

Reshma Singh and ors. Vs. Manmohan Singh Kent and ors.

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Court : Punjab and Haryana

Decided On : Jan-30-1985

Reported in : AIR1985P& H193

Judge : J.V. Gupta, J.

Acts : Specific Relief Act - Sections 28 and 28(1); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 148 and 151 - Order 20, Rule 12-A

Appeal No. : Civil Revn. No. 3271 of 1982 and Civil Misc. No. 309-CII of 1985

Appellant : Reshma Singh and ors.

Respondent : Manmohan Singh Kent and ors.

Judgement :

ORDER

1. This order will dispose of Civil Revision No. 3271 of 1982 and 154 of 1983, as both the petitions have been filed against the same order of the Additional Senior Sub Judge, Hoshiarpur, dt. 27th Aug, 1982.

2. In a suit for specific performance of agreement to sell, a conditional decree was passed on 29th Oct, 1981 in favour of the plaintiff-petitioners. According to the decree, a sum of Rs. 50,500/- was to be paid within one month, failing which the plaintiffs' suit was to stand dismissed. Admittedly, no appeal was filed by either party against the said decree of the trial Court which had become final between

the parties. Admittedly, the plaintiffs did not deposit the amount of the decree within the time allowed. They sought execution of the decree by filing an application dt. 15th Mar, 1982. This application was contested on behalf of the judgment-debtors on the ground that the amount had not been deposited within time and, therefore, the plaintiffs' suit stood dismissed, and the question of execution as such did not arise. Then the decree-holders filed an application dt. 7th April, 1982 under Ss. 148 and 151, C.P.C., for extending time for depositing the same. This application was contested on behalf of the judgment-debtors. The learned Sub Judge disposed of both the applications by the impugned order, dt. 27th Aug. 1982. It came to the conclusion that 'since the decree-holders failed to deposit the amount within one month of the decree, their suit stood dismissed and this Court has no jurisdiction now to extend the time'. It was further held that the judgment-debtors were not obliged to move application for the rescission of the contract. Thus both the applications, that is, the execution application as well as the application for seeking the extension of time, were dismissed. Dissatisfied with the same, the decree-holders filed these petitions in this Court.

3. The learned counsel for the petitioners contended that under the C.P.C. there is no provision by virtue by which conditional decree could be passed in a suit for specific performance of the agreement to sell. The only provision in the Code is O. 20, R. 12-A which provides that where a decree for specific performance of the contract for 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. Thus, argued the learned counsel, no further condition could be put and in case the said amount was not deposited the suit shall not stand dismissed. According to the learned counsel, a decree in a suit for specific performance was in the nature of a preliminary decree, and in case the amount was not deposited within the time allowed, it was open to the judgment-debtors to move an application under S. 28 of the Specific Relief Act for rescission of the contract for the sale. It was further contended that simply because the Court had imposed this condition in the decree, it did not debar the Court from extending the time for depositing the amount of the sale price in view of the provisions of S. 148 of the C.P.C. and, therefore, the executing court has failed to exercise its jurisdiction by not extending the time to deposit the amount of the sale price. In

support of this contention, he referred to K. Saraswathi v. P. S. S. Somasundaram Chettiar, (1977) 2 Mad LJ 68, Someshwar Dayal v. Widow of Lalman Shah AIR 1958 All 488; Gokul Prasad v. Fattelal, AIR 1946 Nag 29; Tribeni Tewary v. Ramarattan Nonia, AIR 1959 Patna 460; K. Kalpana Saraswathi v. P. S. S. Somasundaram Chettiar, AIR 1980 SC 512. On the other hand, the learned counsel for the respondents submitted that since the decree was a conditional one which decree could be passed, as there was no bar under the C.P.C. to pass such a decree, the plaintiff's suit stood dismissed on the expiry of the period of one month when they failed to deposit the sale price. According to the learned counsel since the decree was conditional one, the Court had no jurisdiction to extend the time because that will be amounting to varying the decree without there being any appeal against the same. In support of his contention, reference was made to Smt. Parmeshri v. Naurata, AIR 1984 Punj and Har 342; Smt. Sarupi v. Har Gian, AIR 1975 Punj & Har 231; Bokaro and Ramgur Ltd. v. State of Bihar, AIR 1965 Cal 308; Bhutnath Das v. Sahadeb Chandra Panja, (1966) 66 Cal. WN 645: (AIR 1962 Cal 485), and Dhanna Singh v. Malkiat Singh (1983) 85 Pun LR 275.

4. I have heard the learned counsel for the parties and have also gone through the case law cited at the bar. Such a matter was considered by this Court in Smt. Sarupi's case (supra). It has been observed in para 6 there that 'the case may be different when the Court records a direction in the decree for specific performance that in the event of default of deposit of the purchase money within the prescribed time, the suit shall stand dismissed. In such a case, it would be deemed that the Court has also, in substance, passed the order of recession of contract as contemplated by the concluding portion of sub-section (1) of S. 28 of the Specific Relief Act. It is in the case of such a decree that the Court may not, when the purchase money has not been deposited by the successful plaintiff within the prescribed time, be competent to extend the time for its deposit. 'The matter has also been considered in Smt. Parmeshri's case (supra) where it was observed that under the provisions of S. 148, C.P.C. the Court has powers to extend the time when it applies to the procedural orders and not to conditional decrees. Similarly, in Bokaro's case (supra) it was held that:

'Where a decree is passed on condition that if a certain sum of money be put in within a specified time, the suit would stand decreed and in default thereof the suit would stand dismissed, after the expiry of the time limited by the decree, the Court loses seisin over the matter and cannot extend the time '.

No Judgment taking the contrary view has been cited at the bar. The authorities relied upon by the learned counsel for the petitioner are only to the effect that the nature of the decree passed in the suit for specific performances is that of preliminary decree and if the amount is not deposited within time allowed in the decree, the defendants will be entitled to take a recourse under S. 28 of the Specific Relief Act. None of the authorities deal with the extension of time as such under S. 148 of the C.P.C. The only authority which deals with the extension of time is K. Saraswathi's case (supra) which has also gone to the Supreme Court in K. Kalpana Saraswathi v. P. S. S. Somasundram Chettiar, AIR 1980 SC 512. In the former judgment, it was an appeal against the decree itself where time was allowed for depositing the sale price and at the same time it was also provided that if the amount was not deposited, the suit shall stand dismissed. The plaintiffs felt dissatisfied with that direction and filed the appeal against the judgment and decree of the Court. The Bench hearing the appeal discussed this matter in para 32 of the report which reads as under:--

'32. The only other question is, whether the learned Judge had jurisdiction to provide that the suit shall stand automatically dismissed, if the appellant committed default in making the payment within the time stipulated in decree. Having regard to the decisions, which we have referred to already, holding that the decree in a suit for specific performance is in the nature of a preliminary decree, and also having regard to the express provisions contained in S. 28 of the Specific Relief Act, 1963, which constitute the statutory crystallization of the legal position in this behalf, we are clearly of the opinion that the learned Judge had no jurisdiction to provide that if the appellant committed default in making the deposit within the time stipulated in the decree, the suit shall stand dismissed, since that will destroy the character of the decree as a preliminary decree and disable the Court from granting the reliefs provided for in S. 28(3) as occasion may warrant'.

5. Thus, this default condition was deleted by the D.B. in appeal against the decree. As regards the present case, the decree of the trial Court had become final between the parties as no appeal was filed against the same by either of the parties. The Executing Court could not go behind the decree as such, and, therefore, the question of the extension of time under the circumstances did not arise. Before the Supreme Court also, the question of the extension of time was in the appeal against the decree. It is well settled that the Appellate Court could pass any orders in appeal against the decree of the Court below including the extension of time and therefore, the Supreme Court did observe that the condition that the suit will be dismissed on non-payment of the sale price within the prescribed time, could not be imposed in the light of the provisions of S. 28 of the Specific Relief Act as the proper course in that situation was to pass a decree for specific performance which would, for all practical purposes, be a preliminary decree.

6. It may be observed that it was not the case of the petitioners that the Executing Court could go behind the decree when the same was a conditional one. Such a condition, if imposed, was liable to be set aside in appeal, if any. Since the amount was not deposited within the time allowed according to the terms of the decree, the suit stood dismissed automatically, and, therefore, the Executing court could not execute the decree. Now to extend the time for depositing the sale price will be varying the decree of the trial Court which could not be done as the Court has become functus officio after passing the said decree.

7. Apart from that even on merits no case has been made out for extension of time. The only ground pleaded in the application was that in another suit filed against the vendors-defendants they were restrained from executing any sale deed in favour of the plaintiff-petitioners and when the said order was vacated on the dismissal of the suit on 19th Feb, 1982, the necessary application for extension of time was moved. This by itself was no ground for seeking the extension of time because the said order of interim injunction was already there when the conditional decree was passed on 29th Oct, 1981. In spite of the said order, the said condition was imposed and, therefore, this by itself was not sufficient to claim extension of time.

8. In this view of the matter, I do not find any illegality or error of jurisdiction which justifies any interference in the revisional jurisdiction. Consequently, the petitions fail, and are dismissed with no order as to costs. The C. Ms are allowed to the extent that annexures P-1 & P-2 are allowed to be placed on records.

9. Petitions dismissed.

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