

Sardar Mohar Singh Through Power of Attorney Holder, Manjit Singh

Vs

Mangilal alias Mangtya

Slp (C) No. 2283 of 1997

(K. Ramaswamy, S. C. Agarwal, G. T. Nanavati, S. Saghir Ahmed, G. B. Pattanaik JJ)

15.01.1997

ORDER

1. Delay condoned.

2. This special leave petition arises from the judgment of the learned Single Judge of the Madhya Pradesh High Court, made on 4-10-1996 in Civil Revision No. 394 of 1996. The petitioner had entered into a contract with the respondent for sale of agricultural lands in Khasra Nos. 52, 61, 73, a 74, 79, admeasuring 3-533, 0-166, 1-437, 0.384, 0.202 hectares and also an agreement to sell dated 7-7-1977 in respect of lands situated in Village Khode, for a consideration of Rs. 25,000. The respondent failed to perform his part of the contract and, therefore, the petitioner filed a suit bearing Civil Suit No. 9-A of 1978 in the Court of ADJ, Mandleshwar. The trial court granted a decree for specific performance on 18-11-1987 directing the respondent to refund the earnest money of Rs. 15,000 and also damages quantified in the sum of Rs. 2000, as agreed in the contract, within a period of three months and in default to execute the sale deed. The respondent filed applications to rescind the decree in execution and he sought extension of time for compliance. The executing court by order dated 15-3-1996 allowed both the applications of the respondent and directed him to deposit the amount within three days from that date. In revision, the High Court, while upholding that order, has, in addition to the direction of the lower court, directed the respondent to deposit a further sum of Rs. 16,000 to compensate the petitioner for loss of enjoyment of money. Thus, this special leave petition.

3. Shri R. S. Suri, the learned counsel for the petitioner, contended that in view of the inordinate delay of 7 1/2 years in making the application and in view of the finding given by the executing court that no proper explanation was given by the respondent for the delay, the execution court as well as the High Court committed an error of law in directing extension of time there being no proper explanation. The High Court also was wrong in its conclusion that the decree can be treated to be a preliminary decree and, therefore, the direction can be granted in the final decree. It is also contended that the court has no power to extend time. We do not find force in any of these contentions. It is seen that sub-section (1) of Section 28 of the Specific Relief Act, 1963 (for short "the Act") gives right to the judgment-debtor to file an application to rescind the contract. It reads as under :

"28. (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."

4. From the language of sub-section (1) of Section 28, it could be seen that the court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes functus officio. The very fact that Section 28 itself gives power to grant order of rescission of the decree would indicate that till the sale deed is executed in execution of the decree, the trial court retains its power and jurisdiction to deal with the decree of specific performance. It would also be clear that the court has power to enlarge the time in favour of the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance. In spite of an application for rescission of the decree having been filed by the judgment debtor and rejected. In other words, the court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance. It is true that the respondent has not given satisfactory explanation of every day's delay. It is not, unlike Section 5 of the Limitation Act, an application for condonation of delay. It is one for extension of time. Under these circumstances, the executing court as well as the High Court had exercised discretion and extended the time to comply with the conditional decree. Accordingly, we do not find any valid and justifiable reason to interfere with the order passed by the High Court confirming the order of the executing court when in particular, the High Court has further enhanced a sum of Rs. 16,000 to compensate the petitioner for loss of enjoyment of the money. The said amount is given to the respondent in a sum of Rs. 16,000 rightly for the reason that parties contracted for non-performance of the contract. They quantified the damages at Rs. 2000 for 8 years. The Court has given Rs. 16,000 obviously in terms of the contract.

5. The special leave petition is dismissed.