

(203)

Supreme Court of India

ADARSH KUMAR GOEL, UDAY UMESH LALIT

Prem Jeevan v. K.S. Venkata Raman

CIVIL APPEAL NO(S).608-609 of 2017 (Arising out of SLP(C)Nos.147-148 of 2015)

17.01.2017

Specific Relief Act, 1963, Section 28 - CPC, 1908, Order 20 Rule 12A - 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 - 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 - 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 - 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 - If the judgment-debtor has not sought rescission of the contract, it does not automatically result in extension of time. [Para 10, 11]

Specific Relief Act, 1963 - Section 28 - S. 28 of the Act permits the judgment-debtor to seek rescission of a contract and also permits extension of time by the Court but merely because rescission of contract is not sought by the judgment-debtor, does not automatically result in extension of time. [Para 13]

ORDER

(1) Leave granted. These appeals have been preferred against Judgment and Order in Civil Revision Petition No(s).2807/2012 and 2810/2012 passed by High Court of Judicature at Hyderabad on 1st September, 2014. (2) Short question that arises for consideration in these appeals is : whether failure of the decree-holder in a suit for specific performance to make the requisite deposit within the specified time, will permit the decree-holder to execute the decree in absence of extension of time?

The facts are not in dispute. A decree for specific performance was granted in favour of the plaintiffs-respondents on 25th September, 2008 as follows:

“In the result, the suit of the plaintiff is decreed with costs directing the defendant no.1 to execute and register sale deed in favour of the plaintiff in respect of the suit schedule property within two months from the date of this order after receipt of balance sale consideration of Rs.10,50,000/- at 6% per annum from 27.09.2002 i.e., from the date of agreement of sale.

It is further decree that in case defendant No.1 refuse to receive the balance sale consideration with interest the plaintiff is at liberty to deposit the said amount into the Court and to obtain regular sale deed through Court.”

(4) The respondents claimed to have a cheque on 4 th December, 2008 for the amount in question but the same was returned, as not accepted by the judgment-debtor, appellant herein. Thereafter the decree-holders applied for execution sometime in the year 2010, after making the deposit of the decretal amount on 7th October, 2010. (5) The judgment-debtor filed an application before the Executing Court objecting to the execution of the

decree as the amount in question was not deposited by the decree-holders within the stipulated time, rendering the decree inexecutable in the absence of extension of time.

(6) The Executing Court upheld the objection holding:

“There is no documentary proof to show that he seek enlargement of time for paying the purchase money under Section 28(1) of the Act of 1963, without seeking extension of time the respondent herein filed this EP on 07.10.2010 i.e., after a period two years two months. As per the decision reported in 2010 (5) ALD 807 the execution petition for obtaining specific performance is not maintainable.”

(7) On a revision having been filed by the decree-holders, the High Court reversed the order of the Executing Court and held :

“The Executing Court was not clear, both as regards the facts and as to law. On facts, it did not take into account, the real purport of the decree. The relevant portion has already been extracted. The stipulated of two months was for the 1st respondent to execute the decree. That stipulation, no doubt, is coupled with the right to receive the balance of consideration. There was nothing on record to indicate that he ever made any effort to collect or demand the balance of consideration from the petitioner, within that time. The plea of the petitioner that when he offered the amount, the respondents refused to receive; remained un rebutted. The 1st respondent did not file any rejoinder to the counter-affidavit. As observed in the preceding paragraphs, the Executing Court did not record any evidence of the parties. Therefore, the finding recorded by the trial court, in this behalf, cannot be sustained. When valuable rights accrued to a party, on account of the suit for specific performance being decreed, they cannot be taken away, on the basis of such an untenable finding.

On the aspect of law, the Executing Court proceeded as though Section 28 of the Act gets attracted, though it did not mention in so many words. Firstly, the 1st respondent himself did not invoke that provision. Secondly, the provision gets attracted only where, a) the Court, which passed the decree, directs the decree-holder to pay the purchaser money (balance of consideration) within a period, stipulated by it, and b) the decree-holder failed to comply with the direction. It is then, and only then, that the Court can consider the feasibility of directing rescission of contract. In the instant case, the time stipulated by the trial Court in its decree was for the 1st respondent, to execute the decree, and not directly for the petitioner to deposit the amount.

There is nothing on record to disclose that the 1st respondent has ever made any effort to receive the amount, stipulated in the decree. On the other hand, the plea of the petitioner that, when he offered to pay the amount, the 1st respondent did not receive the same; remained un rebutted. The Court must ensure strict compliance with the conditions stipulated in a provision, which has the effect of nullifying a decree. Even where two views are possible on the facts of the case, the one, which would sustain the decree, must be adopted.”

(8) We have heard learned counsel for the parties.

(9) Reference to Order XX Rule 12A 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.

(10) 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* - (1994) 2 SCC 642, 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.

(11) 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.

(12) Section 28 of the Specific Relief Act is as follows:

“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, 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 lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser 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, 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.”

(13) There is no doubt that the above provision permits the judgment-debtor to seek rescission of a contract and also permits extension of time by the Court but merely because rescission of contract is not sought by the judgment-debtor, does not automatically result in extension of time.

(14) In view of the above, we allow these appeals, set aside the order passed by the High Court and restore the order of the Executing Court. No costs.

(15) The respondents-decree holders will be entitled to withdraw the amount deposited by them.