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Court : Rajasthan

Decided On : May-29-1997

Reported in : 1997(3)WLC64; 1997(1)WLN541

Judge : G.L. Gupta, J.

Appeal No. : S.B. Civil Revision Petition No. 110 of 1996

Appellant : Pukhraj

Respondent : Kunji and ors.

Disposition : Petition dismissed

Judgement :

G.L. Gupta, J.

1. This revision petition has been directed against the order passed by the learned Additional Dist. Judge No. 2, Jodhpur on 20.12.1995 whereby he rejected the application of the plaintiffs to extend the time for deposit of the amount under the decree dated 14.12.1995.

2. The relevant facts are: The petitioner plaintiffs filed a civil suit for specific performance of the contract against 25 persons on the basis of an agreement to sell dated 7.10.1994, with the allegation that the defendants No. 1 to 22 and Babulal, whose legal representatives are defendants No. 23 to 25 had agreed to

sell 112 bighas of agricultural land bearing khasra No. 632/35 to 632/42 situated in revenue boundary of Jodhpur at the rate of Rs. 1,35,000 per Bigha and the plaintiffs had paid Rs. one lakh to each khasra holder at the time of agreement and paid further Rs. 2 lakh 70 thousand to defendant No. 1. It was averred that the defendants had agreed to execute sale deeds and handover the vacant possession of the land within one month. It was further averred that the plaintiffs were ready and willing to perform their part of the contract but the defendants did not execute the sale deed despite the notice given by the plaintiffs. When summons were sent to the defendants some of them viz. defendants No. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 22, 23, 24 and 25 appeared. They did not file written statement and they stated that they were prepared to execute the registered sale deeds and decree be passed against them. Keeping in view the provisions of Order 12 Rule 6 C.P.C. and Order 15 Rule 2 C.P.C. the trial court decreed the suit of the plaintiffs against these: defendants vide judgment dated 14.12.1995. In the judgment and decree it was directed under Order 22 Rule 12 A C.P.C. that the plaintiffs would deposit the amount in their bank account at the rate of Rs. 1,35,000 within seven days of the judgment and decree and pass book should be filed in the court. It was further directed that after the amount was deposited the defendants should get the sale deeds registered within 10 days failing which the plaintiffs shall be entitled to get the sale deeds registered through the court. A further condition was mentioned in the judgment and decree that the time limit of 7 days granted to the plaintiffs to deposit the amount in their bank account shall be mandatory and the time shall not be extended, and in case the plaintiff failed to comply with the direction to deposit the amount within seven days the plaintiffs suit shall stand dismissed. Thereupon the plaintiffs moved an application before the trial court under Section 148, 151 and 152 C.P.C. on 18.12.1995 praying that time for depositing the amount be extended for two months. This application was opposed by the defendants. The trial court dismissed this application. Hence, this revision petition.

3. Arguments of the learned Counsel for the parties have been heard.

4. The contention of Mr. Chopra was that the trial court imposed unreasonable condition in the decree as the huge amount could not be deposited within a period

of seven days and, therefore, the plaintiffs application ought to have been allowed for the extension of the time. He pointed out that the trial court had committed error when it did not consider the adjustment of 10 lakh 70 thousand paid by the plaintiffs to the defendants as advance money in the decretal amount.

5. On the other hand Mr. Maloo contended that the trial court has not committed any jurisdictional error and, therefore, revision petition does not lie under Section 115 C.P.C.

6. On a careful consideration of the material on record there is substance in the contention of the learned Counsel for the non-petitioners. It is well settled that the jurisdiction of the High Court under Section 115 C.P.C. is a limited one and the section applies to jurisdictional wrongs only i.e. irregular exercise or non-exercise or illegal assumption of it. The revisional jurisdiction cannot be invoked against the conclusions of law and fact where question of jurisdiction is not involved. The Apex Court in the case of *Pandurang Dhondi Chougule v. Maruti Hari Jadhav* AIR 1966 SC. 153 has observed as follows:

While exercising its jurisdiction under Section 115 it is not competent to the High Court to correct errors of fact, however gross they may be or even errors of law unless the said errors have relation to jurisdiction of the Court to try the dispute itself.

7. It is thus obvious that while exercising jurisdiction under Section 115 C.P.C. it is not competent for this Court to correct errors of fact, however gross or errors of law unless the said errors have relation to jurisdiction of the Court to try the dispute itself. In the instant case the decree had already been passed on 14.12.1995. The plaintiff moved application pointing out that a sum of Rs. 10 lacs 70 thousand was not considered and that the condition requiring the plaintiffs was required to deposit the amount within seven days was harsh. Thus by this application the plaintiffs sought the alteration of the judgment and decree. The condition that the plaintiffs were required to deposit the amount within seven days failing which the suit shall stand dismissed even cannot be called to be a clerical mistake which could be corrected under Section 152 C.P.C. Therefore, the Court was not unjustified when it refused to extend the time of payment. Once the court

delivers the judgment, it becomes functus officio. Rule 3 of Order 20 C.P.C. reads as under:

3. Judgment to be signed-The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by Section 152 or on review.

8. Since Rule 3 of Order 20 thus created a positive bar to the trial court to make alteration in the judgment or decree. In these circumstances it cannot, be said that there was jurisdictional error on the part of the trial court when it did not allow the application of the plaintiffs.

9. Mr. Chopra cited the case of Abdul Gaffar v. Sahid Hussain 1991 (2) RLW 1 and urged that the trial Court had vide powers to extend the time fixed in the decree to deposit the amount. In that case, the Full Bench considered the scope of Sections 148 and 151 CPC and held that the Court has ample power to extend the time after the expiry of period originally fixed irrespective of the fact that the application for extension of time has been moved after the expiry of the period fixed under the order. With respects, it may be stated that was not a case where a decree was passed with the condition that if the compliance was not made suit shall stand dismissed. In that matter it was observed that where the Court passes peremptory orders, the purpose usually is to get the compliance in time bound manner and order is faithfully and punctually complied with, but there may be cases in which a party may be helpless and stands prevented by a reasonable, sufficient and just cause from making such an application within the time fixed by the Court and there may be cases in which the Court may find that in the facts of a given case it would lead to a gross injustice if the application seeking extension of time made after the expiry of period fixed by the Court, is not allowed. That was not a case of conditional decree and therefore the ruling does not help the petitioner.

10. It was contended that under Section 28 of the Specific Relief Act the trial court had a power to grant extension of time fixed under the decree. Section 28 of the Specific Relief Act, 1963 reads as under:

28. Recission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed' (1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other such which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require. (2) Where the contract is rescinded under Sub-section (1), the court (a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and (b) may direct payment to the vendor or the lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any such paid by the vendee or lessee as earnest money or deposit in connection with the contract. (3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in Sub-section (1) the court may, on application made in the suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely-(a) the execution of a proper conveyance or lease by the vendor or lessor; (b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or, lease. (4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be. (5) The costs of any proceedings under this section shall be in the discretion of the Court.

Under this section the Court has power to direct payment by the purchaser of the price or other sum by a fixed date. This section further lays down that if the purchaser fails to pay the amount within the time fixed by the decree for specific performance, the vendor could apply in the same suit to have the contract rescinded and, on such application, the Court may order recession of that contract

and proceed to give consequential directions for the restoration of any benefits received thereunder. However, in the instant case, where a self operative final decree was passed in express terms that if the payment was not made within the fixed period the suit is to stand dismissed, it is not possible to invoke the provisions of Section 28 of the Specific Relief Act. A similar question arose before the Bombay High Court in the case of Bhujangrao Ganpati v. Sheshrao Rajaram AIR 1974 Bombay-104 in which it was held that a decree which provides that the suit is to stand dismissed if the payment is not made is a self operative final decree and provisions of Section 28 of the Specific Relief Act, do not apply to such a decree and failure on the part of the party to carry out the term of the decree had automatic resulted in dismissal of the suit. It is to be noted that this judgment is based on the unreported Division Bench judgment of the Bombay High Court referred to in that case. The Apex Court in the case of Mahanth Ram v. Ganga Das AIR 1961 SC-882 considering the scope of Section 148 C.P.C. held that the Court was empowered to deal with the events that might arise subsequent to the orders for the purpose of enlarging time for payment even though it had been peremptorily fixed but even in that case the Apex Court made an exception of conditional decrees. It is thus clear that the conditional decrees are excluded from the purview of Section 148 C.P.C.

11. Consequently, there is no substance in this revision petition which is hereby dismissed.