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Court : Kerala

Decided On : Jun-21-2012

Reported in : 2012(3)KLT326

Judge : V. Chitambaresh

Appeal No. : O.P.(C) NO. 918 OF 2011(O)

Appellant : Sreenarayanan

Respondent : Huzain

Judgement :

1. The suit is one for specific performance of an agreement for sale. The trial court decreed the suit as prayed for on 17/1/2000. A period of one month was fixed therein to pay the balance sale consideration of Rs.4000/-. (Rupees four thousand only). The defendant challenged the decree in appeal before this Court. It took nine long years for the appeal to be disposed of. The appeal-A.S No.174/2001 - was finally dismissed on 14-1-2010.

2. The decree holder was therefore at liberty to pay the balance sale consideration within one month from the appellate decree. This is because the trial court decree had merged with the appellate decree. The time for deposit of the balance sale consideration thus expired on 14-2-2010. But then the decree holder had filed an application for extension of time on 10-3-2008 itself. The said application was allowed on 26-10-2010 and the balance sale consideration deposited within five

days therefrom on 1-11-2010.

3. The judgment debtor opposed the application for extension of time and contended that the decree for specific performance is liable to be rescinded. A similar defence was taken in the application filed on the original side for execution of the sale deed. A separate application for rescinding the decree is not necessary as held in *V.S Palanichamy Chettiar Firm, vs. Alagappan and another, Respondents* (AIR 1999 Supreme Court 918). But the question remains as to whether the decree for specific performance lawfully passed is liable to be rescinded.

4. The decree holder had filed I.A No.1198/2008 for extension of time to make the deposit on 10-3-2008 itself. That was filed at a time when A.S No.174/2001 was still pending on the file of this Court. I.A No.1198/2008 was allowed only on 26-10-2010. The decree holder paid the balance sale consideration on 1-11-2010 itself. It could thus be seen that there is no inordinate delay in making the deposit of the balance sale consideration.

5. It is trite law that the Court retains control till a decree for specific performance is either executed or rescinded. The power to grant extension of time to make the deposit is evident from Section 28 of the Specific Relief Act. Such further time as the court deems fit can be granted by the court on the original side. The power to grant extension could be exercised more liberally than under Section 5 of the limitation Act. The mere fact that the value of the property has shot up by that time is of no consequence. See. *Kumar Dharendra Mullick and Others vs. Tivoli Park Apartments (P) Ltd* ((2005) 9 Supreme Court Cases 262)

6. The sale consideration in the instant case included also a vehicle. The vehicle belonging to the plaintiff was taken over by the defendant. It is now conceded that the said vehicle has already been repossessed by the financier. Therefore the vehicle cannot be handed back to the plaintiff/decree holder under any circumstance. The decree if rescinded would entail in restoring the status quo ante as on the date of the suit. Such a procedure is impossible in the instant case due to the reasons aforesaid.

7. The court below has exercised a discretion vested in it in allowing the application for extension of time to deposit the balance sale consideration. The court below was also justified in holding that the decree for specific performance is not liable to be rescinded. The order impugned in this original petition does not warrant interference under Article 227 of the Constitution of India. The original petition fails and is dismissed.

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