

P. SHYAMALA

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v.

GUNDLUR MASTHAN

(Civil Appeal Nos.1363-1364 of 2023)

FEBRUARY 24, 2023

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[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

Specific Relief Act, 1963 : s. 28 – Rescission of agreement to sell, the specific performance of which is decreed – On facts, agreement to sell the suit property between the late mother of the appellant and the respondent – Suit for specific performance by the respondent – Trial court passed an ex parte decree and directed the respondent to deposit balance sale consideration, however, the respondent failed to pay the same – After 853 days the respondent filed an application u/s. 148 CPC and s. 28 of the Specific Relief Act for extension of time to deposit the balance amount – Trial court allowed the application of the respondent while dismissed the appellant's application u/s. 28 – High Court dismissed the revision filed by the appellant – Held : Nothing is on record that any steps were taken by the respondent either to deposit/pay the balance sale consideration or even calling upon the appellant to execute the sale deed as per the judgment and decree passed by the trial court till the application u/s. 148 CPC and s. 28 of the Specific Relief Act was filed – If the respondent was ready with the money payable towards the balance sale consideration, he could have got the sale deed executed through power of attorney after effecting deposit/payment – In absence of any sufficient explanation, such a huge delay of 853 days ought not to have been condoned by the trial Court – Moreover, s. 28 of the Specific Relief Act seeks to provide complete relief to both the parties in terms of a decree of specific performance – Therefore, the trial court failed to exercise the discretion judiciously in favour of the appellant and erred in exercising the discretionary power in favour of the respondent, that too with a delay of 853 days – High Court erred in upholding the same – Code of Civil Procedure, 1908 – s. 148

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Allowing the appeals, the Court

HELD: 1.1 At the outset, it is required to be noted that by an ex-parte judgment and decree dated 12.10.2013, the trial Court

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- A passed a decree for specific performance of the agreement to sell dated 9.5.2012. In the agreement to sell dated 9.5.2012, the total sale consideration was Rs. 23,00,000/-, against which Rs. 8,00,000/- was paid as advance. The balance sale consideration of Rs. 15,00,000/- was directed to be deposited/paid by the plaintiff under the ex-parte judgment and decree dated 12.10.2013, within two weeks from the said date, which expired on 21.10.2013. Nothing is on record that any steps were taken by the plaintiff either to deposit/pay the balance sale consideration of Rs. 15,00,000/- or even calling upon the defendant to execute the sale deed as per the judgment and decree passed by the trial Court dated 12.10.2013 till the present application under Section 148 CPC and Section 28 of the Specific Relief Act was filed on 7.6.2017/19.06.2017 with a huge delay of 853 days, seeking extension of time to deposit the balance sale consideration. The reasons for delay are set out hereinabove. The explanation which was given by the plaintiff, narrated hereinabove, can hardly be said to be a sufficient explanation as to why the plaintiff did not pay the balance sale consideration as per the judgment and decree or even did not make an application within a reasonable time under Section 148 CPC and Section 28 of the Specific Relief Act seeking extension of time for making payment. If the plaintiff 9
- B was ready with the money payable towards the balance sale consideration, he could have got the sale deed executed through power of attorney after effecting deposit/payment. In absence of any sufficient explanation, such a huge delay of 853 days ought not to have been condoned by the trial Court. [Para 5][42-E-H; 43-A-B]
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- F 1.2. The Court is of the opinion that the trial Court erred in exercising the discretion in favour of the plaintiff and erred in extending the time in favour of the plaintiff to deposit the balance sale consideration of Rs. 15,00,000/- by condoning the huge delay of 853 days, which as observed hereinabove has not been explained sufficiently at all. After the plaintiff was directed to deposit the balance sale consideration of Rs. 15,00,000/- within a period of two weeks from the date of *ex-parte* judgment and decree dated 12.10.2013, which the plaintiff failed to deposit/pay, even no application for extension of time under Section 148 CPC and Section 28 of the Specific Relief Act was made thereafter within a
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reasonable time and was made after a period of 853 days. Nothing is on record that in between any notice was given to the defendant to execute the sale deed as per the judgment and decree on deposit of the balance sale consideration. The application filed by the plaintiff under Section 148 CPC and Section 28 of the Specific Relief Act seeking extension of time to deposit the balance sale consideration was hopelessly delayed. Section 28 of the Specific Relief Act seeks to provide complete relief to both the parties in terms of a decree of specific performance. Therefore, the trial Court failed to exercise the discretion judiciously in favour of the defendant and erred in exercising the discretionary power in favour of the plaintiff, that too with a delay of 853 days. The High Court has erred in confirming the same and dismissing the revision applications. Under the circumstances, the order passed by the trial Court allowing the application of the plaintiff being I.A. No. 732/2016 seeking extension of time to deposit the balance sale consideration deserves to be dismissed and I.A. No. 914/2017 filed by the defendant – appellant under Section 28 of the Specific Relief Act to rescind the agreement to sell dated 9.5.2012 deserves to be allowed. However, at the same time, to strike the balance between the parties the amount of Rs. 8,00,000/- paid by the plaintiff as an advance is to be returned to the plaintiff with 12% interest per annum from 13.9.5.2012 till the actual payment, within a period of six weeks from today, failing which it shall carry interest @ 18% per annum. [Para 8][44-H; 45-A-F]

V.S. Palanichamy Chettiar Firm v. C. Alagappan and Another (1999) 4 SCC 702 : [1999] 1 SCR 349 – referred to.

Kishor Ghanshyamsa Paralikar (D) through Lrs. v. Balaji Mandir Sansthan Mangrul (Nath) & Another Civil Appeal No. 3794/2022 – inapplicable.

Case Law Reference

[1999] 1 SCR 349

referred to

Para 6

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.1363-1364 of 2023.

From the Judgment and Order dated 17.01.2022 of the High Court for the State of Telangana at Hyderabad in CRP Nos.2374 and 2304 of 2019.

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- A Mithun Shashank, M. V. Mukunda, Krishna Dev Jagarlamudi, Advs. for the Appellant.
Harshit Tolia, Shesh Narayan Singh, Shrey Kapoor, Advs. for the Respondent.
- B The Judgment of the Court was delivered by
M. R. SHAH, J.
- C 1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 17.01.2022 passed by the High Court for the State of Telangana at Hyderabad in CRP No. 2374/2019 & 2304/2019,
2. The facts leading to the present appeals in a nutshell are as under:
- D That the respondent herein – original plaintiff instituted a Civil Suit No. 291/2013 against the mother of the appellant – original defendant for specific performance of the agreement to sell dated 09.05.2012. In the agreement to sell, the late mother of the appellant agreed to sell the suit property for a total sale consideration of Rs. 23,00,000/-, against which an advance of Rs. 8,00,000/- was paid by the plaintiff.
- E 2.1 That the trial Court passed an ex-parte judgment and decree on 12.10.2013 and passed a decree for specific performance of the agreement to sell dated 9.5.2012. While decreeing the suit, the trial Court directed the respondent – original plaintiff to deposit the balance sale consideration of Rs. 15,00,000/- within two weeks before the trial Court.
- F The trial Court also observed that in case the defendant fails to execute the sale deed on receiving the balance of sale consideration, the plaintiff is at liberty to get it done through process of law. Therefore, under the decree dated 12.10.2013, the plaintiff was required to deposit Rs. 15,00,000/- within a period of two weeks from the judgment and decree dated 12.10.2013. Thus, as per the judgment and decree dated 12.10.2013, the respondent – original plaintiff was required to pay/deposit the balance sale consideration of Rs. 15,00,000/- on or before 21.10.2013. However, the respondent herein – original plaintiff failed to pay/deposit the balance sale consideration as ordered by the trial Court.
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2.2 After a period of 853 days from the date of judgment and decree dated 12.10.2013 passed by the trial Court, the original plaintiff – respondent herein filed an application before the trial Court under Section 148 of the Code of Civil Procedure (for short, 'CPC') and Section 28 of the Specific Relief Act being I.A. No. 732/2016 in O.S. No. 291/2013 and prayed for extension of time to deposit the balance sale consideration which the plaintiff was required to deposit on or before 21.10.2013, as per the judgment and decree dated 12.10.2013. At this stage, it is required to be noted that after the ex-parte judgment and decree, the mother of the appellant – original defendant died on 13.01.2015 and the appellant herein being legal heir of the original defendant was brought on record. Simultaneously, the appellant, being the legal representative of the original defendant, filed an application being I.A. No. 914/2017 in O.S. No. 291/2013 under Section 28 of the Specific Relief Act, 1963 to rescind the Agreement to Sell dated 9.5.2012.

2.3 Before the trial Court, it was the case on behalf of the plaintiff in support of I.A. No. 732/2016 that he became sick with Jaundice and treated in the hospital from 1.11.2013 to 5.1.2014 and after discharge also confined to house with High Blood Pressure, Diabetes and other diseases. It was also the case on behalf of the plaintiff that ultimately on 9.6.2016 when he contacted the advocate he came to know about the judgment and decree dated 12.10.2013 and the directions given thereunder. Therefore, it was prayed to condone the delay of 853 days and extend the time to deposit the balance sale consideration.

2.4 The said application was opposed by the appellant. It was the case on behalf of the appellant in support of the application under Section 28 of the Specific Relief Act that the plaintiff has wilfully not deposited the balance sale consideration and therefore the agreement to sell dated 9.5.2012 is required to be rescinded under section 28 of the Specific Relief Act. It was also the case on behalf of the appellant that the alleged illness is false and created. By common order dated 29.06.2019, the trial Court allowed I.A. No. 732/2016 directing the plaintiff to deposit the balance sale consideration of Rs. 15,00,000/- with interest @ 18% per annum from the date of decree, i.e., 12.10.2013 till the date of deposit, within one month. Consequently, the trial Court dismissed I.A. No. 914/2017 filed by the appellant under Section 28 of the Specific Relief Act.

2.5 Feeling aggrieved and dissatisfied with the common order dated 29.06.2019 passed by the trial Court in I.A. No. 732/2016 & I.A. No.

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- A 914/2017, the appellant herein filed the present revision applications before the High Court. By the impugned common judgment and order, the High Court has dismissed the said revision applications. Hence, the present appeals.
3. Shri Mithun Shashank, learned counsel appearing on behalf of
- B the appellant has vehemently submitted that in the facts and circumstances of the case, the trial Court committed a serious error in allowing the application submitted by the original plaintiff and extending the time by directing the plaintiff to deposit the balance sale consideration and dismissing the application filed by the appellant under Section 28 of the Specific Relief Act.
- C 3.1 It is vehemently submitted that as such there was a huge delay of 853 days in submitting the application for extension of time to deposit the amount under section 148 CPC and Section 28 of the Specific Relief Act. It is submitted that no sufficient cause was shown and/or there was no explanation whatsoever given by the decree holder as to why he did not pay the balance sale consideration as per the judgment and decree dated 12.10.2013 or did not make an application under Section 28 of the Specific Relief Act, seeking extension of time to make the payment of balance sale consideration.
- D 3.2 It is vehemently submitted that even as per the original plaintiff he became sick with Jaundice and was treated in the hospital from 1.11.2013 to 5.1.2014 only. It is submitted that it is not believable at all that thereafter he was confined to house with High Blood Pressure, Diabetes and other diseases for approximately two years. It is submitted that therefore in absence of any reasonable explanation, the trial Court ought not to have condoned the huge delay of 853 days occurred in filing the application for extension of time to deposit the balance sale consideration as per the judgment and decree passed by the trial Court. It is submitted that therefore the High Court has committed a very serious error in dismissing the revision applications.
- E 3.3 It is further submitted by the learned counsel appearing on behalf of the appellant that as such the original plaintiff obtained the ex parte judgment and decree dated 12.10.2013. It is submitted that the original defendant – mother of the appellant died on 13.01.2015. Till her death, no efforts were made by the plaintiff to deposit the balance sale consideration of Rs. 15,00,000/- It is submitted that neither the balance
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sale consideration as directed by the trial Court was paid, nor any steps were taken to get the sale deed executed by the original defendant. It is submitted that the aforesaid conduct on the part of the original plaintiff disentitles him for any relief of extension of time for deposit of the balance sale consideration and therefore the trial Court ought to have rescinded the agreement to sell dated 9.5.2012, in exercise of powers under Section 28 of the Specific Relief Act. Heavy reliance is placed on the decision of this Court in the case of *V.S. Palanichamy Chettiar Firm v. C. Alagappan and Another, reported in (1999) 4 SCC 702 (paragraphs 14, 16 & 17)*.

3.4 It is further submitted that even the equity is also in favour of the appellant. It is submitted that after the ex-parte judgment and decree, in the year 2013 the prices of the agricultural land in question have gone up to Rs. 3 crores. It is submitted that despite the judgment and decree, non-deposit of the balance sale consideration of Rs. 15,00,000/- at the relevant time, i.e., within a period of two weeks from the judgment and decree dated 12.10.2013, disentitle the plaintiff seeking any extension and it can be inferred that the plaintiff was not ready and willing to perform his part of the contract and even as directed by the trial Court and therefore this is a fit case to rescind the agreement to sell dated 9.5.2012, in exercise of powers under Section 28 of the Specific Relief Act.

3.5 Making above submissions and relying upon the aforesaid decision, it is prayed to allow the present appeals.

4. The present appeals are opposed by Shri Harshit Tolia, learned counsel appearing on behalf of the original plaintiff.

4.1 It is vehemently submitted by Shri Tolia, learned counsel appearing on behalf of the original plaintiff that the order passed by the trial Court in an application under Section 148 CPC and Section 28 of the Specific Relief Act is discretionary in nature and when the trial Court had exercised its discretion in favour of the plaintiff and thereafter when the revision applications have been dismissed by the High Court, the same may not be interfered with by this Court.

4.2 It is further submitted that the delay of 853 days was sufficiently explained by the plaintiff. It is submitted that the plaintiff became sick with Jaundice and was treated in the hospital from 1.11.2013 to 5.1.2014. That thereafter and after his discharge he was also confined

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- A to house with High Blood Pressure, Diabetes and other diseases which were supported by the medical record. It is submitted that the trial Court had accepted the explanation submitted on behalf of the plaintiff explaining the delay occurred in making the application under Section 148 CPC and Section 28 of the Specific Relief Act and thereafter when the trial Court extended the time and directed the plaintiff to deposit/pay the balance sale consideration of Rs. 15,00,000/- with interest @ 18% per annum and when the same is confirmed by the High Court, the same may not be interfered with by this Court.

4.3 It is submitted that to strike the balance, the trial Court in fact had directed the plaintiff to pay/deposit the balance sale consideration of Rs. 15,00,000/- with interest @ 18% per annum from the date of judgment and decree dated 12.10.2013 till the actual payment.

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- D 4.4 Making above submissions and relying upon the recent decision of this Court in the case of *Kishor Ghanshyamsa Paralikar (D) through Lrs. V. Balaji Mandir Sansthan Mangrul (Nath) & Another (Civil Appeal No. 3794/2022, decided on 9.5.2022)*, it is prayed to dismiss the present appeals.

5. We have heard learned counsel for the respective parties at length.

- E At the outset, it is required to be noted that by an ex-parte judgment and decree dated 12.10.2013, the trial Court passed a decree for specific performance of the agreement to sell dated 9.5.2012. In the agreement to sell dated 9.5.2012, the total sale consideration was Rs. 23,00,000/-, against which Rs. 8,00,000/- was paid as advance. The balance sale consideration of Rs. 15,00,000/- was directed to be deposited/paid by the plaintiff under the ex-parte judgment and decree dated 12.10.2013, within two weeks from the said date, which expired on 21.10.2013. Nothing is on record that any steps were taken by the plaintiff either to deposit/pay the balance sale consideration of Rs. 15,00,000/- or even calling upon the defendant to execute the sale deed as per the judgment and decree passed by the trial Court dated 12.10.2013 till the present application under Section 148 CPC and Section 28 of the Specific Relief Act was filed on 7.6.2017/19.06.2017 with a huge delay of 853 days, seeking extension of time to deposit the balance sale consideration. The reasons for delay are set out hereinabove. The explanation which was given by the plaintiff, narrated hereinabove, can hardly be said to be a sufficient explanation as to why the plaintiff did not pay the balance sale
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consideration as per the judgment and decree or even did not make an application within a reasonable time under Section 148 CPC and Section 28 of the Specific Relief Act seeking extension of time for making payment. If the plaintiff was ready with the money payable towards the balance sale consideration, he could have got the sale deed executed through power of attorney after effecting deposit/payment. In absence of any sufficient explanation, such a huge delay of 853 days ought not to have been condoned by the trial Court.

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6. It is observed and held by this Court in the case of *V.S. Palanichamy Chettiar Firm (supra)* that provisions to grant specific performance of an agreement are quite stringent. Equitable considerations come into play. 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. It is further observed that therefore, the Court cannot as a matter of course, allow extension of time for making payment of balance amount of consideration in terms of a decree. It is further observed that in absence of any explanation whatsoever even by the decree holders as to why they did not pay the balance amount of consideration as per the decree or did not make an application under section 28 of the Specific Relief Act seeking extension of time for making payment, equity demands that discretion be not exercised in favour of the decree holders and no extension of time be granted to them to comply with the decree.

7. Now so far as the reliance placed upon the decision of this Court in the case of *Kishor Ghanshyamsa Paralikar (D) through Lrs. (supra)*, relied upon on behalf of the respondent is concerned, it is required to be noted that in the said case before this Court, the total sale consideration was Rs. 8,78,500/. The vendee paid a sum of Rs. 7,31,000/- immediately. 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. There was a delay of five days only in paying the remaining amount of Rs. 1,47,500/. Therefore, in exercise of powers under Section 28 of the Specific Relief Act, this Court allowed the extension of time in favour of the decree holder to deposit the balance sale consideration. In the said decision, in paragraph 11, it is observed as under:

“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

- A 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. Dakshyani1**, 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:
- “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 Therefore, as observed by this Court, the power under Section 28 of the Specific Relief Act is discretionary and the Court has to pass an order as the justice may require.
- H 8. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand and considering Section 28 of the Specific Relief Act, we are of the opinion that the trial Court erred in exercising

the discretion in favour of the plaintiff and erred in extending the time in favour of the plaintiff to deposit the balance sale consideration of Rs. 15,00,000/- by condoning the huge delay of 853 days, which as observed hereinabove has not been explained sufficiently at all. As observed hereinabove, after the plaintiff was directed to deposit the balance sale consideration of Rs. 15,00,000/- within a period of two weeks from the date of ex-parte judgment and decree dated 12.10.2013, which the plaintiff failed to deposit/pay, even no application for extension of time under Section 148 CPC and Section 28 of the Specific Relief Act was made thereafter within a reasonable time and was made after a period of 853 days. Nothing is on record that in between any notice was given to the defendant to execute the sale deed as per the judgment and decree on deposit of the balance sale consideration. The application filed by the plaintiff under Section 148 CPC and Section 28 of the Specific Relief Act seeking extension of time to deposit the balance sale consideration was hopelessly delayed. As observed hereinabove, Section 28 of the Specific Relief Act seeks to provide complete relief to both the parties in terms of a decree of specific performance. Therefore, the trial Court failed to exercise the discretion judiciously in favour of the defendant and erred in exercising the discretionary power in favour of the plaintiff, that too with a delay of 853 days. The High Court has erred in confirming the same and dismissing the revision applications. Under the circumstances, the order passed by the trial Court allowing the application of the plaintiff being I.A. No. 732/2016 seeking extension of time to deposit the balance sale consideration deserves to be dismissed and I.A. No. 914/2017 filed by the defendant – appellant under Section 28 of the Specific Relief Act to rescind the agreement to sell dated 9.5.2012 deserves to be allowed.

However, at the same time, to strike the balance between the parties the amount of Rs. 8,00,000/- paid by the plaintiff as an advance is to be returned to the plaintiff with 12% interest per annum from 9.5.2012 till the actual payment, within a period of six weeks from today, failing which it shall carry interest @ 18% per annum.

9. In view of the above and for the reasons stated above, both these appeals succeed. The impugned common judgment and order dated 17.01.2022 passed by the High Court dismissing the revision applications and the common order passed by the trial Court dated 29.06.2019 allowing I.A. No. 732/2016 filed by the plaintiff seeking extension of time with a

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- A huge delay of 853 days and dismissing I.A. No. 914/2017 filed by the defendant to rescind the agreement to sell dated 09.05.2012 are hereby quashed and set aside. I.A. No. 732/2016 filed by the plaintiff under Section 148 CPC and Section 28 of the Specific Relief Act seeking extension of time with a huge delay of 853 days to deposit the balance sale consideration stands dismissed. I.A. No. 914/2017 filed by the appellant – defendant under Section 28 of the Specific Relief Act to rescind the agreement to sell dated 09.05.2012 on non-payment of deposit of the balance sale consideration by the plaintiff, which the plaintiff was required to deposit/pay within a period of two weeks from the date of ex-parte judgment and decree dated 12.10.2013, stands allowed.
- B Agreement to sell dated 09.05.2012 stands rescinded in exercise of powers under Section 28 of the Specific Relief Act. However, the appellant herein is directed to refund the amount of Rs. 8,00,000/- to the plaintiff with 12% interest from 09.05.2012 till the actual payment, within a period of six weeks from today, failing which it shall carry interest @ 18% per annum.
- C 10. The instant appeals are allowed accordingly in the aforesaid terms.

No costs.

Nidhi Jain

Appeals allowed.

(Assisted by : Abhishek Agnihotri and Tamana, LCRAs)