2024 INSC 651

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10193 OF 2024
(Arising out of SLP (C) No.29899 OF 2017)

ISHWAR (SINCE DECEASED)
THR. LRS & ORS. ...APPELLANTS

VERSUS

BHIM SINGH & ANR. ...RESPONDENTS

J U D G M E N T

MANOJ MISRA, J.

1. Leave granted.

2. This appeal impugns an order of the High Court of Punjab and Haryana at Chandigarh[1] dated 11.01.2017

1 High Court

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passed in Civil Revision No.8105 of 2016, whereby the revision preferred by the appellant(s) against the order of the Civil Judge (Senior Division), Kaithal[2] dated 03.11.2016 was dismissed.

FACTUAL MATRIX

3. A suit for specific performance was instituted by the respondents against the appellant(s) (which would include their predecessor in interest) for enforcement of an agreement to sell dated 18.05.2005. In the plaint, *inter alia*, it was alleged that the appellant(s) had agreed to sell the property in dispute at a total consideration of Rs.18 lacs, out of which Rs.9.77 lacs was paid in advance, yet, despite service of notice requesting execution of sale deed, the appellants failed to execute the same.

4. The trial court (i.e., the Court of Additional Civil Judge (Senior Division), Kaithal), *vide* judgment and decree dated 28.02.2011, decreed the suit in part whereunder the appellant(s) were directed to refund the earnest money with interest, etc.

2 Execution Court

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5. Aggrieved by rejection of the prayer for specific performance of the agreement, the respondents went in appeal. The appellate court (i.e., the Court of Additional District Judge, Kaithal (for short ADJ)) allowed the appeal *vide* judgment and decree dated 12.01.2012 and accepted the prayer for specific performance of the agreement. While doing so, it directed the appellants herein to execute the sale deed in favour of the respondents herein on payment of balance sale consideration within a period of two months from the date of the decree, failing which, liberty was given to the decree holder(s) to get the sale deed executed through Court.

6. On 20.03.2012, the respondents (i.e. decree holders) filed an execution application before the Court of first instance (i.e., the trial court) praying thus:

> "It is therefore, prayed that the sale deed as per the decree passed in Civil Appeal No.53 of 2011 may kindly be got executed and registered in favour of the decree holders by the appointment of the local commissioner and possession may kindly be got delivered to the decree holder and the balance sale price may kindly be got deposited in the Court for payment to the J.Ds and cost for the suit and the appeal and this execution may also be got recovered from the J.Ds."

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7. While the application for execution of the decree was pending, the appellant(s) (i.e., the judgment debtor(s)) challenged the appellate court decree by filing Second Appeal No.3730 of 2012 before the High Court, which came to be dismissed on 07.11.2013.

8. Upon dismissal of the Second Appeal, the respondents (i.e., decree-holders) filed an application before the Execution Court on 24.03.2014 seeking permission to deposit the balance consideration in Court. Opposing this prayer of the decree holder, in the execution proceeding itself, the appellant(s) (i.e. the judgment-debtors) submitted an application under Section 28[3] of the Specific Relief Act,

3 **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 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, 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:—

1963 (in short "the 1963 Act") to rescind the contract on the ground that decree-holder(s) had failed to make deposit within two months, as directed by the first appellate court.

9. The Execution Court, however, rejected the application of the judgment-debtor(s) for rescission of the contract *vide* order dated 03.11.2016 and, simultaneously, permitted the decree-holder(s) to make deposit of the balance consideration.

10. Aggrieved by the aforesaid order of the Execution Court, the appellant(s) (i.e., the judgment-debtors) filed a Civil Revision before the High Court, which came to be dismissed by the impugned order.

11. We have heard Shri Subhasish Bhowmick for the appellant(s); Mr. Devendra Singh for the respondents; and have perused the materials on record.

SUBMISSIONS ON BEHALF OF THE APPELLANT(S)

(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.

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12. The learned counsel for the appellants submitted:

(i) The Execution Court held no jurisdiction to extend the time for depositing the balance consideration as the decree under execution was passed by the appellate court.

(ii) The decree was executable on payment of balance sale consideration within two months. No application for extension of time to make deposit was made within the aforesaid period, therefore the Court had no power to extend the time for deposit.

(iii) The Execution Court committed grave error in extending the time to make deposit of the balance amount after four years of the appellate court's decree, when, otherwise, it was to be paid within two months from the date of the decree.

SUBMISSIONS ON BEHALF OF RESPONDENTS

13. *Per contra*, the learned counsel for the respondents submitted:

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(i) The execution application was filed in the same Court where the original suit was instituted, therefore, the Court had jurisdiction to extend the time to make deposit;

(ii) The decree under execution did not specifically fix the mode of payment and there was no direction to deposit the balance consideration in Court, therefore, except to file for execution of the decree and seek permission of the Court to deposit the balance consideration, there was no other method by which decree holder could have paid the balance amount, more so, when the judgment debtor was not interested in abiding by the decree;

(iii) The judgment – debtor(s) were offered balance consideration within time, and the execution application was also filed within time, but, instead of executing the sale deed, the judgment– debtor(s) chose to prefer a second appeal before the High Court. Not only that, after the second appeal was dismissed, the judgment-debtor(s) preferred a Special Leave Petition (in short SLP) before this

Court, which, too, was dismissed on 07.11.2016. Thus, it is clear that the decree-holders were throughout ready and willing to perform their part under the contract / decree whereas the judgment-debtor(s) avoided execution of the sale deed. In these circumstances and having regard to the facts of the case, the Execution Court was justified in allowing the application for extension of time and rejecting the application for rescission of the contract.

ISSUES

14. Having noticed the rival contentions, in our view, the following issues arise for our consideration:

(i) Whether the Execution Court had jurisdiction to deal with the application(s) for (a) recission of contract and (b) extension of time to deposit the balance sale consideration?

(ii) If Execution Court had the jurisdiction, whether those applications ought to have been decided as one in the suit (i.e., original side)? If yes, then, whether, in the facts of the case, on that

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ground alone, the impugned order warrants interference in exercise of jurisdiction under Article 136 of the Constitution of India?

ANALYSIS

A. The Execution Court had jurisdiction

15. A bare reading of Section 28(1) of the 1963 Act gives an impression that the power to extend time to deposit, or to rescind the contract on failure of deposit, vests in the Court which passed the decree in as much as the words used in Section 28 (1) are:

> "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."

16. In **Ramankutty Guptan Vs. Avara**[4]**,** this Court answered two questions. One, whether an application under Section 28 of the 1963 Act is maintainable in the Court of first instance when the decree has been passed by the appellate court. Second, whether the Execution Court

4 (1994) 2 SCC 642

in which the original suit was filed can entertain an application under Section 28 of the 1963 Act. After taking note of the provisions of Section 37[5] of the CPC, this Court held:

> "8. .....Therefore, it is clear that the decree of the appellate court would be construed to be the decree passed by the court of first instance. It is settled law that an appeal is a continuation of the suit. Therefore, when a decree for specific performance has been dismissed by the trial court, but decreed by the appellate court, it should be construed to be in the same suit. When the decree specifies the time for performance of the conditions of the decree, on its failure to deposit the money, Section 28(1) itself gives power to the court to extend the time on such terms as the Court may allow to pay the purchase money or other sum which the court has ordered him to pay. In *K. Kalpana Saraswathi Vs. P.S.S. Somasundaram Chettiar*[6], this Court held that on an oral prayer made by the counsel for the plaintiff for permission to deposit the entire amount as directed by the trial court this Court directed the appellant to deposit the amount within six months from that date together with interest and other conditions mentioned therein. An application for extension of time for payment of balance consideration may be filed even in the court of first instance or in the appellate court in the same suit

5 **37. Definition of the court which passed a decree** – The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include-

(a) Where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) Where the court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

6 (1980) 1 SCC 630

> as the decree of the trial court stands merged with that of the appellate court which decree is under execution. It is to be seen that the procedure is the handmaid for justice and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve substantial justice. Therefore, technicalities would not stand in the way to subserve substantive justice. Take a case where the decree is transferred for execution to a transferee executing court, then certainly the transferee court is not the original court and execution court is not the "same court" within the meaning of Section 28 of the Act. But when an application has been made in the court in which the original suit was filed and the execution is being proceeded with, then certainly an application under Section 28 is maintainable in the same Court."
>
> (Emphasis supplied)

17. Following the view taken in **Ramankutty Guptan *(Supra),*** in **V.S. Palanichamy Chettiar Firm Vs. C. Alagappan and Anr.**[7] this Court held:

> "16. In view of the decision of this Court in *Ramankutty Guptan* case when the trial court and the executing court are the same, the executing court can entertain the application for extension of time though the application is to be treated as one filed in the same suit. On the same analogy, the vendor judgment-debtor can also seek rescission of the contract of sale or take up this plea in defence to bar the execution of the decree. ....."
>
> (Emphasis supplied)

7 (1999) 4 SCC 702

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18. Having regard to the aforesaid decisions, in our view, the expression *"may apply in the same suit in which the decree is made"* as used in Section 28 of the 1963 Act must be accorded an expansive meaning so as to include the court of first instance even though the decree under execution is passed by the appellate court. This is so, because the decree is in the same suit and, according to Section 37 of the CPC, the expression "the court which passed a decree", or words to that effect, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, would include:

> (a) the court of first instance even though the decree to be executed has been passed in the exercise of appellate jurisdiction; and
>
> (b) where the court of first instance has ceased to exist, or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Thus, an application under Section 28 of the 1963 Act, either for recission of contract or for extension of time, can be entertained and decided by the Execution Court

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provided it is the Court which passed the decree in terms of Section 37 of the CPC.

19. In the instant case, the Court of first instance (i.e., where the civil suit was instituted) was the Court of Additional Civil Judge (Senior Division), Kaithal, as would appear from the decree-sheet placed on record as Annexure P-1. The execution application was also filed before the Court of Additional Civil Judge (Senior Division), Kaithal, as would appear from Annexure P-2. Paragraph No.1 of the impugned order indicates that the order dated 03.11.2016 by which the application under Section 28 was disposed of was passed by the Court of Civil Judge (Senior Division), Kaithal. Thus, by virtue of Section 37 of the CPC, the Execution Court being the Court of first instance with reference to the suit in which the decree was passed had jurisdiction to deal with the application under Section 28 of the 1963 Act. We, therefore, reject the objection as regards jurisdiction of the Execution Court to deal with the application for extension of time / rescission of the contract under Section 28 (1) of the 1963 Act. Issue (i) is decided in the aforesaid terms.

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B. Execution Court ought to have decided the Application under Section 28 of the 1963 Act as an application in the Suit

20. The next question which falls for our consideration is whether the application under Section 28 of the 1963 Act ought to have been dealt with as an application on the original side (i.e., as an application in the suit) or on the execution side (i.e., as an application in the execution proceedings). This issue is no longer *res integra* as it has been answered by this Court in **Ramankutty Guptan *(Supra)*** in the following terms:

> "9. The question then emerges is whether it should be on the original side or execution side. Section indicates that it should be "in the same suit". It would obviously mean in the suit itself and not in the execution proceedings. It is equally settled law that after passing the decree for specific performance, the Court does not cease to have any jurisdiction. The Court retains control over the decree even after the decree has been passed. It was open to the Court to exercise the power under Section 28(1) of the Act either for extension of time or for rescinding the contract as claimed for. Since the execution application has been filed in the same court in which the original suit was filed, namely, the court of first instance, instead of treating the application on the execution side, it should have as well been numbered as an interlocutory application on the original side and disposed of according to law. In this view, we feel that the judgment of the Bombay High Court laid down the law correctly and that of the Andhra

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> Pradesh High Court is not correct. The High Court, therefore, is not right in dismissing the application treating it to be on execution side, instead of transferring it on the original side for dealing with it according to law."
>
> (Emphasis supplied)

21. The above view was followed in **Sanjay Shivshankar Chitkote Vs. Bhanudas Dadarao Bokade (Died) through L.Rs.**[8] wherein, upon finding that the applications under Section 28 were dealt with on the execution side, this Court set aside the order of the execution court and directed that the applications shall be transferred to the file of the civil suit so that they could be numbered as an application in the suit.

22. The law is, therefore, settled that an application seeking rescission of contract, or extension of time, under Section 28 (1) of the 1963 Act, must be decided as an application in the original suit wherein the decree was passed even though the suit has been disposed of. As a sequitur, even if the Execution Court is the Court of first instance with reference to the suit wherein the decree under execution was passed, it must transfer the application filed under Section 28 to the file of the suit

8 Civil Appeal No.8022 of 2023 @ SLP (C) No.24720 of 2023 decided on 08.12.2023

before dealing with it. Issue (ii) is partly decided in the aforesaid terms.

C. Not a Fit Case for Interference Under Article136 of the Constitution

23. Now, the question which survives for our consideration is whether, in the facts of the case, the order impugned is liable to be interfered with only because the Court which passed the order dealt with the application on the execution side and not on the original side (i.e., as an application in the suit).

24. Before we examine facts relevant to the issue, we must reiterate that the jurisdiction of this Court under Article 136 of the Constitution is a discretionary jurisdiction to advance the cause of justice. The Court does not exercise its jurisdiction under Article 136 only because it is lawful to do so[9]. For the purpose of doing complete justice to the parties, the Court may not interfere with the order even if it suffers from some legal error. Not only that, the Court may deny relief to a party having regard to its conduct and may, in a given

[9] See C.K. Prahalada v. State of Karnataka, (2008) 15 SCC 577

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situation, mould the relief to do complete justice to the parties[10].

25. In **Chanda v. Rattni**[11], this Court held that the power to rescind the contract under Section 28 of the 1963 Act is discretionary in nature and is to do complete justice to the parties. The Court does not cease to have the power to extend the time even though the decree may have directed that payment of balance price is to be made by a certain date. While exercising discretion in this regard, the Court is required to take into account facts of the case so as to ascertain whether the default was intentional or not. If there is a bona fide reason for the delay/ default, such as where there appears no fault on the part of the decree holder, the Court may refuse to rescind the contract and may extend the time for deposit of the defaulted amount.

26. We shall now consider whether the impugned order does substantial justice to the parties. For this end, it would be apposite to have a close look at the facts of the case as it would help us in determining whether discretion to extend the time for depositing the balance

10[10] See Lajpat Rai Mehta v. Govt. of Punjab (Deptt. of Irrigation & Power), (2009) 3 SCC 260
11[11] (2007) 14 SCC 26

consideration was justifiably exercised in favour of the decree holder.

27. In the instant case, the agreement, of which specific performance was sought, is of the year 2005. The suit for specific performance was filed in the year 2006. The trial court partly decreed the suit, *inter alia*, for refund of the earnest money in the year 2011. The plaintiff(s) (respondents herein) being aggrieved by rejection of their prayer for specific performance of the agreement, filed an appeal before the appellate court. The appellate court allowed the appeal on 12.1.2012 and directed the defendants (appellants herein) to execute the sale deed on payment of balance consideration within two months from the date of the appellate court order, failing which the plaintiff(s) were entitled to get the sale deed executed through Court. Notably, the mode of payment of the balance consideration was not specified in the decree and there was no direction upon the plaintiff(s) to deposit the balance consideration in Court. Further, the decree did not spell out consequences of non-payment within the stipulated period. Rather, right was given to the decree holder to get the sale deed executed through Court if it was not executed upon payment within two months. As

the mode of payment was not specified in the decree, what course the decree holder could have adopted in case the judgment-debtor refused to abide by the decree becomes a relevant consideration for the purposes of exercise of discretion in one way or the other.

28. In the instant case, admittedly, the decree attained finality upon dismissal of second appeal on 7.11.2013, and, finally, SLP on 7.11.2016. In between, pursuant to the order of the Execution Court dated 3.11.2016, as claimed by the respondents in their written submission, the balance sale consideration was deposited on 13.11.2016. Before that, the decree-holder(s) had promptly filed for execution of the decree immediately after expiry of 60 days from the date of the appellate court decree. Not only that, as no specific mode for payment/ deposit of the balance consideration was provided for in the decree, the decree holder(s) sought a direction from the Court to permit them to deposit the amount in Court so as to get the decree executed through its intervention. This application, however, remained pending as challenge to the decree was being considered by higher courts. In the meantime, as soon as the Second Appeal was dismissed, the decree-holder(s) applied for

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fresh permission to deposit the balance consideration. Ultimately, when permission was granted by the Execution Court, the deposit was made, as noted above. In these circumstances, the decree holder(s) had all throughout displayed their intention to pay the balance consideration and there appears no intentional or deliberate fault on their part so as to deprive them of the fruits of the decree.

29. The contention of the learned counsel for the appellant(s) that there was no proper prayer for condonation of delay in making the deposit of the balance consideration, or that there was no proper application for extension of time to make deposit, is unworthy of acceptance. Because, in the execution application itself, which was promptly filed after expiry of 60 days from the date of the appellate court decree, the decree holder had sought permission to make deposit. Not only that, the application filed after dismissal of second appeal also sought permission to make deposit. The prayer to extend the time to make deposit was therefore implicit in the prayer to permit the decree holder to make deposit of the balance consideration. In this view of the matter, we reject the submission of the appellants that as there was

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no proper application for extension of time to make deposit, the Court held no jurisdiction to extend the same.

30. In light of the discussion above and on an overall assessment of the facts, we are of the considered view that the respondents had all throughout shown their intention to pay the balance consideration for execution of the sale deed whereas the appellants appeared interested only in challenging the decree before higher Courts. In these circumstances, taking note of all the events, the Execution Court justifiably exercised its discretion in favour of the decree-holder(s) by allowing them to deposit the balance consideration. In our view, therefore, substantial justice has been done to the parties and if we interfere with the impugned order only on the technical ground that the application was not dealt with as one on the original side, grave injustice would be caused to the decree holder(s). More so, when the judgment-debtor(s) themselves applied to the Execution Court for rescinding the contract under Section 28(1) of the 1963 Act, and raised no such jurisdictional issue either before the Execution Court or the High Court. Therefore, in our view, no interference with the impugned

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order is called for in exercise of our discretionary jurisdiction under Article 136 of the Constitution.

31. For the reasons above, the appeal is dismissed. Interim order, if any, stands discharged. Parties to bear their own costs.

32. Pending application(s), if any, stands disposed of.

..... J.
(J. B. PARDIWALA)

..... J.
(MANOJ MISRA)

NEW DELHI;
September 03, 2024.

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 10193 OF 2024
(Arising out of SLP (C) No.29899 of 2017)

Ishwar (Since deceased) Thr. Lrs & Ors. **... Appellants**

Versus

Bhim Singh & Anr. **... Respondents**

O R D E R

1 On being Mentioned, the Appeal is taken on Board.

2 We have been informed that there is some typographical error in paragraph 11 of the judgment in respect of recording the name of the counsel appearing for the respective parties.

3 In view thereof, in place of "We have heard Shri Subhasish Bhowmick for the appellant(s); Mr. Devendra Singh for the respondents; and have perused the materials on record." paragraph 11 shall be read as "We have heard learned counsel for the parties and have perused the materials on record."

4 Paragraph 11 of the Judgment dated September 03, 2024 shall be corrected and read accordingly.

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
September 04, 2024
GKA

ITEM NO.801 COURT NO.10 SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 10193/2024

ISHWAR (SINCE DECEASED) THR. LRS & ORS. Appellant(s)

VERSUS

BHIM SINGH & ANR. Respondent(s)

Date : 04-09-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Appellant(s) Mr. Subhasish Bhowmick, AOR

For Respondent(s) Mr. Sanchar Anand, Adv.
Mr. Devendra Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

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(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

(Signed reportable order is placed on the file)