

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, BAHAWALPUR
BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT

C.R. No.388 of 2018/BWP

Muhammad Bilal & another

Versus

Muhammad Ayub

J U D G M E N T

Date of hearing: 12.06.2023.

Petitioners by: M/s. Gulzar Ahmad Durrani and Dr. Malik Muhammad Hafeez, Advocates.

Respondent by: M/s. A.R. Aurangzeb, Shakeel Ahmad Bobra and Shoaib Iqbal, Advocates.
Rai Mazhar Hussain Kharral, Assistant Advocate General.

MUHAMMAD SAJID MEHMOOD SETHI, J.: - Through instant revision petition, petitioners have challenged judgment dated 01.03.2018, passed by learned Additional District Judge, Ahmadpur East, whereby appeal filed by respondent against Trial Court's order dated 20.12.2016 dismissing his application for extension of time period to deposit the remaining sale consideration, was allowed.

2. Brief facts of the case are that respondent filed suit for specific performance of contract, which was contested by petitioners by filing written statement. Learned Trial Court, after framing issues, recording evidence and hearing arguments of both sides, proceeded to decree the suit vide judgment & decree dated 06.12.2016. Upon respondent's failure to deposit the aforesaid amount, he filed application for extension of time to deposit balance consideration whereas petitioners filed application for rescission of contract. Learned Trial Court vide order dated 20.12.2016 dismissed respondent's application for extension of time to deposit the balance amount and allowed petitioners' application for rescission of contract, thereby dismissing respondent's suit. Feeling discontent, respondent filed appeal, which

was allowed by learned Appellate Court vide judgment dated 01.03.2018. Hence, instant revision petition.

3. Learned counsel for petitioners while referring to the observations of learned Trial Court submits that the judgment & decree in favour of respondent was not alive as per law as stipulation qua payment of remaining consideration amount within 10 days stood unfulfilled. He adds that Trial Court had become *functus officio*, thus, was incompetent to extend the time for deposit of remaining sale consideration, however, impugned judgment has been passed while ignoring this legal position. In support, he has referred to Muhammad Wahid and another v. Nasrullah and another (2016 SCMR 179) and Haji Abdul Latif and 4 others v. Ateeq Ahmad and 3 others (2004 YLR 985).

4. Contrarily, learned counsel for respondent defends the impugned judgment by contending that Appellate Court has rightly exercised the jurisdiction in terms of Section 104 CPC and correctly enhanced time for deposit of remaining sale consideration. He adds that extension of time is not an alteration or modification of a decree to be hit by Order XX Rule 3 CPC. In support, he has referred to Shabbir Ahmed and another v. Zahoor Bibi and others (PLD 2004 Supreme Court 790), Ata Ullah Khan and others v. Mst. Surraya Parveen (2006 SCMR 1637), Nizam-ud-Din and 13 others v. Ch. Muhammad Saeed and 7 others (1987 CLC 1682), Nasir Ahmad v. Muhammad Yousuf (PLD 1994 Lahore 280) and Mirza Zafar Iqbal Baig and 2 others v. Mirza Ayub Baig and 3 others (2010 YLR 386).

5. Arguments heard. Available record perused.

6. Undisputedly, respondent's suit for specific performance of contract was conditionally decreed vide judgment & decree dated 06.12.2016, whereby respondent had been given 10-days' time to deposit balance consideration amount, otherwise he would be deemed to be non-suited. The relevant part of said judgment is reproduced hereunder:-

“20. In view of my opined rendered in issues supra, the plaintiff's suit is decreed on merits along with possession of suit land as prayed for subject to payment of remaining consideration amount of

Rs.10,000/- within 10 days of this judgment, failing which the plaintiff will deemed to be non suited. Parties are left to bear their own costs.
....."

7. The sole question before this Court is whether the Civil Court had become *functus officio* or still having seisin over the decree was legally competent to pass an order to extend time for deposit of remaining consideration amount by the respondent. Moreover, the nature of decree would also to be considered as the preliminary or final and what should be the just and fair order to have been passed by a Court in this regard.

8. Section 148 of the Civil Procedure Code gives the Court power to extend time previously fixed or granted by it for the doing of any act prescribed or allowed by the Code of Civil Procedure and it can do so even after the period originally fixed or granted has expired. But this section, it is now well settled, does not apply where the period is fixed by a decree in a suit unless the decree is in the nature of a preliminary decree. The principle upon which it has been so held is that since a decree normally puts an end to a suit, the Court becomes *functus officio* with regard thereto. In the case of a preliminary decree, the Court does not become *functus officio* but still retains control over the action and, therefore, has full power to make necessary orders therein including an order for the extension of time. This distinction is not without importance, for, even orders contained in decrees, which are not strictly speaking preliminary decrees, may not always be such as are intended to operate automatically without any further intervention by the Court. The real test, is whether the decree has been made in such terms as to indicate that the Court has finally disposed of all matters so that it is to operate automatically or whether the Court has still retained some control over the litigation. An examination, therefore, has to be made of the precise terms used in the decree. In the present case, the decree of the Trial Court used the words that in the event of default, "plaintiff will deemed to be non-suited". Since the words used in Trial Court's judgment are words of finality and are to take effect automatically, Section 148 CPC can have no manner of application and

the time cannot be enlarged. Reliance is placed upon *Shah Wali v. Ghulam Din alias Gaman and another (PLD 1966 Supreme Court 983)*, *Shujat Ali v. Muhammad Riasat and others (PLD 2006 Supreme Court 140)*, *Tasneem Ismail and others v. Messrs WAFI Associates and others (2007 SCMR 1464)* and *Mst. Samrana Nawaz and others v. M.C.B. Bank Ltd. and others (PLD 2021 Supreme Court 581)*.

The aforesaid question after discussing the earlier judgments rendered by superior Courts in pros and cons on the proposition in hand has already been authoritatively clinched by this Court in *Muhammad Ismail v. Muhammad Akbar Bhatti (PLD 1997 Lahore 177)*, relevant part whereof is reproduced hereunder:-

"The ratio, deducible from the preceding examination, is: Firstly, that decree passed by court, in an action for specific performance of agreement of sale, is in the nature of preliminary decree. It actually partakes the character of a contract; vendee has to deposit the purchase price, cost for purchase of necessary stamps for the execution of conveyance deed and so on so forth; while the seller had to appear in the Court, sign the conveyance deed and receive purchase price. In this state of affairs, it clearly follows that decree, passed in such an action, is not final but preliminary in nature and the court passing the decree retain seisin over the lis and has power to enlarge/extend the time for payment of purchase price fixed therein. The court, however, had to pass such orders after objectively assessing the merits of such applications. Secondly, Specific Relief Act is an adjective law and substantive law is to be looked for elsewhere. It presents a codification of principles derived from long series of precedents and practices of English Courts of Equity. Specific Relief Act so is based upon principle of Equity, reason and good conscience. The most leading principle is that 'who comes to get the equity, must do equity to others'. Thirdly section 35 of the Specific Relief Act lays down a procedure for rescission of the written contract. It applies to both vendor and vendee. Any one of such party may move the Court by motion in the action for an order for putting an end to contract. This mechanism is, however, subject to following limitation/namely where the trial court has decreed the suit for specific performance of contract subject to condition that purchase price shall be deposited in court within a specific time and also ordered that if that money is not put in within that time, the suit shall stand dismissed, the court has no power to extend the time as in such a case; that the decree by court is final and self-operative and in case of default of payment of purchase price; the mandate of court tantamounts to rescission of the contract. In such a case recourse to section 148 of C.P.C. or section 151, C.P.C. will not be permissible. Fourthly, the court will not allow the plea for extension of time if it finds that it will occasion a wrong to the other side. Furthermore, in order to succeed in an action for specific performance, the plaintiff had to show that he had been willing and ready to perform his part of contract."

This view has also been followed by this Court in cases reported as Muhammad Iqbal through Legal Heirs v. Bashir Ahmad and 19 others (PLD 2002 Lahore 88) and Mst. Ruqiya Bibi and 10 others v. Allah Ditta and 17 others (2018 YLR 2118).

9. The legal position emerging from aforesaid case law is that on account of the penal clause contained in Trial Court's decree, upon respondent's failure to deposit the remaining sale consideration within time fixed therein, respondent stands non-suited and consequently, the subject matter agreement to sell automatically stood rescinded in terms of section 35(c) of the Specific Relief Act, 1877. The jurisdiction with the learned Trial Court was only available within the stipulated period in the subject matter decree and the moment this stipulated period expired, it ceased to have jurisdiction and had become *functus officio*, in view of the expression of adjudication through a condition contained in the decree.

10. Resultantly, instant revision petition is allowed and impugned judgment dated 01.03.2018, passed by learned Additional District Judge, Ahmadpur East is set aside. Consequently, Trial Court's order dated 20.12.2016 is restored.

(Muhammad Sajid Mehmood Sethi)
Judge

Approved for reporting

Judge

A.H.S.