

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

THURSDAY, THE 29TH DAY OF JULY 2021 / 7TH SRAVANA, 1943

CRP NO. 608 OF 2019

AGAINST THE ORDER/JUDGMENT IN OS 107/2010 OF SUB COURT,

PAYYANNUR, KANNUR

REVISION PETITIONER/S:

M.K.RAGHAVAN

AGED 62 YEARS

S/O.KANNAN KOMARAM, PAYYANNUR AMSOM, MAMBALAM DESOM,
PAYYANNUR POST, KANNUR DISTRICT-670307.

BY ADVS.

M.SASINDRAN

SRI.SATHEESHAN ALAKKADAN

RESPONDENT/S:

SEERAKATH MARIYAM BEEVI

D/O.LATE N.P.MUHAMMED HAJI, PAYYANNUR AMSOM,
THAYINERI DESOM, KANNUR DISTRICT-670307.

BY ADVS.

SRI.KALEESWARAM RAJ

SRI.VARUN C.VIJAY

SMT.MAITREYI SACHIDANANDA HEGDE

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 8.7.2021, THE COURT ON 29.07.2021 DELIVERED THE FOLLOWING:

V.G.ARUN, J.

C.R.P.No. 608 of 2019

Dated this the 29th day of July, 2021

O R D E R

Revision petitioner is the plaintiff in O.S.No.107 of 2010 on the files of the Subordinate Judge's Court, Payyannur. The suit was filed for a decree of specific performance directing the respondent to execute sale deed in terms of the agreement dated 22.8.2008. During the pendency of the suit, the parties arrived at a settlement and the lower court rendered judgment and decree in terms of the settlement. As per the terms of the compromise decree, the sale consideration was fixed at Rs.70 lakhs, out of which Rs.5 lakhs had already been paid to the defendant. The balance sale consideration was to be paid off by depositing Rs.25 lakhs in the defendant's account on or before 30.1.2018 and Rs.40 lakhs, on or before 31.3.2018. Thereupon, the sale deed was to be registered in the plaintiff's favour. It was also stipulated that on failure of the plaintiff to deposit the balance amount, the defendant could adjust the advance amount of Rs.5 lakhs towards the loss sustained by him and the plaintiff's right to get back the amount will stand forfeited.

2. The petitioner failed to pay the amount of Rs.65 lakhs towards the balance sale consideration within time. Instead, he caused a lawyer notice dated 28.4.2018 to be issued, requiring the defendants to hand over the original documents of the property for raising funds. The defendants issued reply notice on 9.5.2018 stating that handing over of original documents was not part of the agreement and that the plaintiff had already breached the terms of the agreement. Thereafter, the petitioner filed I.A.No. 499 of 2018 under Section 28(1) of the Specific Relief Act, 1963 seeking extension of time for paying the balance sale consideration. The respondent opposed the prayer for extension, contending that the court having rendered a compromise decree, extension of time at the instance of one party will amount to varying of the decree unilaterally. By the impugned order, the court below dismissed the application for extension, holding that a compromise decree is passed based on the agreement between the parties and the terms of the said agreement cannot be varied without the consent of both parties.

3. Heard Sri.Satheesan Alakkadan, learned counsel for the petitioner and Sri.Kaleeswaram Raj, learned counsel for the respondent.

4. Learned counsel for the petitioner assailed the finding in the

impugned order contending that the contract between parties does not get extinguished by the court passing the decree for specific performance. Such a decree being preliminary in nature, the suit is deemed to be pending even after the decree. Relying on the decision in **Smt.Periyakkal and Others v. Smt.Dhakshyani** [AIR 1983 SC 428], it is contended that the agreement between the parties gets merged with the order of the court and hence the court's freedom to act in furtherance of the ends of justice is not curtailed by the compromise. The decision of the Apex Court in **Kumar Dhirendra Mullick and others v. Tivoli Park Apartments (P) Ltd.** [(2005) 9 SCC 262] is cited to contend that while exercising power under Section 28(1) of the Specific Relief Act, the court does not become *functus officio* after granting the decree for specific performance.

5. Learned counsel for the respondent drew attention to the stipulation in the agreement that, failure to deposit the balance sale consideration would result in the advance sale consideration of Rs.5 lakhs received by the respondent being adjusted towards the loss sustained by him and the petitioner not being entitled to get back the amount. It is argued that in the light of the said self working stipulation, the petitioner is not entitled for extension of time. Support for the proposition is sought to be garnered from the

decision of the Apex Court in **Gupta Steel Industries v. Jolly Steel Industries Pvt.Ltd and another** [(1996) 11 SCC 678] and of this Court in **Kappothoora Chandran and others v. N.Mustafa** [(2011) 3 KLT 245].

6. Section 28 of the Specific Relief Act provides for rescission of contract in certain circumstances, the specific performance of which has been decreed. Sub-section (1) of Section 28, which is contextually relevant, reads as under;

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.

(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.

(2) xx xx xx”

On a reading of the Section, it is evident that the court which passed the decree has the power to extend the time for payment of the

purchase money. Here, the question is whether such power could be exercised in cases where the specific performance decree is based on a compromise agreement containing self operative clauses, between the parties. In **Periyakkal (supra)**, suit for recovery of money was decreed based on compromise. An application for extension of time stipulated in the decree was filed under Section 148 CPC the Apex Court held as follows;

“4.The parties, however, entered into a compromise and invited the court to make an order in terms of the compromise, which the court did. The time for deposit stipulated by the parties became the time allowed by the court and this gave the court the jurisdiction to extend time in appropriate cases. Of course, time would not be extended ordinarily, nor for the mere asking. It would be granted in rare cases to prevent manifest injustice. True, the court would not rewrite a contract between the parties but the court would relieve against a forfeiture clause; And, where the contract of the parties has merged in the order of the court, the court's freedom to act to further the ends of justice would surely not stand curtailed.....”

7. This Court in **Kappothoora Chandran** (supra), held that the relief extended in **Periyakkal** was based on the peculiar facts of that case and cannot be made applicable in cases where there are self working clauses in the decree. In **Kumar Dhirendra Mullick** (supra), the Apex Court granted extension of time for payment finding that the decree in question was not a self operative final

decree. In **Compack Enterprises India (P) Ltd. v. Beant Singh** [2021 SCC OnLine SC 97], the Apex Court, after a detailed precedential survey, held that the courts would be slow to unilaterally interfere in, modify, substitute or modulate the terms of a consent decree, unless it is done with the consent of all the parties thereto. It was also observed that the above proposition is far from absolute and does not apply as a blanket rule and that a consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation or mistake.

8. The terms of the compromise decree in the instant case required the petitioner to pay Rs.25 lakhs on or before 30.1.2018 and Rs.40 lakhs, before 31.3.2018. The petitioner neither paid the amounts within time, nor seek extension before expiry of the period stipulated in the decree. By the time the application for extension was filed, the self operative clause had come into effect, resulting in the advance amount of Rs.5 lakhs paid by the petitioner being forfeited. Being so, extension of the time will definitely amount to rewriting of the terms of the compromise, which the court cannot do even in exercise of the power under Section 28(1) of the Specific Relief Act. Therefore, the general proposition that the court which passed the decree for specific performance does not become *functus officio* and has the power to extend the period of payment of

purchase price, will not apply. Hence, the court below was justified in rejecting the application for extension of time.

For the reasons aforementioned, the civil revision petition is dismissed.

**Sd/-
V.G.ARUN, JUDGE**

vgs