

**Badam Singh Vs. 8th Additional District Judge, Agra and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/469872](http://sooperkanoon.com/469872)

**Court :** Allahabad

**Decided On :** Mar-06-2002

**Reported in :** 2002(2)AWC1352

**Judge :** Anjani Kumar, J.

**Acts :** [Specific Relief Act, 1963](#) - Sections 28

**Appeal No. :** C.M.W.P. No. 10886 of 1999

**Appellant :** Badam Singh

**Respondent :** 8th Additional District Judge, Agra and ors.

**Advocate for Def. :** Prakash Chandra, S.C.

**Advocate for Pet/Ap. :** Vikram Nath, Adv.

**Judgement :**

**Anjani Kumar, J.**

1. By means of this writ petition under Article 226 of the Constitution of India, the petitioner-judgment debtor has filed present writ petition against the orders dated 21.9.1999 and 27.5.1998, passed by respondent Nos. 1 and 2, respectively, Annexures-1 and 2 to this writ petition.

2. The facts leading to the filing of the present writ petition are that plaintiff, respondent No. 3 of this petition, filed Original Suit No. 174 of 1991 in the Court of Civil Judge, Agra. The said suit for specific performance of agreement to sale has been declared in the month of March, 1993 by the Civil Judge, Agra. The judgment and decree dated 26.3.1993 passed by Civil Judge has been annexed as Annexure-3 to the writ petition. The operative portion thereof is being reproduced below :

'WADI SHESH PRATIPHALANDAR EK MAH NYAYALAYMEN JAMA KAR DEN.'

3. That it appears that the judgment debtor preferred an appeal against the decree of the trial court with deficiency of Court fee the said appeal was ultimately dismissed in deficiency of Court fees and default. It is after the rejection of the aforesaid appeal, the decree holder-plaintiff filed an application that the period of one month since has expired, the decree holder may be permitted to deposit the balance of the amount of a sum of Rs. 36,000 and the decree may be executed. The judgment debtor filed his objection 24Ga on the ground that the decree being the conditional decree stipulating deposit within one month and even on 22.1.1994 when an application was again filed, no amount was deposited and the decree holder has not complied with the directions issued by the Court decreeing the suit, namely, deposit of the balance amount of Rs. 36,000 within one month, the time can also not be extended and the decree has become un-executable. The trial court vide order dated 27.5.1998 rejected the objection raised by the judgment debtor and allowed the application of the decree holder for extension of time in depositing the balance of the amount. Aggrieved thereby the judgment debtor filed revision before respondent No. 1 being Civil Revision No. 171 of 1998. The said revision was also dismissed by the revisional Court vide its order dated 21.1.1999, hence this writ petition.

4. Heard learned counsel for the parties. Sri Vikram Nath, learned counsel appearing on behalf of the petitioner argued that since the decree was a conditional decree, the decree holder having not been complied with the conditions, the Court ceased to have no jurisdiction to extend the time to deposit the balance amount as directed in the original decree and thus the decree has

become un-executable. He relied upon the decision of Hon'ble Supreme Court in V. S. Palanichamy Chettiar Firm v. C. Alagappan and Anr., 1999 12) AWC 1033 (SC). On the contrary, learned counsel for the respondent-decree holder relied upon the decision of three Judge's Bench of Supreme Court in Sardar Mohar Singh through Power of Attorney Holder. Manjit Singh v. Mangilal alias Manglya. 1997 ACJ 288. wherein the Supreme Court has laid down that the executing Court in exercise of the powers under Section 28 of the Specific Relief Act, 1963. do have powers to extend the time for depositing the balance of the amount directed to be deposited. Learned counsel for the decree holder has further relied upon Chithambaran Ponnappan v. Viswambaran and Anr. AIR 2001 Ker 205. wherein it has been held that mere failure to deposit the amount directed to be deposited within the time specified will not render the decree ineffective or un-executable. In arriving at the aforesaid judgment, the Kerala High Court has relied upon the decision of Apex Court in K. Kalpana Saraswathi v. P. S. S. S. Chettiar. AIR 1980 SC 512. A perusal of the decree passed in favour of the decree holder clearly demonstrates that the same was not a conditional decree ; it clearly demonstrates that the decree holder was directed the compliance of the sale consideration within one month without further stating therein the consequence of non-depositing the amount. On the contrary, the decree proceeds to say that in case of non-depositing of the aforesaid amount or un-execution of the sale consideration by the judgment debtor, the same shall be executed through the Court. In these circumstances, the judgment relied upon by the learned counsel for the petitioner are distinguishable of facts than the present case.

5. In this view of the matter, I am of the opinion that the revisional Court as well as trial court did not commit any error, much less the error of law so as to warrant any interference by this Court in exercise of powers under Article 226 of the Constitution of India.

6. In view of what has been stated above, this writ petition deserves to be dismissed and is hereby dismissed. The interim order, if any, stands vacated. There will, however, be no order as to costs.