

Vijayan Vs. Vivek

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Court : Kerala

Decided On : Sep-19-2002

Reported in : AIR2003Ker82

Judge : K.A. Mohamed Shafi, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 148; [Specific Relief Act, 1963](#) - Sections 28

Appeal No. : C.R.P. No. 1032 of 1999

Appellant : Vijayan

Respondent : Vivek

Advocate for Pet/Ap. : A.N. Kuttan, Adv.

Judgement :

K.A. Mohamed Shafi, J.

1. The defendants - judgment debtors in E.P. 50/96 in O.S. 159/95 on the file of the Munsiff's Court, Chengannur have filed this C.R.P. challenging the order dated 16.1.1999 in E.A. 103/98.

2. O.S. 159/95 was filed by the respondent against the revision petitioners seeking a decree for specific performance of an agreement for sale. That suit was decreed

exparte allowing specific performance of the agreement and directing the respondent to deposit Rs. 5,000/- within a month. Since the respondent decree holder could not deposit the amount within the stipulated period, he filed E.A. 123/95 on 9.11.1995 to condone the delay in depositing the amount and to accept the amount tendered along with the petition and also E.P. 50/96 for execution of the decree. That E.A. was allowed by the lower court on 18.11.95. The contention raised by the judgment debtors that the decree is not executable since the period fixed for deposit of the amount has expired and therefore, the court has become functus officio was rejected by the lower court and the E.P. was allowed. The revision petitioners challenged that order before this Court in C.R.P. No. 2520/96. By order dated 22.10.1998 this Court directed the revision petitioners to file application before the lower court to set aside the order accepting the deposit made by the respondent after the expiry of the period granted to deposit the amount, within one month from the date of that order and directed the lower court to dispose of the application within two months from the date of filing of the application. Accordingly the above E.A, is filed by the revision petitioners to set aside the order dated 18.11.1995 in E.A. 123/95 and the order dated 5.7.1996 in E.P. 50/96.

3. The lower court found that it has got jurisdiction under Section 143 of the CPC and Section 28(1) of the Specific Relief Act to extend the time for deposit. Therefore, the application filed by the revision petitioners is dismissed by the lower court. Hence the above revision is preferred challenging the order passed by the lower court.

4. The counsel for the revision petitioners submitted that since the decree passed by the lower court in the suit is a conditional decree, the court has no jurisdiction to extend time to deposit the amount after the expiry of the time fixed by the court and the provisions of Section 148 of the CPC are not applicable to such cases. He also submitted that the conditional decree has worked out itself on the expiry of one month from the date of the decree viz., 19.7.1995 and thereafter the court became functus officio and ceased to have seisin over the case. In support of this contention the counsel for the revision petitioners relied upon the decisions of the Bombay High Court in B Ganapati v. S. Rajaram (AIR 1974 Bombay 104) and H.A.

Paril v. Y.L. Yadav (AIR 1983 Bombay 60) wherein the single Judge of the Bombay High Court held that decree for specific performance of agreement for sale passed subject to condition that plaintiff should deposit sale price within time fixed in the decree being conditional decree, the court has no jurisdiction to extend the time for deposit under Section 148 of the CPC.

5. In the decision in Mahanth Ram Das v. Ganga Das (AIR 1961 SC 882) the Supreme Court has held that even though peremptory order for payment of court-fee within time fixed was passed, the court has got jurisdiction to extend time for payment under Sections 148, 149 and 151 of the CPC. In that judgment the Supreme Court has observed as follows: ,

'Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen Within the time fixed'.

6. In the decision in Ramesh v. John K. Joseph (1995 (1) KLT 801) this Court has held that petition for extension of time for payment of balance consideration can be filed under Section 28 of the Specific Relief Act or Section 148 of the CPC and in case sufficient cause is shown for his failure to pay the balance consideration as directed in the decree, extension of time for payment can be granted.

7. In the decision in Sardar Mohar Singh v. Mangilal @ Mangtya (1997 (1) Supreme 846) the Supreme Court has held that the court has power to enlarge time to -pay the amount or to perform the condition mentioned in the decree for specific performance under Section 28 of the Specific Relief Act. In that case in a suit for specific performance the decree directed the respondent therein to refund the earnest money of Rs. 15,000/- and damages of Rs. 2,000/- within three months and in default to execute the sale deed. The application filed by the respondent seeking extension of time for compliance of the conditions as per the decree was allowed by the trial court. In revision the High Court while upholding the order passed by the trial court directed the respondent to deposit a further sum of Rs. 16,000/- to compensate the petitioner for loss of enjoyment of money due to the delay. The Supreme Court confirmed the order passed by the High Court and

held that the Court has discretion to extend the time for compliance of conditional decree as stipulated in the decree for specific performance.

8. In view of the above rulings of this Court as well as the Supreme Court the decisions of the Bombay High Court relied upon by the counsel for the revision petitioners cannot be followed being not good law.

9. In this case the respondent has contended that he could not deposit the amount in court within the time stipulated in the decree as he was not in station since he had to accompany his mother for treatment at Madras being the only son and there is no wilful laches or negligence on his part in depositing the amount in time. The lower court found the above explanation offered by the respondent for his failure to deposit the amount in time as directed in the decree is acceptable and the delay can be condoned. I find no reason to disbelieve the above explanation offered by the respondent for his failure to deposit the amount within the time stipulated by the court in the decree. Therefore, I find that the impugned order passed by the lower court is legal, just and proper and there is no ground to interfere with that order.

Hence the order passed by the lower court is confirmed and the C.R.P. is dismissed.

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