

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

CRP Nos.2374 and 2304 of 2019

COMMON ORDER:

1. Civil Revision Petition No.2304 of 2019 is filed assailing the order dated 29.06.2019 in IA No.914 of 2017 in OS No.291 of 2013 on the file of the learned II Additional District Judge, Ranga Reddy at L.B. Nagar. Whereas, CRP No.2374 of 2019 is filed assailing the order dated 29.06.2019 in IA No.732 of 2016 in the said OS No.291 of 2013 on the file of said Court.
2. IA No.914 of 2017, filed under Section 28 of Specific Relief Act, 1963 to rescind the contract of sale dated 09.05.2012 under Ex.A.1, was dismissed by the trial Court. Whereas, IA No.732 of 2016, filed under Section 148 of the Civil Procedure Code (for short 'CPC') and Section 28 of Specific Relief Act for extension of time to deposit the balance amount of sale consideration, was allowed by the trial Court. Accordingly, these two Civil Revision Petitions got to be filed by the defendants.
3. The learned II Additional District Judge, Ranga Reddy District, through a common order dated 29.06.2019 dismissed IA No.914 of 2017 and allowed IA No.732 of 2016 directing the plaintiff to deposit balance sale consideration of Rs.15 lakhs with interest @ 18% per annum from the date of decree, till the date of deposit with a direction to deposit the said amount within one month, else petition shall stands dismissed.

4. The learned counsel for the plaintiff seeks to submit that in compliance of the common order dated 29.06.2019, the entire amount has been deposited before the Court below. The draft sale deed is also filed and because of the stay granted by this Court, the proceedings are stalled.

5. The Original Suit No.291 of 2013 was filed for specific performance of suit agreement of sale. Admittedly, the suit was decreed on 21.10.2013, *ex parte* decree was passed directing the plaintiff to deposit the balance sale consideration of Rs.15 lakhs within two weeks and also directing the defendants to execute the sale deed on receiving the balance sale consideration. The plaintiff failed to deposit the balance sale consideration as stipulated in the decree. It is the contention of the plaintiff that he became sick with jaundice, treated in Kamineni Hospital from 01.11.2013 to 05.01.2014, after discharge from the hospital, confined to home with high blood pressure and diabetis. The medical record is also filed to that effect and he even failed to contact his counsel. Ultimately, on 09.06.2016 when contacted the counsel, he came to know that a decree was passed and that he was directed to deposit of Rs.15 lakhs within two weeks. Thus, there is a delay of 853 days.

6. It is pertinent to note that the original defendant died and her legal representatives were brought on record and their contention is that the plaintiff has intentionally failed to deposit the amount, which

shows that the plaintiff is not willing to perform his part of contract and the entire medical record is a created one. The sole defendant died on 13.01.2015 and during her life time, no effort was made to deposit the amount and in fact the legal representative of sole defendant has come to know about the suit only on receipt of notice in IA No.732 of 2016.

7. Be that as it may, the medical record which is made part of the order clearly shows that the plaintiff was suffering from illness, the defendant No.2 did not come forward for refund of Rs.8 lakhs, in case Ex.A.1 is rescinded, accordingly the trial Court on analysis of facts dismissed IA No.914 of 2017 filed by the defendants to rescind the contract and allowed IA No.732 of 2016 extending time for deposit of the balance amount with interest.

8. The learned counsel for the respondent/plaintiff has relied on the following decisions:

- i) ***K. Kalpana Saraswathi v. P.S.S. Somasundaram Chettiar***¹;
- ii) ***Sardar Mohar Singh through power of attorney holder, Manjit Singh v. Mangilal alias Mangtya***²;
- iii) ***Laxman B. Dolwani v. B. Surender Goud***³;
- iv) ***Ali Jaffar v. V. Venkat Reddy***⁴.

¹ AIR 1980 SC 512

² (1997) 9 SCC 217

³ 2001 Law Suit (AP) 962

⁴ AIR 2012 AP 102

9. I have carefully perused the principles laid in the above decisions. Section 148 of CPC deals with enlargement of time and the Court may in its discretion from time to time enlarge such period not exceeding 30 days in total. Section 28 (1) of Specific Relief Act relates to enlargement of time for deposit of the amount. In *K. Kalpana Saraswathi*'s case (first cited supra) held that it is perfectly open to the Court in control of suit for specific performance to extend the time for deposit beyond the stipulated period. It was further held that the Court is not powerless to extend time for payment of the balance sale consideration beyond the period stipulated under the decree in spite of default clause in the decree.

10. In fact, Section 28 of Specific Relief Act, 1963 clearly specifies about the plaintiff decree holder depositing the balance sale consideration within the period prescribed in the decree or within such further period as the Court may allow in this regard. Thus, mere failure to deposit the amount as directed in a decree for specific performance would not render the decree ineffective and more so, when the judgment debtor had not resorted to avail the rights u/s.28 of Specific Relief Act for recession of contract. The Court is always empowered u/s.28 of Specific Relief Act to grant extension of time for deposit of purchase money.

11. It, therefore, necessarily follows that the maximum time limit of 30 days stipulated u/s.148 of CPC does not bar the Court from

extending the time beyond 30 days. If the Court is satisfied that the applicant has made out a case for enlargement of time, it can always enlarge the time in exercise of its power u/s.28 of Specific Relief Act regardless of the provisions of Section 148 of CPC. As such, I find no jurisdictional error committed by the Court below in allowing the application in IA No.732 of 2016 extending the time for deposit of the balance sale consideration with interest and in dismissing IA No.914 of 2017 to rescind the contract of sale.

12. In the result, both the Civil Revision Petitions are dismissed confirming the orders impugned. However, in the circumstances of these cases, the parties shall bear their respective costs. Miscellaneous applications, if any pending in these revision petitions shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 17.01.2022
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