”) even to have a rescission of the contract.

5. It is submitted, by placing reliance on the judgment of *Balbir Singh and Another Vs. Baldev Singh* reported at *2025 SCC Online SC 103,* that the Supreme Court, in a similar scenario, had observed that merely because the judgment-debtor has not sought the rescission of the contract in terms of Section 28 of the 1963 Act, the said inaction on the part of the judgment-debtor would not automatically result in extension of time as stipulated under Order XX Rule 12A of the Code for deposit of the balance amount. Thus, it is argued that the learned Trial Judge acted without jurisdiction in accepting the belated deposit.

6. It is further pointed out by learned Counsel for the petitioner that by a previous order dated August 23, 2024, an application filed by the petitioner/ judgment-debtor for stay of the execution case was fixed for hearing on November 16, 2024 but in the meantime, the application of the decree-older for acceptance of the delayed deposit was

taken up on a put-up petition being filed by the decree holder.

7. Learned Counsel submits further that without any explanation being given or satisfaction being recorded in the impugned order in respect of the huge delay in depositing the amount as directed by the specific performance decree, the learned Trial Judge acted *de hors* the law in accepting such deposit.

8. Learned Counsel appearing for the opposite party No. 1 controverts such allegations and hands over a copy of the application under Section 151 of the Code for acceptance of demand draft, which, unfortunately, has not been annexed to the revisional application.

9. A bare perusal of the same indicates that sufficient reason for the delay was made out, including that the decree-holder was critically ill with severe ailments and her husband being the only *tadbirkar* got engaged with her treatment and medication.

10. Several other litigations intervened in the meantime, which have also been indicated in the application.

11. It has also been stated that the decree-holders requested the judgment-debtors to accept the balance consideration money several times and execute a registered deed of conveyance but the judgment-debtors paid no heed to the said request.

12. As such, it is submitted that there was sufficient reason for the learned Executing Court accepting the delayed deposit.

13. Upon hearing learned Counsel, this court finds that the appropriate provision for enlargement of time in the present context is Section 148 of the Code, which does not mandate any prior recording of satisfaction by the court for the delay in doing an act directed by the court. As per Section 148, where any period is fixed or granted by the court for the doing of any act prescribed or allowed by the 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.

14. Thus, the provisions of Section 148 of the Code are couched in such a language that all other provisions of the Code conferring power on the court for fixing any time are circumscribed by Section 148. Hence, the time stipulated under Order XX Rule 12A of the Code is also circumscribed by Section 148, which empowers the court, even without recording any reason, to enlarge the time for doing any act which has been directed by the court itself. The only fetter is that at a time, the period can be extended for thirty days. However, at the same time, Section 148 makes it abundantly clear that such enlargement can be granted even though the period originally fixed or granted may have expired.

15. What has been held by the Supreme Court in *Balbir Singh's* case (supra) is not that if an application is filed for acceptance of the delayed deposit in terms of a decree for specific performance, the same has to be automatically rejected. It has only been observed in the said judgment that non-application by the judgment-debtor under Section 28 for rescission of a contract does not automatically operate as extension of time.

16. In contradistinction with the ratio laid down therein, in the present case, a specific application for acceptance of the delayed deposit, by showing the reasons for the delay, has been filed by the decree-holder and has been allowed by the impugned order.

17. The position might have been different if the right under Section 28 was exercised by the judgment-debtor in the meantime, in which case, the contract would have been rescinded, thereby creating accrued rights in favour of the judgment-debtor and taking away the executability of the specific performance decree.

18. In the same breath, while the judgment-debtor complains of the inaction of the decree holder for a long period of over nine years, fact remains that the judgment-debtor also did not take out any application under Section 28 of the 1963 Act during the self-same period for having the contract rescinded in view of non-deposit of the money by the decree-holder as directed in the decree for specific

performance. Hence, the petitioner cannot blow hot and cold in the same breath.

19. That apart, although non-filing of any application under Section 28 of the 1963 Act does not automatically enlarge the time, in the present case, the decree-holder specifically filed an application for enlargement of time, which has been allowed by the impugned order by the learned Executing Court, having ample power under Section 148 of the Code to do so despite the provisions of Order XX Rule 12A of the Code.

20. Also, Order XX Rule 12A, while being subject to Section 148, does not contain any sanction or penal provision restraining the court from enlarging the time for complying with the same at a juncture even beyond that fixed by the court.

21. Hence, seen from every perspective, the learned Executing Court was justified in passing the impugned order.

22. The grievance of the petitioner that the application for acceptance of the draft by the decree-holder was taken up earlier than the date fixed for hearing of the judgment debtor's stay application is neither here nor there, since in any event, the grant of stay would be dependent on the outcome of the application for acceptance of the delayed deposit of the money.

23. Hence, I do not find any illegality whatsoever and/or jurisdictional error in the impugned order.

24. Accordingly, C. O. No. 3723 of 2024 is dismissed on contest, thereby affirming the impugned order dated October 1, 2024 passed by the learned Civil Judge (Senior Division), First Court at Alipore, District – South 24 Parganas in Title Execution Case No. 5 of 2016.

25. There will be no order as to costs.

26. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)