

KISHOR GHANSHYAMSA PARALIKAR (DEAD)

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v.

BALAJI MANDIR SANSTHAN MANGRUL (NATH) AND ANR.

(Civil Appeal No. 3794 of 2022)

MAY 09, 2022

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**[S. ABDUL NAZEER AND VIKRAM NATH, JJ.]**

*Specific Relief Act, 1963 – s.28 – Rescission of contract for sale or lease of immovable property, the specific performance of which has been decreed – s.28 gives to the vendor or the lessor the right to rescission of the contract for the sale or lease of the immovable property in the same suit, when after a suit for specific performance is decreed, if the vendor or the lessor fails to pay the purchase money within the period fixed – This section seeks to provide complete relief to both the parties in terms of a decree of specific performance in the said suit without having resort to a separate proceeding – Therefore, a suit for specific performance does not come to an end on the passing of a decree and the court which has passed the decree for specific performance retains control over the decree even after the decree has been passed – s.28 not only permits the judgment-debtors to seek rescission of the contract but also permits extension of time by the court to pay the amount – The power under this section is discretionary and the court has to pass an order as the justice of the case may require – Also, time for payment of sale consideration may be extended even in a consent decree – On facts, as per compromise decree, the appellant was required to pay the balance sale consideration on or before a stipulated date – The trial court in its discretion had granted extension of time for depositing the balance sale consideration assigning cogent reasons – The High Court was not justified in setting aside the said order and cancelling the sale deed.*

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*Smt. Periyakkal and ors. v. Smt. Dakshyami, (1983) 2 SCC 127 – referred to.*

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**Case Law Reference**

(1983) 2 SCC 127

referred to

Para 11

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3794  
of 2022.

From the Judgment and Order dated 30.01.2018 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No. 1637 of 2016.

B Kishor Ram Lambat, Ms. Kashmira Lambat, Sachin Pahwa, Ms. Jyoti thakur, Ms. Reeta Puniya, M/S. Lambat And Associates, Advs. for the appellant.

Aaditya A. Pande, Chander Shekhar Ashri, Rahul Chitnis, Ravindra Chingale, Ms. Anisha Mathur, Sachin Patil, Geo Joseph, Ms. Shwetal

C Shepal, Advs. for the respondents.

The Order of the Court was passed by

**S. ABDUL NAZEER, J.**

1. Leave granted.

D 2. Delay in filing the application for substitution is condoned and abatement is set aside. The application for substitution is allowed.

3. This appeal is directed against the order dated 30.01.2018 in W.P.NO.1637 of 2016 whereby the High Court of Judicature at Bombay,

E Nagpur Bench, has allowed the Writ Petition filed by the first respondent-Trust and set aside the orders passed by the Trial Court granting extension of time for depositing the balance of the sale consideration.

F 4. On 12.03.2007, the appellant herein filed a suit for specific performance of an agreement dated 20.09.2002 executed by the first respondent in his favour for the sale of agricultural land bearing Survey

No.3, admeasuring 10 H (Hactor), 50 R (Are) situated at Village Murtizapur, Mangrulpur Taluk, District Washim, State of Maharashtra.

G 5. During the pendency of the suit, a compromise was arrived at between the parties and accordingly the Trial Court vide Order dated 06.12.2010 decreed the suit in terms of the compromise. As per the

compromise decree, the respondent agreed to sell the suit land for a total consideration of Rs.8,78,500/- . The appellant paid a sum of Rs. Rs.7,31,000/- immediately to the first respondent. He was required to pay the remaining amount of Rs.1,47,500/- within a period of one month from the date of the compromise decree.

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6. The appellant moved an application on 11.01.2011 seeking permission of the court to deposit the balance of Rs.1,47,500/- as per the decree. The said application was allowed by the Trial Court, and accordingly, the said amount was deposited by the appellant in the court on the same day. On 12.01.2011, the first respondent executed the sale deed in respect of the suit property in favour of the appellant. On 15.01.2011, the appellant filed an application for extension of time for payment of balance of the sale consideration which was allowed by the Trial Court vide Order dated 02.12.2015.

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7. After a passage of about three years from the date of execution of the sale deed, the first respondent filed an application for cancellation of the aforesaid sale deed and for a direction to recover possession of the suit property from the appellant. The Trial Court vide Order dated 13.01.2016 dismissed the said application.

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8. Being aggrieved, the first respondent filed a writ petition before the High Court. As noticed above, the High Court has allowed the writ petition and cancelled the sale deed dated 12.01.2011.

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9. We have heard learned counsel for the parties and perused the materials placed on record.

10. Section 28 of the Specific Relief Act, 1963 provides for rescission of the contract for sale or lease of immovable property, the specific performance of which has been decreed. Sub-section (1) of Section 28 is relevant for this case, which is as under:

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“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

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(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.”

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(Emphasis supplied)

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- A        11. This section gives to the vendor or the lessor the right to rescission of the contract for the sale or lease of the immovable property in the same suit, when after a suit for specific performance is decreed, if the vendor or the lessor fails to pay the purchase money within the period fixed. This section seeks to provide complete relief to both the parties in terms of a decree of specific performance in the said suit without having resort to a separate proceeding. Therefore, a suit for specific performance does not come to an end on the passing of a decree and the court which has passed the decree for specific performance retains control over the decree even after the decree has been passed. Section 28 not only permits the judgment-debtors to seek rescission of the contract but also permits extension of time by the court to pay the amount. The power under this section is discretionary and the court has to pass an order as the justice of the case may require. It is also settled that time for payment of sale consideration may be extended even in a consent decree. This Court in **Smt. Periyakkal and ors. Vs. Smt. Dakshyani<sup>1</sup>**, speaking through Chinnappa Reddy, J. observed that even in a compromise decree, the court may enlarge the time in order to prevent manifest injustice, and to give relief to the aggrieved party against a forfeiture clause. The Court observed the following:

E        “4..... The parties, however, entered into a compromise and invited the court to make an order in terms of the compromise, which the court did. The time for deposit stipulated by the parties became the time allowed by the court and this gave the court the jurisdiction to extend time in appropriate cases. Of course, time would not be extended ordinarily, nor for the mere asking. It would be granted in rare cases to prevent manifest injustice. True the court would not rewrite a contract between the parties but the court would relieve against a forfeiture clause; And, where the contract of the parties has merged in the order of the court, the court’s freedom to act to further the ends of justice would surely not stand curtailed.”

- G        12. In the instant case, as per compromise decree dated 06.12.2010 the appellant was required to pay the balance sale consideration of Rs.1,47,500/- on or before 06.01.2011. There was a delay of about five days in payment of balance of the amount. Therefore, he filed an application on 11.01.2011 seeking permission of the court to deposit the

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H        <sup>1</sup>(1983) 2 SCC 127

balance of the amount which was allowed by the trial court on the same day. Accordingly, he deposited the said amount on 11.01.2011 and the sale deed was executed in favour of the appellant on 12.01.2011. Subsequently, the application filed by the appellant seeking extension of time was also allowed by the Trial Court. After a passage of nearly 3 years, the application filed by the first respondent seeking rescission of the contract was dismissed by the Trial Court. This order of the Trial Court has been set aside by the High Court.

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13. We are of the view that, the Trial Court in its discretion has granted extension of time for depositing the balance of sale consideration assigning cogent reasons. In our view, the High Court was not justified in setting aside the said order and cancelling the sale deed.

14. Resultantly, the appeal succeeds and is accordingly allowed. The judgment and order of the High Court dated 30.01.2018 in W.P.NO.1637 of 2016 is set aside and the order of the Trial Court dated 11.01.2011 permitting the appellant to deposit the balance amount of Rs.1,47,500/- is restored. No costs.

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Bibhuti Bhushan Bose

Appeal allowed.