
(2000) 03 AP CK 0075
In the Andhra Pradesh High Court
Case No : CRP No. 3275 of 1996

Katragadda Vijaya Lakshmi	Vs	APPELLANT
Alla Bhavannarayana		RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148
Limitation Act, 1963 — Article 54

Citation : (2000) 3 ALD 487 : (2000) 3 ALT 541 : (2000) 3 APLJ 48

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Mr. K.V. Satyanarayana, for the Appellant; Mr. V.V. Prabhakar Rao, for the Respondent

Judgement

1. This revision arises out of the order dated 8-7-1996 in IA No.428 of 1996 in OS No.22 of 1993 on the file of the Court of I Additional District Munsif, Machilipatnam, refusing to extend time for deposit of the sale consideration as directed in the decree for specific performance obtained by the petitioner (plaintiff) decree holder.

2. The revision petitioner obtained a decree for specific performance against the respondent in OS No.22 of 1993. The operative portion of the judgment reads as under:

"The defendant is directed to execute a regular sale deed after receipt of the balance of sale consideration with interest at 12%p.a., from 15-8-1983 after getting the site measured as agreed in Ex.A1 contract of sale. The plaintiff is directed to deposit the balance of sale consideration after due measurement of the site and after deducting the part payments made under Exs.A2 to A5 and counter interest thereof and also by deducting the amount already deposited in Court within two months from the date of this judgment. Both parties are directed to file calculation memoranda to that effect on or before 15-4-1996. No costs".

3. In accordance with the direction given revision petitioner filed a calculation memo on 15-4-1996, but the respondent did not file calculation memo on or before 15-4-1996, as directed in the judgment. Revision petitioner filed a copy application for decree and judgment on 12-5-1996 and copy thereof was furnished to him on 3-7-1996. The relevant clause in the decree reads as under:

"That the defendant be and same is hereby directed to execute a regular sale deed after receipt of the balance of sale consideration with interest at 12%p.a., from 15-9-1983 after getting the site measured as agreed. It is further ordered that the plaintiff do deposit the balance of sale consideration of Rs.4,691-25 ps., per the calculation memorandum filed for plaintiff within two months from this date, that the calculation memo filed by plaintiff be attached to decree."

4. Since the decree is dated 10-4-1996, time of two months granted as per the decree stood expired by 10-6-1996. Therefore revision petitioner filed IA No.428 of 1996 on 4-7-1996, seeking extension of time along with lodgment schedule. The said petition was dismissed by the order under revision. Hence this revision.

5. The contention of the learned Counsel for the revision petitioner is that the judgment contemplated measurements being taken as per the agreement and calculation memos being filed by both sides as per the measurements on or before 15-4-1996 and since the obligation of getting the suit site measured was on the respondent as per the agreement, and since the respondent was not cooperating, for taking measurements, revision petitioner filed a calculation memo within the time mentioned in the judgment, not as per actual measurement, and the respondent did not file a calculation memo and so the revision petitioner was not aware as to what amount, according to the respondent, is due from him, and that immediately after receiving a copy of the decree he filed a petition for extension of time u/s 148 CPC, and placing strong reliance on *Metta Rama Bhatlu v, Metta Annayya Bhatlu* 1949 MLJ 152 ; *Sardar Mohar Singh v. Mangilal @ Mangtya* 1997 (1) Scale 611 and *Mandavilli Sujatha Vs. Baratam Vykuntarao and others*, , contended that the Court has ample power to extend the time and for the reasons mentioned the Court below, ought to have extended the time for deposit. The contention of the learned Counsel for the respondent is that since the application for extension of time is not filed within the time, the trial Court has rightly dismissed petition. Strong reliance has been placed on *Durga Mhoan Hoshi Vs. International Metal Industries and Others*, and *V.S. Palantchamy Chettiar Firm v. C.Alagappan*, 1999 (1) Supreme 389, in respect of the contention that Court has no power to extend time.

6. *Durga Mohan Joshi's* case (supra) relied upon by the learned Counsel for the respondent has no application to the facts of this case, as it relates to extension of time granted in an instalment decree where it is held that Section 148 CPC applies only to orders passed by a Court while it still retains control over the matter and when once a decree is passed, the Court completes its task qua that matter and does not retain any further control over the proceedings. Hence the provisions of Section 148 cannot apply to final decrees of any Court.

7. The Supreme Court in *Yeshoda and Another Vs. K. Nagarajan*, , held that the Court has power u/s 148 to enlarge the time for payment of balance of sale consideration after expiry of the time stipulated under the decree. The said judgment of the Supreme Court was referred to in *Mandavilli Sujatha's* case (supra). In view of the decision of Supreme Court relating to power of Court to extend time in a decree for specific performance, the decision in *Durga Mohan Joshi's* case (supra) relied on by the respondent's Counsel, which relates to extension of time granted in an instalment decree, cannot be of help to the respondent.

8. In *V.S. Palanichamy Chettiar Firm's* case (supra) relied on by the learned Counsel for respondent, the Supreme Court in Paragraphs 16 and 17 at Page 395 observed as follows:

"(16): In view of the decision of this Court in *Ramankutty Guptan 's* case (supra) when the trial Court and the executing Court are same, executing Court can entertain the application for extension of time though the application is to be treated as one filed in the main suit. On the same analogy, the vendor judgment-holder can also seek rescission of the contract of sale or take up this plea in defence to bar the execution of decree. One of the grounds on which the trial Court dismissed the execution application was that the decree holder did not pay the balance of consideration as per the sale agreement and also did not pay within the time stipulated by the Court in the decree. High Court could have certainly gone into this question when applications for extension of time was filed before it. However, on the objection by the judgment debtor, it chose to send back the matter to the executing Court for decision on these applications, which was perhaps, in circumstances, was not correct procedure to adopt. But then, at the same time, the High Court put shackles on the discretion of the executing Court by observing that vendor might have felt that after the appeal filed by the vendor judgment holder against the decree for specific performance was disposed of they can even then deposit the amount or at the time of seeking the execution of the sale deed.

"(17): The agreement of sale was entered into as far back on February 16, 1980, about 19 years ago. No explanation is forthcoming as to why the balance amount of consideration could not be deposited within time granted by the Court and why no application was made u/s 28 of the Act seeking extension of time of this period. Under Article 54 of the Limitation Act, 3 years period is prescribed for filing the suit for specific performance of contract of sale from the date of the agreement or when the cause of action arises. Merely because a suit is filed within the prescribed period of limitation does not absolve the vendee-plaintiff from showing as to whether he was ready and willing to perform his part of agreement and if there was non-performance was that on account of any obstacle put by the vendor or otherwise. Provisions to grant specific performance of an agreement are quite stringent.....That being the position of law for filing the suit for specific performance, can the Court as a matter of course allow

extension of time for making payment of balance amount of consideration in terms of a decree after 5 years of passing of the decree by the trial Court and 3 years of its confirmation by the Appellate Court? It is not the case of the respondent decree holder that on account of any fault on the part of the vendor judgment debtor, the amount could not be deposited as per the decree. That being the position, if now time is granted, that would be going beyond the period of limitation prescribed for filing of the suit for specific performance of the agreement though this provision may not be strictly applicable."

The ratio in that case shows that the Court has power to grant extension of time, in appropriate cases. The said decision, in fact, goes against the contention of the learned Counsel for respondent that Court has no power to extend the time for payment of money granted in a decree for specific performance.

9. In this case the judgment contemplated calculation memos to be filed by both sides on or before 15-4-1996 after measurements are taken. Revision petitioner filed calculation memo within the time specified, but the respondent has not filed the calculation memo, what is the amount that has to be paid could be known to the revision petitioner only after a copy of the decree was received by her. It is also the contention of the revision petitioner that the entry in Court diary does not show that time was fixed by Court for deposit of money, and that she came to know that two months time, from the date of judgment, was granted only after receiving a copy of the decree.

10. Revision petitioner could know the amount she has to deposit only after receiving a copy of the decree. She was furnished with a copy of the decree on 3-7-1996. This petition is filed immediately on the next day i.e., 4-7-1996. In the above circumstances it has to be held that revision has shown sufficient ground to seek extension of time.

11. In *Sardar Mohar Singh v. Mangilal @ Mangtya* (supra), it is held that even after expiry of time fixed the Court has power to enlarge time. In the circumstances of the case I am of the view that petitioner is entitled to seek extension of time for depositing balance sale consideration payable by her as per the decree.

12. Therefore, the order under revision is set aside, and the IA No.428 of 1996 in OS No.22 of 1993 on the file of the Court of I Additional District Munsif, Machilipatnam, stands allowed. The revision petitioner is directed to deposit the amount within (15) days from today. No costs.