

(2016) 07 KAR CK 0128
In the Karnataka High Court
Case No : C.R.P. No. 430 of 2011

Sri. G.H. Yallappa

APPELLANT

Vs

M/s Sahara Minorities Educational and Welfare Trust Office

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 23 Rule 3

Citation : (2017) 2 AirKarR 114 : (2017) 2 ICC 366

Hon'ble Judges : Mr. S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : Sri. B.S. Murali, Advocate, for the Petitioner; Sri. Janardhana. G., Advocate, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

Mr. S.N. Satyanarayana, J.—The Judgment Debtor in Execution Petition No. 119/2011 on the file of I Additional Senior Civil Judge, Davanagere has come up in this revision impugning the order dated 02.12.2011 wherein the Judgment Debtor is directed to execute the sale deed as per the compromise decree passed in O.S. No.250/2007.

2. Brief facts leading to this revision petition are as under:

The Judgment Debtor is defendant in O.S. No.250/2007 filed on the file of I Addl. Civil Judge (Sr. Dvn.) Davanagere for the relief of specific performance of the agreement dated 21.08.2006. This suit ended in a compromise decree on 22.12.2009. The compromise petition which was filed in the said suit is produced and marked as Annexure A to this proceedings. In terms of the compromise the defendants in the said suit i.e., the revision petitioners herein had agreed to convey an extent of 1 acre 38 gantas of land in Sy.No.143/1B 1P3 and Sy. No.143 2B 1P6 of Davanagere standing in the name of second defendant for the valuable consideration agreed between them as per the compromise petition.

3. In the said compromise petition three months time was stipulated to the

plaintiff for securing necessary permission to get the sale deed executed in its favour. The said condition is stipulated in clause "j" of the compromise petition. Wherein, in the alternative the plaintiff was given an opportunity to get the sale deed executed in favour of any person of its choice, in the event the plaintiffs not able to secure necessary permission from the competent authority within three months. With reference to the sale deed that is required to be executed in favour of any person of plaintiffs" choice, no time is stipulated in clause "j" of the compromise petition. However, learned counsel appearing for Judgment Debtor who are defendants in the court below tried to substantiate that the period of three months should be construed in such a way that the said period includes the second option also. However, the reading of said clause would indicate that was not the intention of parties at the time of entering into the compromise.

4. In clause "j" there is further condition to the effect that the three months time stipulated to secure permission from competent authority for getting sale deed executed in favour of plaintiff does not come in the way of balance sale consideration which is agreed at Rs. 6,11,750/- to be deposited in the court below. If this is the only condition for consideration, probably the defendants in the court below have lesson to resend the compromise on the ground that terms are not adhered to. However, in the very same compromise petition there is another clause which provides for penalty in the case of default with reference to payment of balance sale consideration within the time stipulated. The said clause is regarding payment of interest at 12% on delayed payment i.e., from 22.02.2010 till the date of deposit of entire amount.

5. In the instant case it is seen that the plaintiffs were not able to secure necessary permission for completion of sale transaction in favour of plaintiff within the stipulated time. However, it is seen that subsequently i.e., after the expiry of first part of the time stipulated in the compromise petition they were able to secure permission from the competent authority. Thereafter they have sought for execution of sale deed in their favour. While doing so, the}7 have deposited the balance sale consideration belatedly i.e., on 05.04.2011 with delay of roughly 1 year 1 month for which it is stated that interest at 12% is calculated and deposited. If that is so, it is clearly seen that in view of non-performance of the clause "j" of the compromise petition the plaintiffs in the original suit have bound themselves for penalty provision under clause "g" of the compromise. Therefore, it is contended that the compromise petition is adhered in its strict sense. Therefore, there is compliance of the terms of compromise which is accepted by the court below and accordingly, in execution proceedings levied by the plaintiff a direction is issued to execute the sale deed by order dated 02.12.2011, which is impugned in this proceedings.

6. Heard the learned counsel for the revision petitioner who tried to substantiate the grounds urged in contending that the delayed payment is not acceptable is supported by judgment rendered by Apex Court in the matter of Bhupinder Kumar v. Angrej Singh reported in (2009) S SCC 766.

7. On going through the said judgment it is clearly seen that the same is with reference to the right of the defendant in original suit seeking to resend the agreement even after the suit is concluded in passing a decree if there is no adherence to the terms of decree in its strict sense. But in the instant case the facts are slightly different from the facts which are seen in the judgment referred supra.

8. Here is a case where the decree is not passed on merits, on the contrary it is a compromise decree which is passed on the basis of compromise petition filed by both the parties. Therefore, the decree passed will have to be accepted and understood in the terms and conditions of the compromise entered into between the parties. When that is looked into, as observed supra, the default committed in complying with clause "j" would automatically invoke penalty provision as provided under cause "g" of the compromise petition. Therefore, when the plaintiffs who are decree holders in the court below have complied with the terms stipulated under clause "g" there is compliance of terms of compromise and therefore parallel cannot be drawn to the facts in the aforesaid reported judgment to the dispute on hand.

9. In that view of the matter, the aforesaid judgment would not enure to the benefit of the revision petitioner who is defendant in the original suit and judgment debtor in execution proceedings to seek resending of the original agreement of sale and also the compromise which was entered into between the parties on 22.02.2010. Accordingly, this revision petition is disposed of holding that the same does not merit consideration in challenging the order dated 02.12.2011 passed in Execution Petition No. 119/2011 on the file of I Addl. Senior Civil Judge, Davanagere.