

Ram Lal

v.

Jarnail Singh (Now Deceased) through its LRs & Ors.

(Civil Appeal No. 3245 of 2025)

25 February 2025

[J.B. Pardiwala and R. Mahadevan, JJ.]

Issue for Consideration

Suit filed by appellant seeking specific performance of contract based on an agreement of sale executed by respondents was allowed on 20-01-2012 and appellant was directed to deposit the balance sale consideration within two months. The judgment and decree was upheld by the First Appellate Court on 21-04-2015. Two years thereafter, the decree holder preferred execution petition wherein he sought permission to deposit the balance sale consideration. On 20-05-2019, the executing court permitted the decree holder-appellants to deposit the balance sale consideration and directed the Respondents to execute sale deed in favour of appellants after receiving balance sale consideration. Revision Application against the order of executing court was allowed by High Court on 30-8-2022 on the ground that it was too late in the day for the appellant (original plaintiff/decree holder) to deposit the balance sale consideration. Whether the High Court committed a gross error in passing the impugned order.

Headnotes[†]

Specific Performance – Decree for specific performance of contract based on an agreement of sale – Delay in filing execution petition and seeking permission of executing court to deposit the balance sale consideration – If rendered the decree of specific performance inexecutable:

Held: In the present case, once the appellate court affirmed the judgment and decree of the trial court, there was evidently a merger of the judgment of the trial court with the decision of the appellate court – Once the appellate court renders its judgment, it is the decree of the appellate court which becomes executable – In the considered view of this Court, the Appellate Court, after deciding the appeal on merits, could have called upon the plaintiff to deposit the balance sale consideration by fixing a time limit –

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This would have at least given an opportunity to the plaintiff to fulfil his obligation – It is too much to say that since the trial court had granted two months time to the decree holder to deposit the balance sale consideration the same time period would apply even to the decree that may be drawn by the appellate court – What is executable is the decree passed by the appellate court – The appellate court owes a duty to specify the time period – In the case on hand, undoubtedly, there was a delay on the part of the decree holder in filing the execution petition and thereby seeking permission to deposit the balance sale consideration – Also, just because a decree of specific performance can be executed within 12 years from the date of original decree or from the date the appellate court affirms such decree that, by itself, does not mean that a decree holder deposits the balance sale consideration at his own sweet will – If the appellate court had failed to stipulate any particular time period then it is expected of the decree holder to deposit the same within a reasonable period of time – However, notably, the balance sale consideration of Rs. 4,87,000/- came to be deposited by the decree holder way back in 2019 – In the overall facts and circumstances of the case, the High Court should not have interfered with the order passed by the executing court – Since there was a delay of 2 years in filing the execution petition and delay of 4 years in depositing the balance sale consideration of Rs. 4,87,000/- the respondents-herein (judgment-debtors) are entitled to simple interest at the rate of 9 per cent per annum from the date of the judgment and order passed by the appellate court till the date the balance consideration was deposited i.e. 20.05.2019.
[Paras 43, 49, 50, 51, 52, 53, 55]

Specific Relief Act, 1963 – s.28 – Decree for specific performance – Is in the nature of a preliminary decree – Contract between parties is not extinguished by passing of a decree for specific performance and it subsists despite the decree – Court does not become a *functus officio* after grant of decree for specific performance and it retains its power and jurisdiction to deal with the decree till the sale deed is executed. [Paras 44, 45]

Specific Relief Act, 1963 – s.28 – Decree for specific performance of contract based on an agreement of sale – Time-limit for deposit of money by decree-holder – Court has the power and discretion to extend the time to pay the

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amount – Such power can be exercised even in the appellate stage – Factors that should weigh with the court concerned while permitting the decree holder to deposit the balance sale consideration beyond the time period prescribed by the trial court in its final decree:

Held: The trial court has jurisdiction to fix time-limit for depositing the money by the decreeholder under Section 28 of the Specific Relief Act, 1963 – The decree is preliminary in nature and the court retains control over it – The Court has been conferred with the power to extend the time to pay the amount and while taking into consideration the delay that is sought to be condoned by the plaintiff, the Court does not adjudge the same like an application under Section 5 of the Limitation Act, where each day's delay must be explained – The Court is given the discretion to extend the time and the provision therefore seeks to provide complete relief to both the parties in terms of the decree for specific performance – If during the specified time period the decree holder is not in a position to deposit the balance sale consideration or, in other words, fails to deposit the balance sale consideration and later upon expiry of the specified time period seeks permission to deposit, then it would be within the discretion of the trial court to grant further time to deposit the balance sale consideration or decline – This discretion has to be exercised judiciously keeping in mind various factors like bona fide of the decree holder, the cause for failure to deposit the balance sale consideration in time, the length of delay and also the equities that might have been created during the interregnum period in favour of the judgment debtor – It is the cumulative effect and considerations of such factors that should weigh with the court concerned while permitting the decree holder to deposit the balance sale consideration beyond the time period that might have been prescribed by the trial court in its final decree – Further, appeal is a continuation of the original proceedings and the power of the Court to extend the time for depositing the amount can be exercised even in the appellate stage by the Court.
[Paras 34, 46, 47, 48, 50]

Specific Relief Act, 1963 – s.28 – Decree for specific performance of contract – Non-payment of the balance sale consideration within time period fixed by trial court – If amounts to abandonment of the contract and consequent rescinding of the same – Real test must be to see if the conduct of the plaintiff will amount to a positive refusal to complete his part

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of the contract – There must be an element of wilful negligence on the part of the plaintiff before a Court proceeds to invoke s.28 and rescind the contract. [Para 49]

Code of Civil Procedure, 1908 – Order XX, r.12A - Decree for specific performance of contract for sale - Rule 12A makes it obligatory for the court to specify in the decree the date by which purchase money should be paid by the vendee – Where an appeal is filed against the decree passed by the trial court and the appeal is disposed of, the appellate court should specify time to deposit the balance sale consideration. [Paras 34, 50]

Doctrines/ Principles – Doctrine of Merger – The doctrine is founded on the rationale that there cannot be more than one operative decree at a given point of time – Doctrine of merger applies irrespective of whether the appellate court has affirmed, modified or reversed the decree of the trial court. [Paras 36, 37]

Case Law Cited

Prem Jeevan v. K.S. Venkata Raman and Another (2017) 11 SCC 57; V.S. Palanichamy Chettiar Firm v. C. Alagappan [1999] 1 SCR 349 : (1999) 4 SCC 702; Ramankutty Guptan v. Avara [1994] 1 SCR 542 : (1994) 2 SCC 642; Kunhayammed v. State of Kerala [2000] Supp. 1 SCR 538 : (2000) 6 SCC 359; Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd. [2019] 3 SCR 411: (2019) 4 SCC 376; Chandi Prasad v. Jagdish Prasad [2004] Supp. 4 SCR 942 : (2004) 8 SCC 724; Shanthi v. T.D. Vishwanathan (2019) 11 SCC 419 – referred to.

Krishnamoorthy v. Shanmugasundaram & Anr., 2022 SCC OnLine Mad 963 – referred to.

List of Acts

Specific Relief Act, 1963; Limitation Act, 1963; Code of Civil Procedure, 1908.

List of Keywords

Functus officio; Specific performance; Execution; Delay in filing execution petition; Decree-holder; Balance sale consideration; Preliminary decree; Rescission of contract; Time-limit for deposit of money by decree-holder; Extension of time; Appellate court; Doctrine of merger.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3245 of 2025

From the Judgment and Order dated 30.08.2022 of the High Court of Punjab & Haryana at Chandigarh in CR No. 3723 of 2019

Appearances for Parties

Advs. for the Appellant:

S.K. Pabbi, Ms. Disha Singh, Shivendu Gaur, Ms. Nidhi Sharma, Ajay Kumar Singh.

Adv. for the Respondents:

Ms. Aakriti Jain.

Judgment / Order of the Supreme Court**Order**

1. Leave granted.
2. This appeal arises from the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh dated 30-8-2022 in Civil Revision Application No.3723/2019 by which the Revision Application filed by the respondents – herein (original defendants) came to be allowed thereby setting aside the order passed by the Executing Court directing the defendants to execute the sale deed in favour of the original plaintiff(s) decree holder on the plaintiff(s) depositing the balance sale consideration of Rs.5,00,000/- within 15 days from 6-5-2019.
3. The controversy revolves around in a narrow compass.
4. The appellant before us is the original plaintiff. He instituted a suit for specific performance of contract based on an agreement of sale with the respondents – herein (original defendants)/judgment debtors. The suit came to be decreed in favour of appellant – plaintiff vide Judgment and order dated 20-1-2012. The operative part of the decree passed by the Trial Court reads thus:-

“Suit for possession by way of specific performance of agreement of sale dated 16.11.2006 executed between the parties regarding approximately actually comes to 7 Kanals 17 Marlas out of agricultural land comprised in

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Khewat No.334 Khtauni No.720 to 736 measuring 161 Kanals 5 Marlas comprised in Khasra Nos. 424/1min (11-1), 425/1min (5-16), 1234/1 (1-4), 1237/1 (23-1), 1238/1, (28-1), 1241/1/2 (15-16), 1242 min (5-1), 1246/2 min (2-6), 1241/1/1 (1-0), 1242 min (3-0), 1241/2/1 (2-10), 1241/1 (1-0), 424min (2-10), 425/1 min (1-0), 424/1/1 (0-13), 424/1 min (1-7), 425/1 min (0-13), 1246/2 min (6-0), 424/1 min (1-7), 425/1 min (0-13), 1246/2 min (6-0), 1241/2/2 min (2-15), 1241/2/2 min (2-0), 1234/2/1 (1-4), 424/1 min (2-1), 4251/ min (2-0), 1234 min (8-0), 1234/1 (1-0), 1234/2 (2-13-1/2), 1234/2 (0-1/2), 1234/2 (3-6), 159/2/2 (4-10), 160/2/2 (8-1), 161/2/2 (2-15) and 423/2 (1-0), situated in the revenue limits of Village Naruana Tehsil and District Bathinda on payment of Rs.7,00,000/- per killa of 8 Kanals, (in fact the land with the Defendant remains 7 Kanals 17 Marlas after adjusting her other land in ther Khata and value for ther land comes to Rs.6,86,875/- and after adjusting the Rs.2,00,000/- paid in cash as earnest money and Rs. 50000/- paid by the Plaintiff to the Co-Operative Society as loan payable on their payable by the Defendant.

And

Suit for permanent injunction restraining the defendant from alienating or creating any encumbrance over the same by creating mortgage with the above said bank or any other person in any manner value of the said for the purpose of jurisdiction Rs.7,00,000/- value of the said for the purpose of Court fee Rs.9176/

This suit has come up for final disposal before me (K.K. Singla Additional Civil Judge (Senior Division) Bathinda) in the presence of Sh. Rajneesh Kumar Rana, counsel for plaintiff and Sh.Rajdeep Goyal counsel for defendant. It is ordered that suit filed by the plaintiff for possession by way of specific performance of agreement to sale dated 16.11.2006 is decreed with costs and defendant is directed to execute and registered the sale deed pertaining to 157/3225 share out of the property detailed in the

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head note of the plaint within 3 months on depositing the balance sale consideration by plaintiff within two months from today.”

5. The respondents – herein (original defendants) being dissatisfied with the grant of decree of specific performance challenged the same by filing First Appeal in the District Court. The appeal came to be dismissed vide Judgment and order dated 21-4-2015. The operative part of the order passed by the first appellate court reads thus:-

“xx xx xx xx So, from the above said discussion and findings, there is no merit in this appeal and hence, the same stands dismissed with costs. Lower court record along with copy of this Judgment be returned back. File be consigned to the record room. Decree should be prepared separately”

6. The defendants thereafter did not deem fit to file any second appeal. Thus, the decree attained finality with the dismissal of the First Appeal.
7. Sometime in January, 2017, the plaintiff filed execution petition seeking to execute the decree of specific performance. The plaintiff also sought permission of the executing court to allow him to deposit the balance sale consideration. The execution petition came to be disposed of by the executing court vide order dated 6-5-2019. The order passed by the executing court reads thus:-

“Heard. It is submitted that execution application is not maintainable in its present form as filed and framed because the decree has been passed by this court of Sh. K.K.Singla, then ACJ (SD), Bathinda on dt. 20.01.2012 in favour of the Raj Kumari and now she had died and present execution application has been filed by only one of the LR deceased Raj Kumar ie applicant Ram Lal and he is not entitled to get execute the decree in his favour alone by excluding execution application is not maintainable and the same is liable to be dismissed. The alleged will propounded by the decree holder/applicant of the deceased Raj Kumari is forged and fabricate document and decree holder/applicant is not entitled to get execute in his favour alone basis of the alleged will executed by deceased Raj Kumari. It is further submitted that decree holder did not

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deposit the balance sale consideration, in court as per the directions of this court, at the time of the filing of the present execution and without depositing the balance sale consideration, present execution application cannot be proceed further and as such the same is liable to be dismissed on this score. It is further execution application of the decree holder is totally false, frivolous and vexatious to the knowledge of the applicant and as such the same is liable to be dismissed with costs. It is further submitted that decree/applicant has wrongly mentioned the respondents no.2 and 4, in array of the performa respondents, beyond the decree. Decree has been passed by this court of Sh. K.K.Singla, then ACJ(SD) Bathinda, on dt. 20.01.2012 in favour of the Raj Kumari and now she had died and present execution application has been filed by only applicant Ram Lal and he is not entitled to get execute the decree in his favour alone by excluding other legal heirs. Further decree holder did not deposit the balance sala consideration. in court as per the directions of this court, at the time of the filim of the present execution application cannot be proceed further. Besides judgment and decree dt. 20.01.2012 has been passed against Jarnail nam Sukhpal Singh his son. is minor and prayed for dismissal of the same. 3. In reply to the application, J.Ds has no cause of action standi to file the objections, the objections has been filed to delay the proceedings. The objections raised are false, frivolous and mala fide submitted that all the legal heirs of Raj Kumari are make passing execution. It is pertinent to mention here that respondent/decree he succession has acquired inheritance from Raj Kumar thorugh will more on a matter between the heirs of original D.H & objections/Jds has nothing with it. It is submitted that objector/Jds has no locus standi or cause of ac raise this objection. Further more, it is a matter of interse interest of the heirs of original D.H. It is further submitted that execution application sought permission to deposit the remaining sale consideration. It is furthe submitted that matter between the parties remained pending in the court for a quite long time. Objection raised regarding the minority of original J.Ds (Jarnail Singh) son

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namely Sukhpal Singh does not hold ground as per law. Sale deed with the sanction & permission of court even by a minor is legally valid. This ground has been raised by the Jds with malafide intention to delay the execution proceedings and it is prayed for dismissal of the same. 4. Rival submission considered. Ld Counsel for the JD had argued that the decree had been passed by the Court of Sh. K.K Singla, Ld. ACJ (SD), Bathinda and now JD had expired. DH is not entitled to execute the decree in favour of LR, Decree Holder had not deposited sale consideration, so the present execution be dismissed, he had relied on Md Hanif Khan Vs. Naresh Parsad, Jharkhand High Court WP NO 1502 of 2005 decided on 07-092009 and Civil Appeal No. 502,503,0f1999, decided on 03- 021999, VS Palachinamy Chettar Firm Vs C Alagappan. Ld. Counsel for the Decree holder had argued that the present objection had been filed to delay the proceedings, all the legal heirs of the Raj Kumari had been made party to the execution, and prayed that these objections be dismissed, and he relied on 2011 (1) PLR 271, Perusal of the file shows DH had sought permission to deposit the balance sale consideration and the application for impleading LR of defendant/JD had been filed, the argument advanced by Ld. Counsel for JD, that the balance sale consideration was not deposited is not tenable in view of the clear law laid down by our own Hon'ble High Court in case titled as Gayatri Devi vs Darshan Ram reported as 2017 (20 PLR429), wherein para 11 it was held that if there was no defaulting clause stipulated in the decree for payment of the balance sale consideration then the court had right to extend the time, even If the balance sale consideration was not deposited, within stipulated period, such extension of time can be ordered without application, mere failure on the part of the Decree holder to deposit the amount does not render the decree ineffective or release JD from his liability to satisfy the decree, it is only a willful default that make the court to refuse the extension, the court and court in its discretion can grant such extension of time and also reliance is placed on 2007 (50 RCR Civil). 655.

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In view of the above said factual matrix, these objections are dismissed, being not maintainable at this stage, it is pertinent to mention here that the suit had already been decreed by the court of Sh. K.K Singla Ld. Additional Civil Judge (Senior Division), Bathinda on 20-01-12 and appeal had also been dismissed on 21.04.2015 by the Court of Sh. Amarjeet Singh Ld. Additional District Judge, Bathinda. Decree Holder is directed to deposit the balance sale consideration within 15 days of this order and JD (Represented through LR) are directed to execute the sale deed in favour of the Decree Holder, meanwhile on or before 06-07-2019, after receiving the balance sale consideration. Rough sale deed be also filed."

8. The defendants being dissatisfied with the order passed by the executing court, referred to above, challenged the same by filing civil revision application before the High Court. The High Court allowed the civil revision application holding as under:-

"In the present case the permission to deposit the balance sale consideration was sought by respondent No.1 while filing the execution petition on 02.12.2017. The appeal of the defendant (Jarnail Singh) was dismissed by the lower Appellate Court on 21.04.2015. There is no explanation forthcoming as to why the plaintiff (Raj Kumari) or her successor respondent No.1 did not take any steps to deposit the balance sale consideration upon dismissal of the appeal by the lower Appellate Court on 21.04.2015. No cogent or compelling reasons are also forthcoming in the execution petition or in the reply to the objections for not having deposited the balance sale consideration within the time granted or within a reasonable time after the dismissal of the appeal by the lower Appellate Court.

Keeping in view the law as discussed above as well as the peculiar facts of the present case, it is clear that in case there is no compliance of the judgment and decree, except when there had been compelling circumstances for not depositing the amount, time cannot be extended. In my view, in the present case the decree had become unexecutable. The Executing Court has committed an

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illegality and perversity in granting time to the respondent No.1 to deposit the balance sale consideration. For the reasons aforementioned, the impugned order is set aside and the revision petition stands allowed. Pending applications, if any, also stand disposed off."

9. Thus, the High Court took the view that it was too late in the day for the appellant-herein (original plaintiff/decree holder) to deposit the balance sale consideration as almost three years had elapsed since the date the First Appeal filed by the judgment debtors came to be dismissed. According to the High Court the appellant-herein as decree holder should have acted promptly to show his *bona fide*.

SUBMISSIONS ON BEHALF OF THE APPELLANT/DECREE HOLDER:

10. The learned counsel appearing for the appellant-herein vehemently submitted that the High Court committed a gross error in passing the impugned order. She would submit that mere delay of three years in filing the execution petition and seeking permission of the executing court to deposit the balance sale consideration would not render the decree of specific performance inexecutable. She would submit that even otherwise a decree of specific performance can be executed within a period of 12 years in accordance with Article 136 of the Limitation Act.
11. The learned counsel further submitted that indisputably no application was filed by the respondents-herein/judgment debtors for rescission of the contract under Section 28 of the Specific Relief Act. It was further pointed out that after the executing court passed the order the appellant herein deposited the entire balance sale consideration of Rs. 4,87,000/- on 20th May 2019.
12. In such circumstances referred to above the learned counsel prayed that there being merit in her appeal, the same may be allowed and the impugned order passed by the High Court may be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS/JUDGMENT DEBTORS:

13. On the other hand, the learned counsel appearing for the respondents-herein vehemently submitted that no error, not to speak of any error of law, could be said to have been committed by the High Court in

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passing the impugned order. He would submit that there was a gross delay of two years in seeking permission of the executing court to deposit the balance sale consideration. He would submit that the trial court in its decree had directed that the balance sale consideration shall be deposited by the plaintiff within two months from the date of the judgment and decree. He would submit that after the appeal of his clients came to be dismissed by the appellate court, the plaintiff should have deposited the balance sale consideration within a period of two months thereafter.

14. The learned counsel further submitted that just because the respondents did not file any application under Section 28 of the Specific Relief Act for rescission of the contract that by itself would not be sufficient to condone the delay of four years in depositing the balance sale consideration. In other words, he would submit that merely because rescission of contract was not sought by the respondents-herein/judgment debtors the same does not automatically result in extension of time.
15. The learned counsel in support of his aforesaid submissions placed reliance on the following decisions of this Court:-
 - i. **Prem Jeevan v. K.S. Venkata Raman and Another.** reported in (2017)11 SCC 57
 - ii. **V.S. Palanichamy Chettiar Firm v. C. Alagappan** reported in (1999)4 SCC 702.
16. In such circumstances referred to above the learned counsel prayed that there being no merit in this appeal the same may be dismissed.

ANALYSIS

17. 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 is whether the High Court committed any error in passing the impugned order?
18. The following facts are not in dispute:-
 - a) The suit filed by the appellant-herein seeking specific performance of contract based on an agreement of sale executed by the respondents-herein came to be allowed on 20th January 2012.

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- b) In the decree passed by the trial court the plaintiff was directed to deposit the balance sale consideration within two months.
 - c) The judgment and decree passed by the trial court was challenged by the defendants in appeal. The appeal came to be dismissed on 21.04.2015.
 - d) While dismissing the appeal the appellate court did not prescribe any particular time limit to deposit the balance sale consideration. In other words, the appellate court did not say anything as to within what period of time the decree holder should deposit the balance sale consideration and get the decree executed.
 - e) After a period of two years from the date the appeal came to be dismissed the decree holder preferred execution petition wherein he sought permission to deposit the balance sale consideration. The executing court permitted the decree holder to deposit the balance sale consideration vide order dated 06.05.2019. It is not in dispute that the balance sale consideration came to be deposited on 20th May 2019.
19. Before advertiring to the rival submissions canvassed on either side, we must look into two decisions of this Court, on which strong reliance has been placed by the respondents-herein. We start with the decision in **Prem Jeevan (supra)**.
20. In **Prem Jeevan (supra)** a decree for specific performance was granted in favour of the respondent-plaintiffs on 25-9-2008 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."*
21. The respondents therein claimed to have a cheque on 4-12-2008 for the amount in question but the same was returned, as not accepted by the judgment-debtor, appellant therein. Thereafter the decree-holders

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applied for execution sometime in the year 2010, after making the deposit of the decretal amount on 7-10-2010.

22. 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.
23. The executing court upheld the objection holding:-

"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."

24. On a revision having been filed by the decree-holders, the High Court reversed the order of the executing court and held:-

"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 unrebuted. 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

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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.”

25. In such circumstances referred to above, this Court held as under:-

“8. Reference to Order XX Rule 12A CPC shows that in every decree of specific performance of a contract, the court has to specify the period within which the payment has to be made. In the present case, the said period was two months from the date of the decree.

9. In absence of the said time being extended, the decree-holder could execute the decree only by making the payment of the decretal amount to the judgment-debtor or making the deposit in the court in terms of the said decree. In the present case, neither the said deposit

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*was made within the stipulated time nor extension of time was sought or granted and also no explanation has been furnished for the delay in the making of the deposit. No doubt, as contended by the learned counsel for the decree-holders, relying on the judgment of this Court in **Ramankutty Guptan v. Avara** reported in (1994) 2 SCC 642, in an appropriate case the court which passed the decree could extend the time as envisaged in the Specific Relief Act, 1963. In the present case no such steps have been taken by the decree-holders.*

10. In the above circumstances, the contention advanced on behalf of the decree-holders, respondents herein, that unless the judgment-debtor seeks rescission of the contract in terms of Section 28 of the Specific Relief Act, the decree remains executable in spite of expiry of the period for deposit, with the only obligation on the part of the decree-holders to pay interest, cannot be accepted.

11. Section 28 of the Specific Relief Act is as follows:

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

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(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.

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

26. Thus, the ratio of the decision in **Prem Jeevan (supra)** should be understood as laying down a proposition of law that it is incorrect to say that unless the judgment debtor seeks rescission of the contract in terms of Section 28 of the Specific Relief Act, the decree remains executable in spite of expiry of the period for deposit, with the only obligation on the part of the decree holders to pay interest. In the

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said case this Court ultimately took the view that merely because rescission of contract was not sought by the judgment debtor the same would not automatically result in extension of time.

27. What is important to note in the decision referred to above is that this Court was looking into the decree passed by the trial court prescribing two months time period to deposit the balance sale consideration. What was directly in consideration before this Court was the decree passed by the trial court. It appears that in the said case the matter was not carried further in appeal. In the case on hand the original decree passed by the trial court was challenged by the defendants in First Appeal and the said First Appeal came to be dismissed. Therefore, in **Prem Jeevan (supra)** this Court directly considered the effect of non compliance of the time period prescribed in the original decree passed by the trial court for the purpose of deposit of the balance sale consideration.
28. In **V.S. Palanichamy Chettiar Firm (supra)** this Court while adverting to the decision of this Court in **Ramankutty Guptan v. Avara** reported in **(1994) 2 SCC 642**, 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

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certainly an application under Section 28 is maintainable in the same court.”

29. In the above referred case, 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 Specific Relief 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.”

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Thus, under the above circumstances, this Court held that the vendee, who had applied for extension of time to deposit the balance price, was not entitled to such extension. This Court observed that in deciding application under Section 28(1), the court has to see all the attendant circumstances including the conduct of the parties. On facts, this court found that there was no default on the part of the vendor judgment-debtor. That no explanation whatsoever came from the vendee decree-holder for failure to deposit the balance price. In the circumstances, on facts, this Court refused extension of time to deposit the balance price.

30. Order XX Rule 12A of the CPC reads thus:-

“12A. Decree for specific performance of contract for the sale or lease of immovable property. – Where a decree for the specific performance of a contract for the sale or lease of immovable property orders that the purchase-money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.”

31. The Law Commission for insertion of Rule 12A stated:-

“This rule is new, and is intended to provide that a decree for specific performance of contracts for the sale or lease of immoveable property should specify the period within which the purchase-money or other amount is to be paid.

An elaborate provision regarding decrees for specific performance of such contracts was suggested in an earlier report of the Law Commission. The recommendation there was to the effect, that complete relief (such as possession, etc., rescission, refund of earnest money, etc.) in such a suit should be available by application in the suit itself (instead of in execution as at present), and that appropriate provision should be made in the Civil Procedure Code enabling such applications to be made and orders thereon and also for appeals.

It is considered, that so far as a provision authorising the making of an application and orders thereon is concerned, Section 28 of the Specific Relief Act, 1963 (read with Section 22) would be adequate. So far as appeals from

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such orders are concerned, the orders, it is considered, would fall within the definition of 'decree' given in Section 2(2) of the Civil Procedure Code. It is thought, that the only specific provision which is payment required is to the effect that the decree should specify the period for of the purchase-money or other amount due under the decree.

Necessary amendment is proposed."

32. The Joint Committee also observed:-

"The Committee, therefore, feel that the proper place for the proposed rule is in Order XXI and not in Order XX. The Committee also note that the proposed Rule 12-B is almost a verbatim copy of Rule 34 of Order XXI subject to certain modifications. The Committee, therefore, feel that the proposed Rule 12-B should be omitted from Order XX, and, instead of omitting Rule 34, modifications, as suggested by the Law Commission, should be made therein. Proposed Rule 12-B has been omitted accordingly."

33. In the Statement of Objects and Reasons, it has been said:-

"Clause 73, sub-clause (viii). – New Rule 12-A seeks to provide that the decree for specific performance of contracts for sale or lease of immovable property should specify the period within which the purchase-money or other amount is to be paid"

34. Rule 12A of Order XX, as inserted by the Amendment Act, 1976 enacts that a decree for specific performance of contract for sale or lease of immoveable property should specify the period within which purchase money or other sum should be paid by the purchaser or by the lessee as the case may. Rule 12A makes it obligatory for the court to specify in the decree for specific performance of contract for sale or lease of immovable property the date by which purchase money or other sum should be paid by the vendee or lessee. The trial court has jurisdiction to fix time-limit for depositing the money by the decree-holder under Section 28 of the Specific Relief Act, 1963. The decree is preliminary in nature and the court retains control over it.
35. In the case on hand, in accordance with the provisions of Order XX Rule 12A referred to above the trial court while allowing the suit and granting the relief of specific performance specifically stipulated

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two months time period for the plaintiff to deposit the balance sale consideration and get the sale deed executed in his favour.

36. However, the judgment and decree passed by the trial court came to be challenged before the appellate court. Once the judgment passed by the trial court is challenged before the appellate court the judgment and order passed by the trial court would get merged with the judgment of the appellate court irrespective of the fact whether the appeal is allowed or dismissed. In the case on hand the appeal stood dismissed.
37. The law in the aforesaid context is well settled. 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.
38. In **Kunhayammed v. State of Kerala** reported in (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.”

39. Further, while explaining the position that emerges on the grant of special leave to appeal by this Court, it was observed in **Kunhayammed (supra)** that:-

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"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."

40. The position of law as aforesaid 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.*** reported in (2019) 4 SCC 376.
41. The decision in ***Kunhayammed (supra)*** was followed by a three-Judge Bench decision of this Court in ***Chandi Prasad v. Jagdish Prasad***, reported in (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."

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

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"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."

(Emphasis supplied)

43. The doctrine of merger operates as a principle upon a judgment being rendered by the appellate court. In the present case, once the appellate court affirmed the judgment and decree of the trial court, there was evidently a merger of the judgment of the trial court with the decision of the appellate court. Once the appellate court renders its judgment, it is the decree of the appellate court which becomes executable.
44. The decree for specific performance is in the nature of a preliminary decree. Both the parties have reciprocal rights and obligations flowing out of the decree. The decree may fix the time limit for performance and in some cases may also provide for the consequence for non-performance within the time limit or the decree may even be silent on this aspect.
45. The decree enforces specific performance of the contract. The contract between the parties is thus not extinguished by passing of a decree for specific performance and it subsists despite the decree. Section 28 (1) of the Act, makes it clear that the Court does not become a *functus officio* after the grant of the decree for specific performance and it retains its power and jurisdiction to deal with the decree till the sale deed is executed.
46. The Court has been conferred with the power to extend the time to pay the amount and while taking into consideration the delay that is sought to be condoned by the plaintiff, the Court does not adjudge the same like an application under Section 5 of the Limitation Act,

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where each day's delay must be explained. The Court is given the discretion to extend the time and the provision therefore seeks to provide complete relief to both the parties in terms of the decree for specific performance.

47. The power and jurisdiction granted under Section 28 (1) of the Act, enables the Court to extend the period for payment of the purchase money if it has not been paid within the period allowed by the decree. It also enables the judgment debtor to seek for rescinding the contract for non-compliance of the directions given in the decree and while considering this application, the Court is given the discretion to rescind the contract or in an appropriate case to even extend the time for paying the purchase money.
48. It should also be borne in mind that appeal is a continuation of the original proceedings and the power of the Court to extend the time for depositing the amount can be exercised even in the appellate stage by the Court.
49. In the considered view of this Court, the Appellate Court, after deciding the appeal on merits, could have called upon the plaintiff to deposit the balance sale consideration by fixing a time limit. This would have at least given an opportunity to the plaintiff to fulfil his obligation. The non-payment of the balance sale consideration within the time period fixed by the Trial Court does not amount to abandonment of the contract and consequent rescinding of the same. The real test must be to see if the conduct of the plaintiff will amount to a positive refusal to complete his part of the contract. There must be an element of wilful negligence on the part of the plaintiff before a Court proceeds to invoke Section 28 of the Act and rescind the contract. (See: *Krishnamoorthy v. Shanmugasundaram & Anr.*, 2022 SCC OnLine Mad 963)
50. This litigation is an eye-opener for the appellate courts reminding that they owe a duty to comply with the provisions of Order XX Rule 12A of the CPC. Where an appeal is filed against the decree passed by the trial court and the appeal is disposed of, the appellate court should specify time to deposit the balance sale consideration. It is too much to say that since the trial court had granted two months time to the decree holder to deposit the balance sale consideration the same time period would apply even to the decree that may be drawn by the appellate court. What is executable is the decree

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passed by the appellate court. The appellate court owes a duty to specify the time period. If during the specified time period the decree holder is not in a position to deposit the balance sale consideration or, in other words, fails to deposit the balance sale consideration and later upon expiry of the specified time period seeks permission to deposit, then it would be within the discretion of the trial court to grant further time to deposit the balance sale consideration or decline. This discretion has to be exercised judiciously keeping in mind various factors like *bona fide* of the decree holder, the cause for failure to deposit the balance sale consideration in time, the length of delay and also the equities that might have been created during the interregnum period in favour of the judgment debtor. It is the cumulative effect and considerations of such factors that should weigh with the court concerned while permitting the decree holder to deposit the balance sale consideration beyond the time period that might have been prescribed by the trial court in its final decree.

51. In the case on hand, undoubtedly, there was a delay on the part of the decree holder in filing the execution petition and thereby seeking permission to deposit the balance sale consideration. Just because a decree of specific performance can be executed within 12 years from the date of original decree or from the date the appellate court affirms such decree that, by itself, does not mean that a decree holder deposits the balance sale consideration at his own sweet will.
52. If the appellate court had failed to stipulate any particular time period then it is expected of the decree holder to deposit the same within a reasonable period of time.
53. As noted earlier, the balance sale consideration of Rs. 4,87,000/- came to be deposited by the decree holder way back in 2019. In the overall facts and circumstances of the case we have reached the conclusion that High Court should not have interfered with the order passed by the executing court.
54. In ***Ramankutty Guptan (supra)*** this Court while holding that the application for extension of time for payment of balance amount of consideration can be filed in the Court of the first instance as well as in the appellate court, observed that. "*It is to be seen that the procedure is hand-maid for justice and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve*

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substantial justice. Therefore, technicalities would not stand in the way to subserve substantive justice”

55. The balance sale consideration deposited by the appellant-plaintiff way back on 20-05-2019 i.e. Rs. 4,87,000/- shall now be disbursed in favour of the defendants with interest accumulated thereon within a period of four weeks from today. Since there was a delay of 2 years in filing the execution petition and delay of 4 years in depositing the balance sale consideration of Rs. 4,87,000/- we are of the view that the respondents-herein (judgment-debtors) are entitled to simple interest at the rate of 9 per cent per annum from the date of the judgment and order passed by the appellate court till the date the balance consideration was deposited i.e. 20.05.2019. The executing court shall calculate the interest amount at the rate of 9 per cent simple interest and direct the appellant-herein to deposit the said amount within a period of two weeks from today.
56. In view of the aforesaid, the appeal succeeds and hereby allowed. The impugned order passed by the High Court is set aside and that of the executing court is affirmed.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Bibhuti Bhushan Bose