

to apply any of UNCITRAL Conventions. The parties to the international trade contracts may also choose to use certain legal terms defined in particular manual, such as INCOTERMS 2000, UCP 500 or FOB, CIF or DES type of contracts for interpretation of any word referred in their contract.

The business may be sale of goods, sale of services, licensing of technology, grant of franchise or foreign direct investment, the important aspects to be taken into consideration in international trade contracts include, the compliance of import and export regulations, payment of taxes, fluctuation in currency rate, repatriation of currency, transportation of goods, political situations in the countries of contracting parties,

payment of consideration, risks like *Force Majeure* and impediments.

The study made in this article demonstrates that the legal regime in respect of international trade contracts is very vast, consist of various International Conventions passed by United Nations and its Specialized Organizations, International and Bilateral Treaties, Trade Terms, Usages, Practices and documents developed by trade related organizations. The trade related law has been growing with the growth and expansion of trade in the world. The study concludes that all the trade related organisations, bodies and institutions are working together to harmonize and unification of the law of international trade, in order to achieve peace and development.

SUIT FOR SPECIFIC PERFORMANCE NATURE OF THE DECREE WHETHER PRELIMINARY OR FINAL WHETHER THE APPLICATION FOR EXECUTION OF THE SALE DEED LIES UNDER SECTION 28(3) OF SPECIFIC RELIEF ACT OR BY FILING EXECUTION PETITION UNDER ORDER XXI(34) CPC – CONTROVERSY

By

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There appears to be some considerable controversy, regarding the nature of the decree, whether, preliminary or final covered by suit for specific performance. In other words, does the Court become *functious officio* and loose jurisdiction after grant of decree? *The scope of the study of the article spread over two stages in the teeth of the principles laid down in Section 22 Specific Relief Act 1963.* The scope of the study of the article spreads over on the conjoint reading of Sections 22 and 28 of the Specific Relief Act, 1963 which are extracted for ready reference as hereunder.

Sec.22 : Power to grant relief of possession, partition, refund of earnest money etc.—(1)

Notwithstanding anything to the contrary contained in the Code of Civil Procedure Code, 1908, any person suing for the specific performance of a contract, for the transfer of immovable property may in an appropriate case ask for (a) possession or Partition of the property in addition to such performance or, (b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the

Court unless it has been specifically claimed. Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall at any stage of the proceedings, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of Court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under Section 21.

The purpose of this proviso is to avoid multiplicity of suits and enable the plaintiff to get appropriate relief without being tampered by procedural complications (please see *Babulal v. Hazari Lal*, AIR 1982 SC 818). Thus the Court has the power to order refund of prepaid purchase money even in the absence of specific prayer for the purpose. Where the plaintiff has prayed for possession, though the decree merely, directs specific performance, the executing Court can direct amendment of the E.P. to be made and deliver possession.

The Supreme Court in *Babulal v. Hazari Lal* (supra), has considered the scope of Sections 21, 22 and 28 of the S.R. Act, in a case where vendor selling the immovable property to another in pursuance of the prior agreement of sale and in a suit for specific performance, whether, relief can be granted for possession of the suit schedule property even though it is not prayed for and laid down in Paras 13, 16 18, 28 and 29 of its judgment to the effect (maintaining brevity) have held as hereunder.:

“The Specific Relief Act is not an exhaustive enactment and under the law relating to specific performance relief a Court which passes a decree for specific performance retain control over the decree even after the decree had been passed. Therefore the Court, in the present case, retained control over the matter despite the decree.”

It is thus evidence as a sequel to the law laid down by the apex Court, as above, Specific Relief Act, 1963 is not an exhaustive enactment, and under the law relating to the Specific Relief, a Court which passed the decree, for specific performance, retains control over the decree, even after the decree has been passed. Even at the risk of repetition, to buttress the scope of the article *Babulal v. Hazari Kishori Lal* (supra), wherein it is held in Paragraph 29 that procedure is meant to advance the cause of justice and not to retard it. Thus, the power of the Court, to grant relief of possession, partition, refund of earnest money *etc.*, is already provided in the Act. When a person suing for the specific performance of contract for immovable property, all the reliefs which the petitioner are entitled can be granted in appropriate cases, for possession or partition and separate possession of the property, in addition to such performance or any other relief which he may be entitled including the refund of earnest money or deposit paid in case his claim for specific performance is refused. It also provides that, if any relief for which the person is entitled to is not claimed it is permissible to claim the same relief at any stage of the proceedings. There cannot be sort of inhibition.

Now advertent to sub-section 3(3) of Section 28 of S.R. Act, 1963, reads as follows.

“If the purchaser or lessee pays the purchase money or other sum for which he is ordered to pay under decree within the period referred to 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 including, in appropriate cases, all the following reliefs, namely, (a) execution of proper conveyance or lease by the vendor or lesser (b) the delivery of possession or partition and separate possession of the property on the execution of such conveyance or lease.

The Supreme Court in *Ramankutty v. Aurara*, (1994) 2 SCC 642 = 1994 (1) CCC 360 (SC) = AIR 1994 SC 1699, laid down that the executing Court is not same “Court” within the meaning of Section 28 of S.R. Act. The question that arose there was, whether an application under Section 28 of S.R. Act, should be filed on the original side or execution side. It was held that the section indicates that it should be in the same suit. It would obviously mean in the suit itself and not in execution proceedings. It is equally settled law, that after passing the decree for specific performance, the Court does not cease to have any jurisdiction. The Court retains control over the decree even after the decree had been passed. In ILR 1993 (1) Ker. 197 the Court took the identical view while interpreting the expression ‘in the same’ occurring in sub-section (1) of Section 28 of SR Act, 1963.

Thus in view of the authoritative pronouncement of the Supreme Court, the petition for direction of execution of the sale deed under Section 28(3) of the Act lies only in the suit but not on execution side (please see 1997 (3) CCC 143 (Ker.) = AIR 1997 Ker. 301. In the backdrop of this legal scenario, it is obvious for any relief, even after the decree petition lies only on the original side but not on execution side and the Court does not cease to have control over the matter. Section 28(3) of SR Act, provides that the Court may execute a conveyance and deliver possession of the property to the purchaser if the petitioner pays the purchase money. After the decree for specific performance the remedy of the purchaser is to apply under sub-section (3) of Section 28 of S.R. Act. No separate execution petition is necessary and the Court has to take steps to execute the sale deed as per the decree on the defendant’s failure to do so. The question for consideration is whether the Court can execute the decree for specific performance of a contract in pursuance of Section 28(3) without separate

execution petition lies fell for consideration in (1994) 2 SCC 642 = AIR 1994 SC 1699 = 1994 (1) CCC 360 (SC) *Ramarao Kitty Gupta v. Aurara*, it was laid down that the executing Court is not the same Court within the meaning of Section 28 of SR Act. The question that arose there was whether an application under Section 28(3) SR Act should be filed on the original side or execution side. It was held that the section indicates that it should be in the suit. It would obviously mean in the suit itself and not in the execution proceedings, it is equally settled law that after passing the decree of specific performance the Court does not cease to have any jurisdiction. The Court retains control over the decree even after the decree has been passed. In ILR 1993 (1) Ker. 197, it took identical view while interpreting the expression “in the same suit” of Section 28 SR Act. In view of authoritative pronouncement of the Supreme Court, the Court has jurisdiction to entertain petition within the meaning of Section 22 or Section 28 SR Act, in the suit itself but not execution side.’ Considering the matter from another angle, the nature of the decree in the specific performance is only preliminary decree. In *Bhupinder Kumar v. Angrej Singh*, 2009 (8) SCJ 578 = 2009 SAR 952. It was held that the decree for specific performance is in the nature of preliminary decree and the suit is deemed to be pending even after grant of such decree, Court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes *functus officio*. Trial Court has the power to enlarge the time for compliance of the decree, while deciding application under Section 28(3) SR Act. The Court has to consider all circumstances and conduct of parties. To a similar effect are the other decisions of the Supreme Court on the point regarding the nature of the decree as preliminary decree 2007 (4) SCJ 142, 2005 (2) SCJ 205. in *Pagadala Pedda Yadaiah v. K. Annapurnamma*, 2001 (5) ALT 417, the Honourable High Court of A.P. has made it clear the decree is not a final decree.

Thus it is evident, in view of the several authoritative pronouncements the decree in a suit for specific performance is only a preliminary decree and not a final decree. However, with respect to execution of the decree, whether lies under Section 28 of S.R. Act and or on the execution side, there appears to be conflict of views as laid down in *Balasa Sarada v. Talluri Anusuyama*, reported in 2007 (3) ALT 4 Section 28 does not relate to execution for decree. Application filed under Section 28(3)(a) of the Act is not maintainable. It was further held averting to words “same suit” in Section 28 enables the party to obtain incidental reliefs in the suit but not relating to execution of decree and the proper remedy is only to take steps as provided under Order 21(34) CPC. This is contrary to the decision of the Supreme Court in (1994) 2 SCC 642 = AIR 1994

SC 1699 = 1994 (1) CCC 360 (SC) and requires reconsideration.

Conclusion

Application for execution of a registered sale deed in pursuance of a decree for Specific Performance of a decree lies only under Section 28(3)(a) SR Act but not by filing under execution petition as provided under Order XXI Rule 34 CPC and the judgment of His Lordship Justice N.V. Ramana, 2007 (2) ALD 802 = 2007 (3) ALT 4, laying down the D.Hr has to file a separate petition for execution as provided under Order 21 Rule 34 CPC requires reconsideration and the decree under specific Relief Act is only a preliminary decree and not a Final decree” and the trial Court after passing the decree does not become *functions officio*.

Any sophisticated contra view in view of the importance of the matter is worth welcome.

NEED FOR ABOLITION OF DEATH SENTENCE — Its Spiritual and Constitutional Trends

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“Death to death, eye to eye is not the remedy or solution for controlling or curtailment of a crime or an offence”

All human beings are equal before law and Almighty. Human life is precious to all and is the gift of nature. Right to live is inherent in every human being. My best of study and personal opinion is that human beings by birth are not born as bad, cruel or criminal. It is a known phenomena that Almighty, the Supreme God be that of any community, religion or faith is the creator of all human beings and gifts of nature at 2014-Journal—F-5

large. Since, Almighty alone is the creator of all human beings, he alone has the right, authority to destroy the same. In other words, life and death are two sides of the same coin which are inherent powers vested with Almighty alone. It follows that it is the choice and rule of the Almighty that a human being is born to have his death in natural way, with the said human being/s not knowing how and when they die. Every