



2026:AHC:38801

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**MATTERS UNDER ARTICLE 227 No. - 1534 of 2015**

Vijendra Singh and others

.....Petitioner(s)

Versus

Jai Bhagwan and others

.....Respondent(s)

---

|                           |                                               |
|---------------------------|-----------------------------------------------|
| Counsel for Petitioner(s) | : M.K. Gupta, Pankaj Agarwal,<br>Shreya Gupta |
| Counsel for Respondent(s) | : Gulrez Khan, Onkar Singh,<br>S.C., W.H.Khan |

---

**Connected with**

**MATTERS UNDER ARTICLE 227 No. - 1535 of 2015**

Vijendra Singh and others

.....Petitioner(s)

Versus

Jai Bhagwan and others

.....Respondent(s)

---

|                           |                               |
|---------------------------|-------------------------------|
| Counsel for Petitioner(s) | : M.K. Gupta, Pankaj Agarwal, |
|---------------------------|-------------------------------|

Counsel for Respondent(s) : Shreya Gupta  
Gulrez Khan, Onkar Singh,  
S.C., W.H.Khan

---

**Court No. - 5**

**HON'BLE KSHITIJ SHAILENDRA, J.**

**RESCISSION OF CONTRACT UNDER SECTION 28 OF  
SPECIFIC RELIEF ACT, 1963**

1. Heard Mr. Pankaj Agarwal, learned counsel for judgment-debtor-petitioners and Mr. Gulrez Khan, learned counsel appearing for decree-holder-respondents in both the petitions.

2. These two petitions arise out of execution proceedings in pursuance of a decree for specific performance of an agreement for sale that has attained finality upto the Hon'ble Supreme Court.

3. Two orders were passed by the executing court, one rejecting an application 3-C filed by the judgment-debtor under Section 28 of Specific Relief Act, 1963 and declining to hold the contract as rescinded and the other allowing an application 10-C filed by the decree-holder whereby permission to pass tender of Rs.95,000/- enclosed with the application was sought by him. The orders were upheld in two revisions preferred by judgment-debtor.

**FACTS AND PROCEEDINGS**

4. An agreement for sale was executed by the petitioners in favour of respondents on 23.09.1979. When the same was not honoured, Original Suit No. 283 of 1980 for specific

performance of the agreement was filed by the respondents. The suit was dismissed by the trial court on 09.02.1982 against which Civil Appeal No. 269 of 1982 was filed by the plaintiff, which was allowed on 05.03.1999 and the suit was decreed. The defendants filed Second Appeal before this Court, which was dismissed on 24.03.1999. Thereafter, Special Leave Petition No. 8127 of 1999 was filed by the defendants before Hon'ble Supreme Court, which, after its conversion into Civil Appeal, was dismissed on 09.12.2004.

5. Controversy between the parties arose thereafter in relation to execution of the decree. Whereas the decree-holder filed Execution Case No. 5 of 2005 on 16.02.2005 and an application 10-C requesting the executing court to pass tender of Rs.95,000/- and permit him to present draft of proposed sale deed, an application 3-C was filed by the judgment-debtor under Section 28 of Specific Relief Act praying that the contract stands rescinded on account of default committed by the decree-holder to obey the directions issued by the first appellate court regarding deposit of balance money in one month. Application 3-C was rejected and application 10-C was allowed. Two revisions preferred by the petitioners against both the orders met the fate of dismissal.

#### **SUBMISSIONS ON BEHALF OF THE JUDGMENT DEBTOR-PETITIONERS**

6. Learned counsel for the petitioners submits that once there was an obligation cast upon the plaintiff to honour the decree which attained finality upto the Hon'ble Supreme Court in his favour but he failed to discharge the same and did not deposit the

balance money as required under the first appellate court's judgment and order, the contract stood rescinded in view of Section 28 of the Act, 1963 and, therefore, both the orders impugned are liable to be set aside. It is further submitted that question of readiness and willingness of a plaintiff continues to survive under test till the decree is finally executed and, in the present case, the conduct of the plaintiff was sufficient to disentitle him from getting the decree executed, inasmuch as once the appellate court passed the decree in the year 1999, the decree-holder did not file any execution application till 2005 and it was filed two months after the Hon'ble Supreme Court dismissed the Civil Appeal filed by the judgment-debtor, therefore, delay on the part of the decree-holder in depositing the amount under the first appellate court's order/decreed beyond one month as per the decree itself, would render the contract rescinded.

7. It is further submitted that though the principle of merger may or may not be strictly applicable in the present case as it is not known to the parties whether or not there was any interim order in S.L.P. or Civil Appeal staying execution of the decree, even if pendency of S.L.P./Civil Appeal before Hon'ble Supreme Court is treated to be an impediment in execution of the decree, the plaintiff chose to file application two months after the Civil Appeal was dismissed and, therefore, since one month time granted by the first appellate court for the purpose of making deposit expired in January, 2005, the executing court did not have power to extend the time for making deposit, particularly when even no such prayer was made by the decree-holder in his application 10-C.

**SUBMISSIONS ON BEHALF OF THE DECREE HOLDER-RESPONDENTS**

8. Per contra, learned counsel for the respondents contends that the submissions advanced on behalf of the petitioners are contrary to the terms of the decree drawn by the first appellate court, operative portion whereof did not contain any direction for the decree-holder to deposit the money, rather the direction was for the judgment-debtor to accept the balance money after deducting Rs.8000/- which had been paid as advance money earlier and, therefore, the plea based upon the applicability of Section 28 of the Act, 1963 is misconceived. It is further submitted that, immediately after the Civil Appeal was dismissed by the Hon'ble Supreme Court, execution case was filed and when judgment-debtor was not ready to accept balance money, application 10-C was filed seeking permission to deposit the amount through tender and the same would certainly amount to seeking extension of time and, hence, contrary arguments advanced have no force.

**DISCUSSION**

9. I have considered the submissions advanced and have perused the material available on record.

**The appellate decree**

10. The operative portion of the decree drawn by the first appellate court has quite significance in this case. The same is reproduced as under:-

"आदेश

अपीलार्थी की अपील सव्यय स्वीकार की जाती है ।  
अधीनस्थ न्यायालय द्वारा मूल वाद सख्या 283/1980 जय  
भगवान आदि बनाम राज सिंह आदि मे पारित निर्णय दिनांक 9-  
2-1982 निरस्त किया जाता है।

प्रतिवादीगण को आदेश किया जाता है कि वह वादीगण से  
विवादित जमीन के सन्दर्भ मे इकरारनामे के अनुसार तय धनराशि  
मे से अंकन 8000/- रुपये अग्रिम की धनराशि घटाकर शेष  
धनराशि 30 दिन के अन्दर प्राप्त कर पंजीकृत बयनामा वादीगण  
के पक्ष मे निष्पादित कर दे। अन्यथा वादीगण को यह अधिकार  
होगा कि वह न्यायालय द्वारा बयनामा निष्पादित करा ले।"

11. Apparently, there was no direction by the first appellate court under which the decree-holder was required to deposit any amount, rather the decree, when read as it is, cast an obligation on the judgment-debtor to receive balance money from the decree-holder within a period of 30 days. Nevertheless, effect of the terms of the decree shall be discussed hereinlater.

#### **Rescission of contract**

12. Under the peculiar nature of the operative portion of the appellate decree, language used in Section 28 of the Specific Relief Act, 1963 is important to be perused. The relevant portion of the provision reads as under:-

**"28. Rescission 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 sum 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) .....”

13. A perusal of Section 28 indicates that when the purchaser (i.e. the plaintiff) does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor may apply in the same suit in which the decree is made to have the contract rescinded. Therefore, consequences arising out of non-deposit of money would arise only when direction to pay the amount is issued but not honoured by the decree-holder and not otherwise.

14. Though there is no such direction in the present case requiring the decree-holder to pay the balance money, even if the argument of petitioners is accepted to the effect that it is always for the decree-holder to offer the balance money and not for the judgment-debtor to ask the decree-holder to pay the money, proceedings during the course of litigation in the present matter require a thoughtful consideration.

15. Apparently, the Hon’ble Supreme Court finally dismissed the Civil Appeal on 09.12.2004. Execution Case No. 5 of 2005 as well as application 10-C was filed immediately after two months. The contents of application 10-C read as under:-

“निवेदन है कि उपरोक्त इजराय डिग्रीदारान ने मद्यूनान के विरुद्ध इकरारनामा महायदा बय के आधार पर पारित डिग्री के आधार पर अपने हक में बैनामा निष्पादित व पंजीकृत कराने के लिये योजित की है। डिग्रीदारान को अंकन 95,000/- रुपये की धनराशि बजरिये टेण्डर जमा करनी है

तथा विक्रयपत्र का प्रारूप दाखिल करना है, जिसकी अनुमति का डिग्रीदारान को दिया जाना आवश्यक है।

अतः श्रीमान जी से प्रार्थना है कि उपरोक्त कारण व न्यायहेतु डिग्रीदारान को अंकन 95,000/- की धनराशि न्यायालय में जमा करने की अनुमति प्रदान करते हुये प्रार्थनापत्र के साथ संलग्न टैण्डर पास किया जावे तथा विक्रयपत्र का प्रारूप दाखिल करने की अनुमति प्रदान की जाये। अति कृपा होगी।"

16. Though, learned counsel for the petitioners has made vehement submissions that mere request made from the executing court to pass a tender would not amount to seeking extension of time, in the opinion of the Court, the nature of application 10-C certainly reflects the intention of the decree-holder to deposit the balance money and, for that purpose, he rightly sought permission from the court to pass the tender, in absence whereof he could not go ahead with the execution. Once the application was allowed in the year 2011, in terms of the order impugned in the petition, it would certainly amount to extension/enlargement of time to make deposit. No other interpretation of the nature of application 10-C or the order passed thereon can be made or accepted.

#### **Power to extend/enlarge time**

17. Power of execution court to grant/extend/enlarge time in this regard has been dealt with in **Savitri Devi vs. Ashok Kumar, 2009 (2) ARC 211**, wherein, after placing reliance upon various decisions including the judgment of Hon'ble Supreme Court in **V.S. Palanichamy Chettiar Firm vs. C. Alagappan and another, AIR 1999 SC 918**, it has been held that executing court can

extend the time and the powers of the trial court and the executing court in this regard are common.

18. Recently, in **Ishwar vs Bhim Singh and another, AIR 2024 SC 4232**, under almost identical circumstances, one of the issues that fell for consideration before the Hon'ble Supreme Court was as to whether the execution court had jurisdiction to deal with the application(s) for rescission of contract and extension of time to deposit the balance sale consideration. Reference was made to a judgment in **Ramankutty Guptan Vs. Avara, (1994) 2 SCC 642**, holding that when a suit for specific performance is dismissed by the trial court, but decreed in appeal and the decree specifies the time for performance of the conditions of the decree, on its failure to deposit the money, Section 28(1) itself gives power to the court to extend the time on such terms as the court may allow to pay the purchase money or other sum which the court has ordered him to pay.

19. In **K. Kalpana Saraswathi Vs. P.S.S. Somasundaram Chettiar, (1980) 1 SCC 630**, Hon'ble Supreme Court held that on an oral prayer made by the counsel for the plaintiff for permission to deposit the entire amount as directed by the trial court, direction was issued to the appellant to deposit the amount within six months from that date together with interest and other conditions mentioned therein. It was further held that an application for extension of time for payment of balance consideration may be filed even in the court of first instance or in the appellate court in the same suit as the decree of the trial court stands merged with that of the appellate court which decree is under execution. It was further held that the procedure is the

handmaid for justice and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve substantial justice. Therefore, technicalities would not stand in the way to subserve substantive justice.

20. In **Chanda v. Rattni**, (2007) 14 SCC 26, Hon'ble Supreme Court has held that the power to rescind the contract under Section 28 of the 1963 Act is discretionary in nature and is to do complete justice to the parties. The Court does not cease to have the power to extend the time even though the decree may have directed that payment of balance price is to be made by a certain date. While exercising discretion in this regard, the Court is required to take into account facts of the case so as to ascertain whether the default was intentional or not. If there is a *bona fide* reason for the delay/ default, such as where there appears no fault on the part of the decree holder, the Court may refuse to rescind the contract and may extend the time for deposit of the defaulted amount.

21. In this connection, the court may also take aid of the provisions of Section 148 of Code of Civil Procedure, which reads as under:-

**“148. Enlargement of time.**—Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, **enlarge such period**, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.”

22. It is apparent from Section 148 C.P.C. that the Court may, in its discretion, enlarge any period which is fixed for doing of

any act. In the opinion of the Court, neither Section 28 of the Specific Relief Act, 1963 nor Section 148 of C.P.C. provides for the starting point of the exercise of power to grant further time or to enlarge the same. The legislative intent speaks only of discretion of the Court to do so depending on the facts of a case. The only embargo, if at all it can be put on the power of the Court, may be felt from Section 148 C.P.C. where power to enlarge time has been restricted 'not beyond thirty days in total', but that is the outer limit for enlargement of time and not the starting point thereof. At the same time, there is no such apparent statutory restriction under Section 28 of the Specific Relief Act, 1963. Hence, the question as to when did the decree-holder move application 10-C becomes redundant.

23. Therefore, in a case where grant of further time to deposit money pursuant to a decree for specific performance is the question before the Court, it would be seen as to whether decree-holder was on default/successive defaults in complying with the terms of the decree but even then the Court either cursorily, wrongly or unreasonably granted further time or enlarged the time or as to whether the decree-holder himself or Court itself was precluded from making or entertaining a request for grant of further time for which neither the decree-holder nor the Court can be blamed.

24. As far as reliance placed on behalf of the petitioners on the judgment of Hon'ble Supreme Court in **P. Shyamala vs. Gundlur Mathan**, Civil Appeal Nos. 1363-1364 of 2023; 2023 AIR SC 1224, in that case rescission of the contract was upheld, however the facts were entirely different. In that case, the decree was

passed in the year 2013 and application seeking enlargement of time was filed under Section 148 C.P.C. with a delay of 853 days without any intervening obstruction. In the facts of that case, after dealing with the relevant dates, the Hon'ble Supreme Court found the huge delay as fatal to the claim of the decree-holder. In the present case, once the operative portion of the appellate decree did not cast any obligation upon the decree-holder to deposit the balance amount and, even if, the decree is read in that sense against the decree-holder requiring him to deposit money, though he was not even asked to do so, moving of application 10-C, two months after the Hon'ble Supreme Court dismissed the Civil Appeal, would not be fatal to the claim of the decree-holder.

25. In the present case, the suit was decreed in appeal in 1999. The defendants' Second Appeal was dismissed in 1999, immediately whereafter the matter, in 1999 itself, reached to the Hon'ble Supreme Court which dismissed the Civil Appeal on 09.12.2004. Therefore, occasion to move and consider any application seeking permission to pass the tender to go ahead with the process of execution, arose at that very time. The decree-holder filed application 10-C on 16.02.2005 just after two months from dismissal of Civil Appeal by the Hon'ble Supreme Court and even going to the extent of reading the decree in a way that it was the decree-holder who was required to pay balance money, though the terms of the decree were otherwise, since money could not be accepted unless the Court granted time for the said purpose and cleared the tender on being requested to do so, no sum could be deposited.

26. Now the Court tests the submission of Shri Agrawal that even if time of one (1) month for making deposit of amount is computed from the date of decision of Hon'ble Supreme Court, since Civil Appeal was dismissed on 09.12.2004, one month period would begin to run from the said date and would end on 09.01.2005 and, on or before the said date, the decree holder should have deposited the balance amount. In the opinion of the Court, even in that situation, the occasion to seek extension/enlargement of time would arise only after 09.01.2005 and not before that. Therefore, moving of application 10-C seeking to clear the tender of Rs. 95,000/- on 06.02.2005 was a rightful act on his part and there was no delay in moving the same. Delay, if any, could be of 28 days but cannot be said to be fatal to claim of decree-holder so as to frustrate the decree affirmed upto Hon'ble Supreme Court or hold the contract as rescinded. Therefore, timing, stage, nature and contents of application 10-C are found to be in accordance with law and executing Court did not commit any error in allowing the same. In totality of facts and circumstances, no case for rescission of contract as per Section 28 stands made out.

27. In view of above discussion, this Court does not find any error in any of the orders impugned.

**Balancing the equities and length of litigation**

28. In the last, Shri Pankaj Agarwal, Advocate submits that the suit being that of specific performance of agreement and the value of immovable property covered by that having gone up

over a period of time, equities should be balanced as regards deposit and payment of money. To this submission, Shri Gulrez Khan, Advocate submits that over the entire period of litigation, it was the judgment-debtor who continued to remain in possession of the property and the decree-holder has already deposited the amount in the year 2011 itself pursuant to the permission granted by the executing court, therefore, he cannot be penalized in any manner.

29. In the present case, the agreement for sale was executed in 1979, Original Suit was filed in 1980, it was dismissed in 1982 against which appeal was filed by the plaintiff in 1982 itself, which was allowed after 17 years in 1999 and the suit was decreed. The defendants' Second Appeal was dismissed in 1999, whereafter, S.L.P. was filed in 1999 itself, Civil Appeal was dismissed by Hon'ble Supreme Court by a very detailed order on 09.12.2004. Thereafter, applications were filed by the contesting parties in February 2005 and were decided after 6 years, whereafter, revisions preferred by the judgment-debtor were dismissed in 2011. This petition was filed in 2012 under Article 226 of Constitution of India and later on, it was converted into Matter under Article 227 in the year 2015. In the meantime, an interim order was passed on 05.05.2014 staying further proceedings in Execution Case of 2005. The matter is now being finally decided by this Court in the year 2026.

30. The Court here deems it appropriate to refer a judgment in **Vansh S/o Prakash Dolas v. Ministry of Education and the Ministry of Health & Family Welfare and others : 2024 AIR SC 1924**, wherein the Hon'ble Supreme Court, by referring to its

previous decision in **Manoj Kumar v. Union of India : 2024 (3) SCC 563**, observed that in public law proceedings, when it is realized that the prayer is unattainable due to passage of time, claim should not be dismissed by the Constitutional Courts on the ground of their perceived futility and in the life of litigation, passage of time can stand both as an ally and adversary and it is the duty of the Court to transcend the constraints of time and perform the primary duty to control and regulate the exercise of power or arbitrary action. It has further been observed that the temporal gap between the actions and their subsequent adjudication by the courts introduces complexities in the provision of restitution, however, the Court should try to subserve the primary purpose and object of public law proceedings by appropriately providing remedial measures and relief in the nature of restitution.

31. Considering the entire facts and circumstances, the law referred above and balancing the equities in the matter of specific performance of agreement when lis, after going through multiple stages, is being finally decided after a long period of time, while dismissing both the petitions and upholding the orders impugned, it is hereby provided that the decree-holder shall deposit a further sum of Rs.2,00,000/- (Rupees two lacs) before the executing court within a period of two months from today. On deposit of the said amount, executing court shall make all endeavour to execute the decree forthwith and not later than one month in terms of getting the sale deed executed by the judgment-debtor and, on his failure to do so, to execute the same itself in favour of the decree-holder.

32. Both the petitions are, therefore, **DISMISSED** with the above observations.

**(Kshitij Shailendra, J.)**

**February 19, 2026**  
Sazia