

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

(SINGLE BENCH : HON. Mr. JUSTICE VIVEK RUSIA)

C.R. No.529 of 2017

Gitabai & others.

... Petitioners

Vs.

Sunil Kumar & others.

... Respondents.

-x-x-x-x-x-x-x-x-x-x-

**Shri A.K. Sethi, Sr. Advocate with Shri Vinay Gandhi, Advocate for the
petitioners.**

**Shri Sunil Jain, Sr. Advocate with Shri Kushagra Jain, Advocate for
respondents.**

-x-x-x-x-x-x-x-x-x-x-

ORDER

(Reserved on 15.02.2018)

(Passed on March, 2018)

The petitioner (hereinafter referred to as defendants / judgment debtor) has filed the present revision against the order dated 26.9.2017 by which application filed by plaintiff / decree holder u/s. 148 of C.P.C. has been allowed by extending the time period for depositing the decretal amount.

2. The respondent No.1 (hereinafter referred to as the plaintiff/ decree-holder) has filed the civil Suit No.19-A/2002 seeking decree of specific performance of the contract dated 20.8.1999. As per terms and conditions of the agreement, the defendant No.1 and 2 are owners of two-storied house and shop constructed over land bearing Survey No.1359 area 0.036 Hect. situated at Bus Stand, Bhanpura, District Mandsaur. The plaintiff had agreed to purchase the said house in total consideration of

Rs.22,50,001/- and out of which, he paid Rs.1,51,000/-. The balance amount was agreed to be paid on 1.10.1999.

3. The defendant filed the written statement and contested the suit. Vide judgment and decree dated 22.12.2003, the learned trial Court had decreed the suit in favour of plaintiffs with a direction to pay the balance amount of sale-consideration within three months from 22.12.2003 and the defendant No.1 and 2 were directed to execute the sale deed and on receipt of the balance amount, if they do not execute the sale-deed, then the plaintiff would be entitled to get the sale-deed registered through Court and thereafter, he shall obtain the vacant possession. The operative part of the judgment and decree is reproduced below :-

“(अ) यह आदेश दिया जाता है व डिक्री दी जाती है कि वादी प्रतिवादी क्रमांक 1-2 को आज दिनांक 22.12.2003 से तीन माह के अन्दर बकाया रकम अदा कर विक्रय पत्र का सम्पादन अपने पक्ष में करायेगे। यदि तीन माह की अवधि के अन्दर प्रतिवादी क्रमांक 1, 2 बकाया रकम प्राप्त कर वादग्रस्त सम्पत्ति का पंजीयन वादी के पक्ष में नही करवाने पर वादी अनुबंधानुसार बकाया राशि में से इस वाद व्यय की राशि कम कर शेष राशि जमा कराकर वादग्रस्त सम्पत्ति का पंजीयन न्यायालय के माध्यम से वादी अपने नाम से करा सकेगा।”

4. The plaintiff filed the execution proceeding on 14.6.2004. The Executing Court started the execution proceedings by issuing notice to the defendants, judgment debtor. By order dated 26.2.2005 and 21.3.2005, the Executing Court directed the plaintiff to deposit the draft of the sale amount and stamp papers so that it can be sent to the Registrar for its execution. On 28.3.2005, the plaintiff submitted the three FDRs of the balance sale consideration along with format of sale-deed. All the three FDRs

were in the name of the plaintiff prepared on 23.3.2005 with the maturity period of one month.

5. The defendant filed an application u/s. 28 of the Specific Relief Act before the District Judge, Mandsaur in Civil Suit No.90-A/2002 for recession of the agreement on the ground that the plaintiff has failed to pay the balance amount of sale-consideration within the period of three months and since the sale-deed has not been executed so far, therefore, the right of the plaintiff to get the sale-deed executed has come to an end.

6. After hearing the plaintiff and defendant, the learned District Judge vide judgment dated 18.8.2007 has held that the right of plaintiff to get the sale-deed executed has come to an end and, therefore, directed the defendant to refund the amount of Rs.1,51,000/- with interest @ 6% per annum. The defendant has deposited the amount of Rs.2,24,000/- in the CCD.

7. Being aggrieved by the aforesaid order dated 22.12.2003, the plaintiff filed C.R. 292/2003 before this Court. Vide order dated 17.11.2008, this Court has allowed the civil revision on the ground that Section 148 of the C.P.C. does not completely take away the discretionary power of trial Court to extend the time for payment of balance amount and by setting aside the order dated 22.12.2013, directed the parties to appear before the trial Court to proceed in accordance with law.

8. In compliance of the aforesaid direction, the plaintiff filed an application u/s. 148 of the C.P.C. admitting that there was a delay in depositing the amount hence the default be condoned and the sale-deed be executed. Meanwhile, the defendant approached the Apex Court by way of SLP (c) No.5236/2009

against the order dated 17.11.2008. Vide order dated 22.10.2013, the SLP has been dismissed with the observation that the application filed u/s. 148 of the C.P.C. by the decree-holder shall be considered by the District Court in accordance with law.

9. Thereafter, the defendant filed the reply to the application u/s. 148 of the C.P.C. opposing the extension of time. The learned District Court vide order dated 26.9.2017 has allowed the application filed u/s. 148 of the C.P.C. by extending 30 days' period for depositing the amount before the Court in compliance of the judgment and decree. Hence, the present revision by the defendant / judgment debtor .

10. Shri A.K. Sethi, learned senior counsel appearing for the petitioners/plaintiff /judgment debtor , submitted that vide judgment and decree dated 22.12.2003, the plaintiff was directed to **pay** balance amount to the defendant within 3 months to get the sale-deed executed, meaning thereby, the plaintiff was required to pay the amount to the defendant, but he deposited the amount by way of FDR in his name in the Court, therefore, there was not only delay in depositing the amount, but also non-payment to the defendant in true compliance of the decree. The decree was passed on 22.12.2003 and amount was liable to be paid upto 21.3.2004, but the plaintiff deposited the amount in the Court on 28.3.2005 i.e. almost after one year. The Apex Court has directed the Court to decide the application filed u/s. 148 of the C.P.C. in accordance with law. Shri Sethi, learned senior counsel further submitted that u/s 148 of the C.P.C., the Court may extend the time which is prescribed or allowed by the Civil Procedure Code but not exceeding 30 days in total even though, the period originally fixed

or granted may have expired. Therefore, the Court in exercise of its discretionary power, may extend the period prescribed under this Code and not the period prescribed in the judgment and decree. He further submitted that in a suit for specific performance of contract, the time granted by the Court to deposit/pay the amount cannot be extended u/s. 148 of the C.P.C. Even otherwise, the Court comes to conclusion that the time can be extended u/s. 148, then it has to be seen whether the amount has been paid to the defendant in compliance of the direction given in the decree, because the plaintiff has deposited the amount in the Court in the form of FDR prepared in his name. The said amount cannot be paid to the defendant as the Bank is liable to pay the amount to the plaintiff only because the FDR's were prepared in his name. Till today, the amount has not been paid to the defendants, hence the said period cannot be extended, and thus the execution proceedings are liable to be dropped.

11. Per contra, Shri Sunil Jain, learned senior counsel appearing for the respondent /plaintiff/decree-holder , emphasized that the plaintiff served a notice dated 25.2.2004 to the defendants within 3 months from the date of judgment and decree by requesting him to accept the amount and get the sale-deed registered in his name. Since the defendant did not respond to the said notice, then he filed the execution application before the Executing Court. The decree is executable within 12 years and the plaintiff is still ready to pay the entire amount. The plaintiff has deposited the FDR in the Court and at that time the Court did not raise any objection. The defendant without filing any reply to the application for execution application filed an application u/s. 28 of

the Specific Relief Act for recession of the contract. The Executing Court is having power u/s. 28 of the Specific Relief Act to extend the time as the decree passed under the Specific Relief Act is preliminary in nature. Therefore, though the application was filed u/s. 148 of the C.P.C., but the Court has rightly exercised the power u/s. 28 of the Specific Relief Act by extending the time to deposit decretal amount. The amount deposited by the plaintiff is secured and it can be paid to the defendant at the time of execution of the sale-deed, therefore, the Court has rightly extended the period hence no interference is called for by this Court and the revision is liable to be dismissed.

12. The only issue involved in this revision is, whether the learned trial Court has rightly extended the time to deposit the decretal amount in exercise of powers u/s. 148 of the C.P.C.?

13. The plaintiff filed the suit seeking the relief of specific performance of contract dated 20.8.1999. He had agreed to purchase the suit property in total consideration of Rs.22,50,001/- and paid only Rs.1,51,000/- and further agreed to pay the balance amount of Rs.20,99,001/- up to 1.10.1999. Vide judgment and decree dated 22.12.2003, the learned trial Court has decreed the suit by directing the plaintiff to pay the balance consideration within three months from 22.12.2003 to the defendants and get the sale-deed executed and, if the defendants refuses to execute the sale-deed, then the plaintiff shall deposit the balance amount of consideration in the Court and get the sale-deed executed through Court. Therefore, as per the decree, the plaintiff was required to pay the balance consideration within a period of three months and the defendants were required to receive the amount and execute the

sale-deed.

14. The second part of the decree was that, if the defendants refuses to execute the sale-deed, then the plaintiff was given liberty to deposit the amount in the Court and get the sale-deed executed through Court, for which, no time-period was prescribed in the decree.

15. After passing of the decree dated 22.12.2003, the plaintiff being a decree-holder, sent a notice dated 25.2.2004 to the defendant/judgment debtor requesting him to receive the balance amount of the consideration and execute the sale-deed. The defendants received the said notice on 26.2.2004, but did not respond. Thereafter, the plaintiff filed an application for execution of the decree before the executing Court on 14.6.2004. The learned executing Court registered the case and sent the notice to the defendants. After receipt of the summons from the executing Court, the defendants put their appearance in the Court on 22.7.2004. Thereafter, the defendant sought time to file reply on several dates. Vide order dated 26.2.2005, the executing Court directed the plaintiff to deposit the balance amount and the draft sale-deed in the Court. On 28.3.2005, the plaintiff deposited the amount by way of three FDRs. and the draft sale-deed. At that time, neither the Court nor the defendants objected the mode of deposit of the amount by way of FDRs.

16. On 20.4.2005, the defendants filed an application u/s. 28 of the Specific Relief Act stating that the contract has come to an end as the plaintiff has failed to pay the balance amount to get the sale-deed executed. Vide order dated 18.8.2007, the learned executing Court allowed the applicant and rescinded the contract.

Being aggrieved by the order dated 18.8.2007, the plaintiff filed the Civil Revision No.292/2007 before this Court and this Court vide order dated 17.11.2008 allowed the revision and set aside the order of the executing Court with the finding that the Court is having power to extend the time u/s. 148 of the C.P.C.

17. Thereafter, the plaintiff filed an application u/s. 148 of the C.P.C. on 10.2.2009. Meanwhile, the defendants approached the Supreme Court by way of SLP against the order passed by this Court in Civil Revision. The Apex Court dismissed the SLP with the direction to the trial Court to consider the application filed u/s. 148 of the C.P.C. in accordance with law. Thereafter, the defendant filed reply to the application u/s. 148 of C.P.C. and the learned executing Court allowed the application. The matter was under litigation continuously and the plaintiff was perusing to get the fruit of the decree.

18. The main contention of Shri Sethi, learned senior counsel appearing for the petitioners/ defendants is that the mode of deposit of the amount in the Court is provided under Order 21 Rule 1 of the C.P.C., but the plaintiff had deposited the amount in the form of FDR prepared in his own name, therefore, the money was with him and cannot be paid to the defendants or could not have been utilized in execution of the sale-deed. In support of his contention, he has placed reliance over the judgment of Apex Court in the case of **P.S.L. Ramanathan Chettiar V/s. O.R.M.P.R.M. Ramanathan Chettiar : AIR 1968 SC 1047** and the judgment of this Court in the case of **Manoj Kumar Agrawal V/s. Nepa Ltd. : 2018 (1) MPLJ 198.**

19. The defendants are estopped from assailing the mode of

deposit of the amount by the plaintiff for the simple reason that at the time of submission of FDRs., they never raised any objection. The plaintiff deposited the FDRs. on 28.3.2005 in presence of counsel of the defendants/judgment debtor. Even at that time, the Court did not raise any objection. Vide order dated 18.8.2007 the executing Court rescinded the contract interalia on the ground that the plaintiff deposited the amount by way of FDRs. and not in the court or in the CCD. The said findings has been set aside by this Court in Civil Revision No.292/2007. In the SLP, the present petitioners took a specific ground to challenge the said findings in respect of deposition of the amount by way of FDRs. The Apex Court dismissed the SLP and directed the executing Court to decide the application u/s. 148 of the C.P.C. Therefore, the ground taken by the defendants have been negated by this Court as well as by the Apex Court, hence the defendants are estopped from raising the said ground again in this revision and the same is hereby rejected.

20. Shri Sethi, learned senior counsel appearing for the petitioner, has raised another objection that u/s. 148 of the C.P.C., the Court can enlarge the time prescribed or allowed by the code i.e. C.P.C not by court. For example the time prescribed for filing of written statement or time prescribed for filing an application under Order 22 Rule 3 and 4 in the C.P.C can ne extended in exercise of power under section 148 . He further submitted that there is no time prescribed in the Code for depositing the decretal amount in the Court, therefore, the time cannot be enlarged u/s. 148 of the C.P.C.

21. Section 148 of the C.P.C. provides that, where any

period is fixed or granted by the Court for the doing of any act prescribed or allowed by the 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. Therefore, the Court may extend the period prescribed by the Code for doing of any act. In the present case, the Court had fixed the time for payment of the amount to the defendants i.e. three months to get the sale-deed executed, therefore, the Court may extend these three months. Even otherwise, as held above, the Court had not fixed the period for depositing the amount in the Court. Since the defendants did not accept the amount within three months offered by the plaintiff by way of notice dated 25.2.2004, therefore, they have no right to pray for rescindment of the contract. Had they agreed to receive the amount to get the sale-deed executed within three months and the plaintiff could not have paid the amount to them, then they could have filed an application u/s. 28 of the Specific Relief Act. Since they did not accept the balance amount of consideration within three months, then the plaintiff was having right to approach the Court to get the sale-deed executed, for which, the period of limitation is 12 years.

22. Even otherwise, in case of **Salem Bar Association(II) V/s. Union of India : (2005) 6 SCC 344**, the Apex Court has held that the restriction of 30 days provided u/s. 148 of the C.P.C. would not take away the right of the Court to extend the time in exercise of powers conferred u/s. 151 of the C.P.C. Para 41 and 42 of the aforesaid judgment are reproduced below :

41. The amendment made in Section 148 affects the power of the court to enlarge time that may have been fixed or granted by the court for the doing of any act prescribed or allowed by the Code. The

amendment provides that the period shall not exceed 30 days in total. Before amendment, there was no such restriction of time. Whether the court has no inherent power to extend the time beyond 30 days is the question. We have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the court to pass orders as may be necessary for the ends of justice or to prevent abuse of process of the court. The rigid operation of the section would lead to absurdity. Section 151 has, therefore, to be allowed to operate fully. Extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for reasons beyond the control of the party. We are not dealing with a case where time for doing an act has been prescribed under the provisions of the Limitation Act which cannot be extended either under Section 148 or Section 151. We are dealing with a case where the time is fixed or granted by the court for performance of an act prescribed or allowed by the court.

42. *In Mahanth Ram Das v. Ganga Das this Court considered a case where an order was passed by the Court that if the court fee was not paid by a particular day, the suit shall stand dismissed. It was a self-operating order leading to dismissal of the suit. The party's application filed under Sections 148 and 151 of the Code for extension of time was dismissed. Allowing the appeal, it was observed: (SCR pp. 767-68)*

“How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out often enough to be inexpedient. 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. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves on the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians.”

43. *There can be many cases where non-grant of extension beyond 30 days would amount to failure of justice. The object of the Code is not to promote failure of justice. Section 148, therefore, deserves to be read down to mean that where sufficient cause exists or events are beyond the control of a party, the court would have inherent power to extend time beyond 30 days.*

The aforesaid case in Salem Bar Association (supra) has further been followed by the Apex Court itself in the case of *Nashik*

Municipal Corpn. v. R.M. Bhandari: (2016) 6 SCC 245.

13. In *Chinnamarkathian v. Ayyavoo* [(1982)1SCC159], this Court called in the principle of equity and held that the court has the jurisdiction to examine alteration or modification which may necessitate extension of time. In para 15, this Court held as under: (SCC p. 168)

“15. ... It is a well-accepted principle statutorily recognised in Section 148 of the Code of Civil Procedure that where a period is fixed or granted by the court for doing any act prescribed or allowed by the Code, the court may in its discretion from time to time enlarge such period even though the period originally fixed or granted may expire. If a court in exercise of the jurisdiction can grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. Passing a composite order would be acting in disregard of the jurisdiction in that while granting time simultaneously the court denies to itself the jurisdiction to extend time. The principle of equity is that when some circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the court retains to itself the jurisdiction to re-examine the alteration or modification of circumstances which may necessitate extension of time. If the court by its own act denies itself the jurisdiction to do so, it would be denying to itself the jurisdiction which in the absence of a negative provision, it undoubtedly enjoys.”

.....

15. In terms of Section 148 CPC court has the discretion to extend the time. The words “not exceeding thirty days in total” have been inserted by the CPC (Amendment) Act, 1999. Observing that if the act could not be performed within thirty days for the reasons beyond the control of the parties, the time beyond maximum thirty days can be extended under Section 151 CPC, in *Salem Advocate Bar Assn. (2) v. Union of India*.

23. In view of the aforesaid two judgments, the Court is having ample power to extend the period to deposit the amount. Therefore, the second contention of Shri Sethi is also liable to be rejected.

24. Section 148 of the C.P.C. is a general provision of law,

in which, the Court can extend the time, but in the present case, there is a decree of specific performance of contract between the plaintiff and the defendant. U/s. 28 of the Specific Relief Act, the decree of specific performance of contract is in the nature of preliminary decree and the suit is deemed to be pending after the decree and the Court does not become *functus officio* and the Court after taking into account all the attending circumstances including the conduct of the parties can extend the time for compliance of the decree. The Apex Court has held in the case of **Yashoda Vs. K. Nagrajan : (1996) 11 SCC 228** has held that Section 148 CPC gives power to the court to enlarge the time for complying with the orders of the court from time to time. Under those circumstances, the court has correctly exercised the discretion since the amount came to be deposited within three months from the date of dismissal of the application under Section 28.

25. The Apex Court in the case of **Bhupinder Kumar v. Angrej Singh, (2009) 8 SCC 766** has held that in the case the decree is not complied with and sufficient cause is shown for non-compliance and if an application for extension of time is made by the decree-holder, the Court has jurisdiction to extend or refuse to extend the time. Para 19 to 22 of the aforesaid judgment are reproduced below

19. It is clear that the decree is in the nature of preliminary decree and the suit would continue and be under the control of the court till either party moves for passing the final decree. It is also clear that though the court has the power to extend time and it is the duty of the court to apply the principle of equity to both the parties.

20. In Kumar Dharendra Mullick v. Tivoli Park Apartments (P) Ltd. (2005) 9 SCC 262 this Court, after analysing earlier decisions, has concluded that: (SCC p. 264a-c)

“When the court passes the decree for specific performance, the

contract between the parties is not extinguished. The court does not lose its jurisdiction after the grant of the decree for specific performance nor does it become functus officio. The decree for specific performance is in the nature of a preliminary decree and the suit is deemed to be pending even after the grant of such decree. Hence, the court retains control over the entire matter even after the decree. Section 28 gives power to grant order of rescission of the agreement which itself indicates that till the sale deed is executed, the trial court retains its power and jurisdiction to deal with the decree of specific performance. Therefore, the court has the power to enlarge the time in favour of the decree-holder to pay the amount or to perform the conditions mentioned in the decree for specific performance.”

21. *It is clear that Section 28 gives power to the court either to extend the time for compliance with the decree or grant an order of rescission of the agreement. These powers are available to the trial court which passes the decree of specific performance. In other words, when the court passes the decree for specific performance, the contract between the parties is not extinguished. To put it clearly the decree for specific performance is in the nature of a preliminary decree and the suit is deemed to be pending even after the decree.*

22. *Sub-section (1) of Section 28 makes it clear that the court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes functus officio. On the other hand, Section 28 gives power to the court to grant an order of rescission of the agreement and it has the power to extend the time to pay the amount or perform the conditions of decree for specific performance despite the application for rescission of the agreement/decreed. In deciding an application under Section 28(1) of the Act, the court has to see all the attending circumstances including the conduct of the parties.*

In view of the above, the learned trial Court has not committed any error of law in exercise of power u/s. 148 of the C.P.C.

26. As held above, the plaintiff was granted three months' time to make payment to the defendants and they were directed to execute the sale-deed. As per second part of the decree, if the defendants fails to execute the decree or refuses to execute the sale-deed, then the liberty was granted to the plaintiff to deposit the amount in the Court, for which, no time was prescribed in the

decree. If there is no time prescribed in the decree, then the normal period of limitation prescribed under the Limitation Act would apply i.e. 12 years. In the present case, the plaintiff immediately sent the notice to the defendants and requested them to accept the balance amount and execute the sale-deed within three months. When the defendants did not respond to the said notice, he immediately filed the execution proceedings and that execution proceeding is still pending and the matter is under litigation. Therefore, the plaintiff has performed his part after the judgment and decree. He has secured the money by depositing the same in the Court in the form of FDRs. and that issue has attained finality. Hence, the plaintiff is still entitled for execution of the decree through Court.

27. In view of the foregoing discussion, the revision fails and is hereby dismissed. However, there shall be no order as to costs.

**(VIVEK RUSIA)
JUDGE**

Alok/-