2025 INSC 81

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 563-566 OF 2025
(Petitions for Special Leave to Appeal (C) Nos. 22802-22805 of 2022)

BALBIR SINGH & ANR ETC **….Appellant(s)**

VERSUS

BALDEV SINGH (D) THROUGH HIS LRS & ORS. ETC **….Respondent(s)**

J U D G M E N T

J.B. PARDIWALA, J.

1. Leave granted.

2. Since the issues raised in all the captioned appeals are same, the parties are also same and the challenge is also to the self-same judgment and order passed by the High Court those were taken up for hearing analogously and are being disposed of by this common judgment and order.

3. These appeals arise from the judgment and order passed by the High Court of Punjab & Haryana at Chandigarh dated 09.09.2022 in Civil Revision No. 6706 of 2019, Civil Revision No. 6952 of 2019, Civil Revision No. 6980 of 2019 and Civil

Revision No. 7053 of 2019 respectively by which the High Court rejected all the four revision applications filed by the original defendants by a common order and thereby affirmed the order passed by the executing court permitting the original plaintiff to deposit the balance sale consideration and rejecting the application filed by the defendants (judgment debtors) under Section 28 of the Specific Relief Act, 1963 (For short, "the Act") for rescission of contract.

4. The facts of this litigation giving rise to these appeals as recorded by the High Court in its impugned judgment read thus:

> *"2. Four connected revision petitions have come up for final disposal. The learned counsel representing the parties are ad idem that these four revision petitions can, conveniently, be disposed of by a common order.*
>
> *3. Some peculiar facts are required to be noticed. As many as four different suits for grant of specific performance of the agreement to sell were decreed by the trial Court on 16.08.1994. Four identical conditional decrees for specific performance of the agreement to sell were passed while permitting the decree holder to deposit the balance sale consideration in the Court within a period of 20 days and the defendant was directed to get the sale deed executed in favour of the plaintiffs. However, the judgments and decrees passed by the trial Court were reversed on 24.11.1994 by the First Appellate Court, which led to filing of four regular second appeals. The High Court allowed three regular second appeals on 03.05.2018, whereas, the fourth one was allowed 24.05.2018. Resultantly, the decrees passed by the trial Court were restored. The decree sheets were prepared on 31. 05 .2018 and a copy thereof was supplied to the plaintiffs. They filed four execution petitions on 04.09.2018. On 07.09.2018, applications to deposit the amount were also filed. The judgment debtors also filed an application under Section 28 of the Specific Relief Act, 1963 {hereinafter referred to as "the 1963 Act") for rescission of the contract on account of non-payment of the remaining sale consideration. The decree holder as permitted by the Court, deposited the decreetal amount in the Court on 07.09.2018. Consequently, on 16.08.2019, the Executing Court has dismissed the application for rescission of the contract. These four revision petitions have been filed for setting aside the orders dated 07.09.2018 and 16.08.2019."*

5. The High Court proceeded to record the submissions canvassed by the parties as under:

> *"5. On one hand, the learned counsel representing the judgment debtors contends that as per the trial Court's judgment dated 16.08.1994, the amount was required to be deposited within a period of 20 days. Since the decree holders have failed to deposit the amount within the stipulated time, the contract was required to be rescinded. He further contends that the High Court, while allowing the regular second appeals, on 03.05.2018 and 24.05.2018, respectively, restored the judgment and decree passed by the trial Court. He submits that at the most, the amount could be deposited within a period of 20 days from 03.05.2018 and 24.05.2018, respectively. Since the decree holders failed to deposit the amount, therefore, the contract should have been ordered to be rescinded. He, in support of his submission~, relies upon the judgment passed by the Supreme Court in* ***Prem Jeevan v. K.S. Venkata Raman and Another 2017 (2) Civil Court Cases 1.***
>
> *6. On the other hand, the learned counsel representing the decree holders submits that the trial Court has correctly extended the period and permitted the decree holders to deposit the amount as ordered in the conditional decree. He submits that a decree passed in favour of the decree holder cannot be permitted to be defeated, unless the Court comes to a conclusion that the decree holder has intentionally failed to honour the conditional decree."*

6. The High Court ultimately while rejecting all the four revision petitions held as under:

> *"12. From a careful examination of the aforesaid judgments, it is apparent that Section 28 of the 1963 Act enables the Executing Court to extend the period keeping in view the conduct of the parties. The Courts have also recognized that the decree passed by the trial Court stands merged with the decree passed by the Appellate Court. In this case, the High Court did not fix any time period for deposit of the amount. The application for execution was filed within a period of four months. Immediately, on filing the execution petition, the decree holders have filed an application seeking permission to deposit the remaining amount, which has been allowed. Undoubtedly, the judgment debtors have filed the various applications for rescission of the contract before the amount was deposited, however, in the facts of the case, this Court does not find that there was any unreasonable delay particularly when the High Court did not fix any period for deposit of the amount. The argument of learned counsel representing the petitioner that 20 days' period, as directed by the trial Court, shall*

revive, is to be examined in the facts of the present case. The decree passed by the trial Court stands merged with the judgment and decree passed by the High Court in the regular second appeal The question is "whether the decree holder willfully failed to deposit the amount under the decree particularly when the High Court did not fix the time for such payment or there was, in fact, unreasonable delay on part of the decree holder to deposit the amount?

13. In view of the detailed discussion here-in-before the aforesaid question is answered in the negative.

14. Keeping in view the facts of the case, it is not considered appropriate to conclude that the decree holders failed to honour the conditional decree. The trial Court has exercised its discretion prudently while extending the time and this Court does not find any reasonable ground to interfere with the order in the exercise of its revisional jurisdiction, which has been passed in accordance with law. Consequently, all the four revision petitions are dismissed."

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration whether the High Court committed any error in passing the impugned judgment and order?

8. The original decree in one of the suits reads thus:

"In view of the foregoing findings on the aforesaid issues, the suit of the plaintiff succeeds and it is hereby decree with costs in his favour for possession by way of specific performance of the agreement dated 5.4.1989 in respect of the suit land mentioned in para no.1 of the plaint and against the defendant.

The plaintiff is directed to deposit the balance sale consideration in the court within the period of twenty days and all the defendant are directed to get the sale-deed executed in favour of the plaintiff in terms of the agreement on or before 15.9.1994. In default, the plaintiff shall be entitled to get the sale-deed executed and attested through the court. Decree sheet be prepared accordingly. File be consigned to the record room."

9. Identical decrees as above were filed in the other connected suits too.

10. Thus, the plain reading of the decree referred to above indicates that the plaintiff was directed to deposit the balance sale consideration in the court within a period of 20 days and the defendants, at the same time, were directed to execute the sale deeds in favour of the plaintiff.

11. Before the plaintiff could deposit the balance sale consideration as directed by the trial court within the stipulated time period of 20 days the defendants went in appeal before the district court. The appeals were preferred on 26th August 1994. The first appellate court allowed the appeals vide judgment and order dated 16th August 1994. Thus, the judgment and decree passed by the trial court granting specific performance came to be set aside.

12. In such circumstances referred to above the plaintiff went to the High Court and filed regular second appeals. All the second appeals came to be allowed vide judgment and order dated 03.05.2018 and the judgment and order passed by the appellate court came to be set aside and the original decree passed by the trial court granting specific performance came to be restored.

13. Against the judgment and order passed by the High Court in second appeals the defendants came to this court seeking leave to appeal. While the SLPs filed by the

defendants were pending before this Court, the original plaintiff (decree holder) preferred execution petition on 04.09.2018.

14. The plaintiffs prayed for permission before the executing court to deposit the balance sale consideration and the same was granted by the executing court vide order dated 07.09.2018 on the very same day the plaintiff deposited the balance sale consideration.

15. On 18.01.2019 this Court dismissed all the SLPs filed by the defendants herein thereby affirming the judgment and order passed by the High Court in second appeals filed by the plaintiff.

16. On 04.04.2019 the defendants/judgment debtors filed an application under Section 28 of the Act to rescind the contract.

17. The executing court vide order dated 16th August 2019 rejected the application filed by the defendants under Section 28 of the Act referred to above.

18. What is important to note is that in 2019 the sale deeds were executed by the defendants in favour of the plaintiffs.

19. Vide the impugned judgment and order dated 23.09.2022 the challenge to the orders passed by the executing court dated 07.09.2018 and 16.08.2019 respectively also failed.

20. On 29.11.2022 the warrants of possession were issued for the purpose of execution of the decree.

21. On 07.12.2022 the execution petitions came to be dismissed as withdrawn as possession of the suit lands was handed over to the plaintiffs.

22. On 15.12.2022 this Court while issuing notice in the present SLPs stayed the further proceedings of the execution petitions. It appears that it was not brought to the notice of this Court that the execution petition had already been disposed of and the possession of the suit lands had also been handed over to the plaintiffs.

ANALYSIS:-

23. In view of the aforesaid, two questions of law fall for our consideration. First, the effect of merger of the trial court's decree with that of the decree passed by High Court in second appeals. Secondly, whether the defendants/ judgment debtors could have prayed for rescission of contract on the ground that the plaintiffs/ decree holders had failed to deposit the balance sale consideration within the stipulated time period of 20 days as prescribed in the original decree.

24. Section 28 of the Act reads 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 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."

25. The present section corresponds to Section 35(*c*) of the Specific Relief Act, 1877 (hereinafter referred to as "the repealed Act") under which it was open to the vendor or lessor in the circumstances mentioned in that section to bring a separate suit for rescission; but this section goes further and gives to the vendor or lessor the right to seek rescission in the same suit, when after the suit for specific performance is decreed the plaintiff fails to pay the purchase money within the

period fixed. The present section, therefore, seeks to provide complete relief to both the parties in terms of a decree for specific performance in the same suit without requiring one of the parties to initiate separate proceedings. The object is to avoid multiplicity of suits. Likewise, under the present provision where the purchaser or lessee has paid the money, he is entitled in the suit for specific performance to the reliefs as indicated in sub-section (3) like, partition, possession, etc. A suit for specific performance does not come to an end on passing of a decree and the court which has passed the decree for specific performance retains the control over the decree even after the decree has been passed.

26. The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The court does not cease to have the power to extend the time even though the trial court had earlier directed in the decree that payment of balance price to be made by certain date and on failure the suit to stand dismissed. The power exercisable under this section is discretionary. **[See : *Chanda (dead) through Lrs. v. Rattni and Anr.* reported in (2007) 14 SCC 26]**

27. As stated above upon the decision of the High Court in the second appeals filed by the plaintiffs (decree holders) there was a merger of the judgment of the trial court with the decision which was rendered by the High Court in the second appeals. Consequent upon the passing of the decree of the second appellate court, the decree of the trial court merges with that of the same.

28. The doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point of time. The doctrine of merger applies irrespective of whether the appellate court has affirmed, modified or reversed the decree of the trial court. The doctrine has been discussed and explained succinctly by this Court in ***Surinder Pal Soni v. Sohan Lal (Dead) through Legal Representatives***, **(2020) 15 SCC 771**.

29. In ***Kunhayammed* v. *State of Kerala,* (2000) 6 SCC 359**, while explaining the doctrine of merger, this Court held thus:

> *"12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-*

> *matter of challenge laid or which could have been laid shall have to be kept in view."*

30. Further, while explaining the position that emerges on the grant of special leave to appeal by this Court, it was observed:

> *"41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one."*

31. This position of law has been affirmed and reiterated by a three-Judge Bench decision of this Court in ***Khoday Distilleries Ltd.* v. *Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.,* (2019) 4 SCC 376.**

32. The decision in ***Kunhayammed* (supra)** was followed by a three-Judge Bench decision of this Court in ***Chandi Prasad* v. *Jagdish Prasad*, (2004) 8 SCC 724**, which held thus:

> *"23. The doctrine of merger is based on the principles of propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time.*
>
> *24. It is trite that when an appellate court passes a decree, the decree of the trial court merges with the decree of the appellate court and even if and subject to any modification that may be made in the appellate decree, the decree of the appellate court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the appellate court affirms, modifies or reverses the decree passed by the trial court."*

33. The decision in ***Chandi Prasad*** (Supra) was followed by a two-Judge Bench of this Court in ***Shanthi* v. *T.D. Vishwanathan*, (2019) 11 SCC 419 : (2019) 4 SCC (Civ) 787,** rendered on 24-10-2018 in the following terms:

> *"7. … When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intents and purposes, the suit continues. When a higher forum entertains an appeal and passes an order on merit, the doctrine of merger would apply. The doctrine of merger is based on the principles of the propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time."*

34. Thus, once the High Court allowed the second appeals in favour of the plaintiffs, there was evidently a merger of the judgment of the trial court with the decision of the High Court. Once the High Court as an appellate court in second appeal renders its judgment it is a decree of the second appellate court which becomes executable hence, the entitlement of the decree holder to execute the decree of the second appellate court cannot be defeated.

35. The issue may be looked at from another perspective in terms of the provisions of Section 28 of the Act referred to earlier.

36. Interpreting the provisions of Section 28 of the Act, a three-Judge Bench of this Court held in ***Sardar Mohar Singh* v. *Mangilal*, (1997) 9 SCC 217:**

> *"4. From the language of sub-section (1) of Section 28, it could be seen that the court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes functus officio. The very fact*

that Section 28 itself gives power to grant order of rescission of the decree 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. It would also be clear that the court has power to enlarge the time in favour of the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, in spite of an application for rescission of the decree having been filed by the judgment-debtor and rejected. In other words, the court has the discretion to extend time for compliance with the conditional decree as mentioned in the decree for specific performance."

37. In ***Bhupinder Kumar* v. *Angrej Singh*, (2009) 8 SCC 766 : (2009) 3 SCC (Civ) 556**, this Court held thus :

"21. It is clear that Section 28 gives power to the court either to extend the time for compliance with the decree or grant an order of rescission of the agreement. These powers are available to the trial court which passes the decree of specific performance. In other words, when the court passes the decree for specific performance, the contract between the parties is not extinguished. To put it clearly the decree for specific performance is in the nature of a preliminary decree and the suit is deemed to be pending even after the decree.

22. Sub-section (1) of Section 28 makes it clear that the court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes functus officio. On the other hand, Section 28 gives power to the court to grant an order of rescission of the agreement and it has the power to extend the time to pay the amount or perform the conditions of decree for specific performance despite the application for rescission of the agreement/decree. In deciding an application under Section 28(1) of the Act, the court has to see all the attending circumstances including the conduct of the parties."

38. The learned counsel appearing on behalf of the respondents placed reliance on the decision in ***V.S. Palanichamy Chettiar Firm* v. *C. Alagappan*, (1999) 4 SCC 702**. While adverting to the decision of this Court in ***Ramankutty Guptan* v. *Avara*, (1994) 2 SCC 642**, the two-Judge Bench held:

"15. … This Court observed that 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. The Court held, after noticing the conflict of decisions by the Bombay [Maruti Vishnu Kshirsagar v. Bapu Keshav Jadhav, 1969 SCC OnLine Bom 39 : AIR 1970 Bom 398] High Court and the Andhra Pradesh [Ibrahim Shariff v. Masthan Shariff, 1966 SCC OnLine AP 251 : (1967) 2 An WR 60] High Court, that when the court which passed the decree and the executing court is the same, application under Section 28 can be filed in the executing court. However, where a decree is transferred for execution to a transferee executing court then certainly the transferee court is not the original court and the executing 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."*

39. In the above case, the facts before this Court were that an agreement to sell had been executed nineteen years earlier on 16-2-1980 and no explanation was forthcoming as to why the balance of the sale consideration was not deposited within the time granted by the court. No application for extension was made under Section 28 of the Act. This Court observed that merely because a suit was filed within a period of three years prescribed by Article 54 of the Limitation Act, 1963, that did not absolve the vendee-plaintiff from demonstrating that he was ready and willing to perform the agreement and whether the non-performance was on account of obstacles placed by the vendor or otherwise. In that context, this Court held:

> *"17. … The court has to see all the attendant circumstances including if the vendee has conducted himself in a reasonable manner under the contract of sale. That being the position of law for filing the suit for specific performance, can the court, as a matter of course, allow extension of time for making payment of balance amount of consideration in terms of a decree after 5 years of passing of the decree by the trial court and 3 years of its confirmation by the appellate court? It is not the case of the respondent decree-holders that on account of*

> *any fault on the part of the vendor judgment-debtor, the amount could not be deposited as per the decree. That being the position, if now time is granted, that would be going beyond the period of limitation prescribed for filing of the suit for specific performance of the agreement though this provision may not be strictly applicable. It is nevertheless an important circumstance to be considered by the Court. That apart, no explanation whatsoever is coming from the respondent decree-holders as to why they did not pay the balance amount of consideration as per the decree except what the High Court itself thought fit to comment which is certainly not borne out from the record. Equity demands that discretion be not exercised in favour of the respondent decree-holders and no extension of time be granted to them to comply with the decree."*

40. The facts noted in the above extract from the judgment indicate a situation which is factually distinct. In that case, the balance of the sale consideration was sought to be deposited three years after the confirmation of the decree by the appellate court. In the present case the balance sale consideration came to be deposited immediately after the second appeals came to be allowed by the High Court in 2018 by seeking permission of the executing court.

41. In a given case the trial court while passing a conditional decree in a suit for specific performance may say so in so many words that if the plaintiff fails to deposit the balance sale consideration within a particular period of time stipulated by the court while allowing the suit, the failure to make such deposit within the time prescribed would have the effect of dismissal of suit. In other words, there could be a decree which may say that if the plaintiff fails to deposit the balance sale consideration within the stipulated time period, the suit shall automatically stand dismissed. If such is the nature of the decree then will the court concerned become

"*functus officio"* and would have no jurisdiction to grant extension of time fixed by the decree for the purpose of deposit? This is one issue that the Supreme Court one day in an appropriate case may have to consider and decide. We say so because there are conflicting views of different High Courts, including to some extent of this Court. In the present case, it is not necessary for us to look into and decide this issue because the decree is not of such a nature.

42. In the case of ***Mahanth Ram Das* v. *Ganga Das,* AIR 1961 SC 882**, this Court has taken the view that Section 148 of the Code of Civil Procedure (C.P.C.) empowers the Court to deal with events that might arise subsequent to an order, for the purpose of enlarging time for payment even though it had been peremptorily fixed, but in that connection the Court observed as follows:

> *"…Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed."*

43. The aforesaid gives an impression whilst laying down, in effect, that s. 148 must be liberally construed, the Court has excluded from its ambit conditional decrees.

44. It is well settled position of law that when time for payment of money is extended, it does not mean a modification of the decree. The trial court has power to extend the time, and the expression "such further period as the court may allow"

would mean the court which had passed the decree, or, where the application under Section 28 of the Act of 1963, is filed.

45. In the case of ***Sardar Mohar Singh (supra)***, this Court had held that the Court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes functus officio. This Court had further held that the very fact that Section 28 of the Act itself gives power to grant order of rescission of the decree, the same 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.

46. One very unusual contention was raised by the learned counsel appearing for the appellant as regards the failure on the part of the decree-holder(plaintiff) to deposit the balance sale consideration within 20 days from the date of the judgment passed by the High Court in second appeal. The argument is that the trial court while allowing the suit filed by the plaintiff for specific performance had specifically directed that the plaintiff shall deposit the balance sale consideration with the court within 20 days from the date of the judgment passed by the trial court. According to the learned counsel this very decree passed by the trial court

came be affirmed by the High Court in second appeal and, therefore, the plaintiff was obliged to deposit the balance sale consideration within 20 days from the date the High Court delivered its judgment in second appeal. This argument proceeds applying the doctrine of Merger.

47. We do not find any merit in the aforenoted submission canvased on behalf of the appellant herein.

48. In the aforesaid context, we may refer to the observations made by the Chief Justice M.C. Chagla (as His Lordship then was) in the case of ***Commissioner of Income Tax, Bombay v. Tejaji Farasram r***eported in AIR 1954 BOM 93. We quote the relevant observations as under:

> *"It is a well established principle of law that when an appeal is provided from a decision of a tribunal and the appeal Court after hearing the appeal passes an order, the order of the original Court ceases to exist and is merged in the order of the appeal Court, & although the appeal Court may merely confirm the order of the trial Court, the order that stands and is operative is not the order of the trial Court but the order of the appeal Court."*

49. The doctrine of Merger or the Merger doctrine in civil proceedings is a common law doctrine that stems from the idea of maintenance of the decorum of the hierarchy of courts and tribunals. The Court in the case of ***Gojer Bros. (Pvt.) Ltd. v. Ratan Lal Singh*** reported in (1974) 2 SCC 453 correctly summed up the meaning of

the doctrine as "the doctrine is based on the simple reasoning that there cannot be, at the same time, more than one operative order governing the same subject matter". To put it simply, if there are two orders passed on the same subject matter, that is, one passed by a subordinate court like a tribunal and another passed by a superior court like the High Court, the operative part of the order by the subordinate court (tribunal in this instance) may be merged with the order of the High Court.

50. In the case of ***Commissioner of Income Tax, Bombay v. Amritlal Bhogilal & Co***. reported in (1958) 34 ITR 130, this Court in para 10 observed as under:

> *"10. There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the Tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law, the position would be just the same even if the appellate decision merely confirms the decision of the Tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority, the original decision merges in the appellate decision and it is the appellate decision alone that subsists and is operative and capable of enforcement."*

51. Thus, the Supreme Court merely reiterated the observation of Bombay High Court in the case of ***Tejaji Farasram*** (supra) and stated that the hierarchy of courts and tribunals is to be maintained when the decision is reversed by the superior court and even when the superior court merely affirms the decision of the

subordinate court.

52. Thus, the High Court while allowing the second appeal filed by the original plaintiff had not issued any specific direction as regards the deposit of the balance sale consideration within a particular period of time. It is incorrect on the part of the appellant herein to say that since the trial court had directed that the balance sale consideration shall be deposited within 20 days, the same direction would be applicable even after the judgment of the High Court in second appeal.

53. Before we close this matter, we must deal with the judgment of this Court in the case of ***Prem Jeevan vs. K.S. Venkata Raman and Another*** reported in **(2017) 11 SCC 57** on which strong reliance has been placed by the learned counsel appearing for the appellants herein. In the said case a decree for specific performance was granted in favour of the plaintiff as follows:

> *"In the result, the suit of the plaintiff is decreed with costs directing Defendant 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 (sic with interest) at 6% per annum from 27-9-2002 i.e. from the date of agreement of sale. It is further decreed that in case Defendant 1 refuses 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."*

54. The plaintiffs therein claimed to have issued a cheque on 04.12.2008 for the amount in question but the same was returned as not accepted by the judgment debtor, who was the appellant before this Court. Thereafter the decree holders

applied for execution sometime in the year 2010, after making the deposit of the decretal amount on 07.10.2010. 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.

55. The executing court upheld the objection holding as under:

> *"There is no documentary proof to show that he sought enlargement of time for paying the purchase money under Section 28(1) of the 1963 Act. Without seeking extension of time the respondent herein filed this EP on 7-10-2010 i.e. after a period two years two months. As per the decision in Suggula Venkata Subrahmanyam v. Desu Venkata Rama Rao [Suggula Venkata Subrahmanyam v. Desu Venkata Rama Rao, (2010) 5 ALD 807 : 2010 SCC OnLine AP 670] the execution petition for obtaining specific performance is not maintainable."*

56. On a revision having been filed by the decree holders the High Court reversed the order of the executing court and held as under:

> *"17. 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 stipulation of two months was for the first 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 unrebutted. The first 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.*
>
> *18. 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 first 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 first respondent to execute the decree, and not directly for the petitioner to deposit the amount.

19. There is nothing on record to disclose that the first 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 first respondent did not receive the same; remained unrebutted. 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."

57. This Court looked into Order XX Rule 12-A C.P.C. which provides 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 said case the period was two months from the date of the decree. The Court took notice of the fact that in the 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 terms of the said decree. This Court also took notice of the fact that neither the said deposit was made within the stipulated time nor extension of time was sought or granted and also no explanation had been furnished for the delay in making of the deposit.

58. In such circumstances referred to above, this Court rejected the contention advanced on behalf of the decree holders that unless the judgment debtor seeks

rescission of the contract in terms of Section 28 of the Act, the decree would remain executable in spite of expiry of the period for deposit.

59. This Court while allowing the appeals filed by the judgment debtor held that although Section 28 of the Act permits the judgment debtor to seek rescission of a contract and also permits extension of time by the court yet merely because rescission of contract was not sought by the judgment debtor would not automatically result in extension of time. Thus, the decision of this Court in ***Prem Jeevan (supra)*** was altogether in a different factual scenario. The same is of no avail to the appellants herein.

60. In the overall view of the matter, we are convinced that the High Court committed no error much less any error of law in passing the impugned judgment.

61. In the result, the appeals fail and are hereby dismissed.

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

.....J.
(R. MAHADEVAN)

New Delhi;
January 17th , 2025