

Anand Narayan Shukla

v.

Jagat Dhari

(Civil Appeal No. 7355 of 2026)

08 May 2026

[Manoj Misra* and Manmohan JJ.]

Issue for Consideration

Issue arose whether the decree of specific performance passed by the trial court merged in the order of the appellate court even though the appellate court dismissed the appeal for non-prosecution; whether respondent's application u/s.28 of the Specific Relief Act, 1963 was maintainable after the Court had granted permission to make deposit of the balance amount and, pursuant thereto, the amount was also deposited; and whether the rescission of the contract and consequential dismissal of the execution application vitiated by a pedantic approach of the courts below as they failed to consider the facts and circumstances of the case as also whether the decree could be saved by compensating the judgment-debtor for the delay in deposit of the balance sale consideration.

Headnotes[†]

Specific Relief Act, 1963 – s.28 – Rescission of a contract – Suit for specific performance of an agreement for sale of immovable property – Trial court directed the appellant to pay balance of the sale consideration to the respondent within a month and on payment, the respondent to execute and register the sale deed – However, the balance amount not paid to the judgment debtor nor the same was deposited in Court – First respondent filed appeal – Appellant applied for execution of the decree which gave rise to execution case – Execution court while fixing the date directed decree holder to deposit the amount in Court – Amount deposited – Judgment debtor applied for rescinding the contract and dismissing the execution application for non-deposit of the balance amount within the specified period – Execution court held that as the

* Author

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amount was not deposited within the stipulated time as per the condition of the decree, the decree cannot be executed and dismissed the execution case – Thereagainst, revision petition filed which was dismissed – Correctness:

Held: For there to be a merger of the trial court decree in the appellate court decree, there must be an adjudication on merits, though it is immaterial whether the decree or order under appeal is set aside or modified or simply confirmed – Dismissal of the appeal for non-prosecution would not merge the trial court decree in the order of the appellate court – No dispute that the appeal of judgment-debtor was dismissed for non-prosecution, thus, there would be no merger of the trial court decree in the appellate court order – Order of the Execution Court, permitting deposit did not determine the rights of the parties *qua* rescission of the contract – Rather, the deposit was permitted just to test the *bona fides* of the decree holder in pursuing the execution – Though such deposit becomes a relevant factor for determining whether the decree holder had been throughout ready and willing to perform his obligation under the contract/decreed, it would not extinguish the right of the judgment debtor to seek rescission of the contract – By permitting the decree holder to make deposit to show his *bona fides*, the Court did not foreclose the right of the judgment debtor to seek rescission of the contract u/s.28 – Neither the Execution Court nor the High Court took into consideration that though the decree fixed a time frame for deposit of the balance consideration, it did not provide for the consequences of failing to adhere to the time schedule – In such circumstances, there could be no automatic rescission of the decree for specific performance – Thus, the Court while exercising its power u/s.28 was required to consider whether the decree was liable to be rescinded or the decree holder was entitled to get extension of time up to the date of deposit in Court – Though, while granting the relief of extension, it was open for the Court to balance the equities by putting the decree holder to such terms as may adequately compensate the judgment debtor for the delay – Neither the Execution Court nor the High Court has considered the matter in proper perspective and in accord with the settled principles governing the exercise of power u/s.28 of the 1963 Act, thus both the impugned orders set aside. [Paras 22, 23, 40, 41]

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Doctrines – Doctrine of merger – Meaning – Application of – Discussed. [Para 21]

Specific Relief Act; 1963 – s.28 – Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed – Legal principles guiding the exercise of power u/s.28 – Stated. [Para 33]

Case Law Cited

Kunhayammed and Others v. State of Kerala and Another [2000] **Supp. 1 SCR 538 : (2000) 6 SCC 359**; *Chandi Prasad & Ors. v. Jagdish Prasad & Ors.* [2004] **Supp. 4 SCR 942 : (2004) 8 SCC 724**; *State of Kerala & Anr. v. Kondottyparambanmoosa & Ors.* [2008] **11 SCR 957 : (2008) 8 SCC 65**; *Sardar Mohar Singh v. Mangilal* [1997] **1 SCR 297 : (1997) 9 SCC 217**; *K. Kalpana Saraswathi v. P.S.S. Somasundaram Chettiar* [1980] **2 SCR 293 : (1980) 1 SCC 630**; *Bhupinder Kumar v. Angrej Singh* [2009] **13 SCR 978 : (2009) 8 SCC 766**; *Ramankutty Guptan v. Avara* [1994] **1 SCR 542 : (1994) 2 SCC 642**; *V.S. Palanichamy Chettiar Firm v. C. Alagappan & Anr.* [1999] **1 SCR 349 : (1999) 4 SCC 702**; *Ishwar (Since Deceased) Thr. Lrs and Others v. Bhim Singh and Another* [2024] **9 SCR 1 : 2024 SCC OnLine SC 2338**; *Ram Lal v. Jarnail Singh* [2025] **2 SCR 1745 : 2025 SCC OnLine SC 584**; *P.R. Yelumalai v. N.H. Ravi* [2015] **4 SCR 163 : (2015) 9 SCC 52**; *Johri Singh v. Sukhpal Singh and others* [1989] **Supp. 1 SCR 17 : (1989) 4 SCC 403 – referred to.**

List of Acts

Constitution of India; Specific Relief Act; 1963; Code of Civil Procedure, 1908.

List of Keywords

Rescission of the contract; Doctrine of merger; Delay in deposit of the balance sale consideration; Suit for specific performance of an agreement for sale; Execution and registration of sale deed; Dismissal of the appeal for non-prosecution; Readiness and willingness to perform obligation under the contract; Foreclosure of right to rescission of the contract; Rescission of the decree for specific performance; Relief of extension.

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Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7355 of 2026

From the Judgment and Order dated 05.03.2025 of the High Court of Madhya Pradesh Principal Seat at Jabalpur in MP No. 4682 of 2023.

Appearances for Parties

Advs. for the Appellant(s):

Saurabh Mishra, Sr. Adv., Sanchit Garga, Sankalp Mishra, Shashwat Jaiswal.

Advs. for the Respondent(s):

Ajay Marwah, Swaroopanada Mishra, Mrigank Bhardwaj, Ms. Dhriti Sharma, Rahul Kumar.

Judgment / Order of the Supreme Court

Judgment

Manoj Misra, J.

1. Leave granted.
2. This appeal impugns the judgment and order of the High Court of Madhya Pradesh at Jabalpur¹, dated 05.03.2025, passed in Misc. Petition No. 4682 of 2023, whereby appellant's petition against the order of 7th Additional District Judge, Satna², dated 12.07.2023, passed in Execution Case No. 27A/2017, was dismissed.

Facts

3. Appellant instituted a suit, *inter alia*, for specific performance of an agreement for sale of immovable property dated 14.11.2011. Under the agreement the respondent agreed to sell 3.75 acres of land @ Rs.16,00,000 per acre, against which, Rs. 2,50,000 was paid by way of advance. Trial Court decreed the suit on 03.03.2017 and thereby directed the appellant to pay balance of the sale consideration to the

1 The High Court

2 The Execution Court

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first respondent (i.e., Defendant No.1) within a month, or to deposit the same in Court. It was also directed that on such payment/ deposit, the first respondent shall execute and register the sale deed.

4. Pursuant to the decree, *vide* notice dated 01.04.2017, the appellant called upon the judgment-debtor to execute the sale deed by receiving Rs. 57,50,000 (i.e., the balance amount) or else face execution of the decree of which costs would have to be borne by him. However, neither the balance amount was paid to the judgment debtor nor the same was deposited in Court within the stipulated period.
5. In the meantime, first respondent filed an appeal (i.e., First Appeal No. 311 of 2017) against the Trial Court decree.
6. As there existed no stay on execution of the decree, on 18.07.2017 the appellant applied for execution of the decree which gave rise to Execution Case No.27 of 2017. In paragraph 7 of the execution application, it was stated:

“7. ... The plaintiff-decree-holder personally wanted to give the remaining amount of Rs. 57,50,000/- to the judgment debtor, but he did not accept it, then on 01.04.2017, the judgment debtor/defendant was informed by giving notice through the Advocate that after receiving the remaining amount of Rs. 57,50,000/- from the decree-holder, he should execute and register the sale deed in compliance with the sale agreement regarding the contracted land, but the judgment debtor did not even comply with the notice, due to which this application is being presented in the Court. The decree-holder is ready to deposit the amount of Rs. 57,50,000/- payable to the judgment debtor in the Court which should be deposited by the decree-holder and by giving the amount to the judgment-debtor, the sale deed should be executed and registered by the judgment debtor and in case this is not done, the amount should be deposited in the Court and the contracted land should be registered in favour of the decree-holder.”

7. On 19.07.2017, the Execution Court passed the following order:

“Execution obtained from the office.

On behalf of the decree-holder/plaintiff, Shri R.L. Shukla,
Advocate. Judgment debtor absent.

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The execution is known to be within the jurisdiction of this Court. Therefore, it should be registered.

Amount should be duly paid by decree-holder and notice should be issued to judgment debtor. The next date for hearing fixed on 06.12.2017.”

8. Thereafter, multiple dates were fixed (i.e., 06.12.2017, 06.04.2018, 10.01.2019, 23.04.2019, 08.05.2019, 13.08.2019 and 28.11.2019). On 6.12.2017, 06.04.2018 and 10.01.2019 though the Court noticed that the judgment debtor is not served, yet it observed that the decree-holder should pay the due amount to the judgment debtor. Interestingly, no order was passed on those dates to deposit the due amount. On 23.04.2019, the Execution Court, while fixing 08.05.2019 as the next date, for the first time directed the decree holder to deposit the amount in Court. However, on the next date i.e., 08.05.2019, upon noticing that the judgment debtor is not served, the Court while fixing the next date i.e., 13.08.2019, surprisingly did not take notice of its earlier order dated 23.04.2019 and again ordered payment to the judgment debtor. On 13.08.2019, the Court noticed that service of summons was not effected and, therefore, directed taking of fresh steps to serve summons on the judgment debtor, while fixing 28.11.2019 for his as well as decree-holder's appearance to enable deposit of the balance amount. On 28.11.2019, again the Court noticed that steps to serve the judgment-debtor were not taken, therefore, while fixing 27.04.2020 as the next date, it directed the decree-holder to take steps within three days. Simultaneously, it ordered that if steps are taken, notice shall be issued to the judgment-debtor to ensure his presence so that the decree holder could make deposit of the amount payable under the decree in the presence of judgment debtor. In between, lockdown was ordered due to Covid-19 pandemic, as a result the matter could be taken not before 26.11.2020. On 26.11.2020, after perusing the records, it was ordered thus:

“The judgment and decree passed earlier are conditional and as per the condition, the said amount was to be deposited within one month, hence first of all it has to be decided whether the said judgment and decree can actually be implemented in the present circumstances and it will take time to take the above decision. Therefore, in such

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a situation, first of all the decree-holder/plaintiff is directed to deposit the amount of Rs. 57,50,000 (Fifty Seven Lakh Fifty Thousand Rupees) today itself and submit the receipt to the court by 05.00 PM of the day so that it can be ascertained whether the decree-holder actually wants to deposit the said amount even today.

An application was also submitted on behalf of the decree-holder to the effect that the passed judgment and the decree be implemented and along with the application, a photocopy of the order passed in the First Appeal No. 311/17 made before the Honorable High Court, Jabalpur, along with the documents as per the list, was submitted.

Please appear at 04:45 pm for proceeding in compliance with the order of the case.”

9. After the above order was passed, the decree-holder deposited Rs.57,50,000 in the concerned Section of the Court *vide* Cheque Nos. 840602 to 840607. In consequence, when the matter was taken up later in the day of 26.11.2020, it was ordered thus:

“In compliance with the order, a total of 06 cheques of Rs. 57,50,000/- i.e., cheque Nos. 840602 to 840607 have been deposited in the Nazarat Section/ Registry Section, Satna on behalf of the decree-holder and in this regard, the District Nazir, appearing in the court, has expressed his consent and stated that the above cheques will be presented by him in the Bank for payment and thereafter the said amount will come in the CCD account. Therefore, the District Nazir is directed to immediately report the said amount to this Court after it is deposited in the CCD account.

The case should be presented on 04.12.2020 for presentation of information regarding deposit of amount and for taking action as per the judgment and decree.”

10. After the deposit was made, the Execution Court proceeded to consider whether the decree could be executed despite the delay in deposit of the balance amount. To consider the said issue, the matter was adjourned from one date to the other. Ultimately, on 10.12.2022, the following order was passed:

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“Mr. R.L. Shukla Advocate for decree-holder is present.

Mr. I.S. Singh Advocate for the judgment debtor is present.

The judgment debtor is directed to comply with the judgment and decree and submit the necessary representation on the next date.

The case should be presented on 10.01.2023 for further action in compliance with the judgment and decree.”

11. Thereafter, on 10.01.2023, the Court ordered thus:

“Mr. R.L. Shukla Advocate for decree-holder is present.

Mr. I.S. Singh Advocate for the judgment debtor is present.

Time was sought on behalf of the judgment debtor to take necessary advance action in compliance of the judgment and decree, which is given after consideration of the case with the direction to submit a report on the next date after necessarily complying with the judgment and decree.

The judgment debtor is given a last opportunity to comply with the judgment and decree.

The case should be presented on 30.01.2023 for further action in compliance with the judgment and decree.”

12. On 30.01.2023, the judgment-debtor filed an application claiming, *inter alia*, that no information was given to him in the matter. Though the advocate representing him in the original suit had appeared, he gave no information to him. In response to the said application, on behalf of the decree-holder / appellant, it was submitted that the advocate concerned had been representing the judgment debtor since 2020, and therefore, such objection is unwarranted. However, the Court, after perusing the record, passed the following order:

“Since in this case no notice letter is found to have been issued to the judgment debtor and no Vakalatnama has been presented by their Advocate. Therefore, notice letter should be issued to the judgment debtor on presenting the amount along with a copy of the execution application.

The case should be presented for the presence of the judgment debtor on 10.02.2023.”

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13. Pursuant to the above order, on 14.03.2023, the judgment debtor formally put in his appearance in the proceeding and applied for rescinding the contract and dismissing the execution application for non-deposit of the balance amount within the period specified by the decree. In response, the decree-holder submitted an application that the deposit of Rs. 57,50,000 made by him be accepted, and the sale deed be executed in his favour.
14. On 12.07.2023 the Court passed a detailed order. The relevant portion thereof is extracted below:

“From the perusal of the execution case it is seen that an application was filed by the decree holder on 03.04.2017 that the judgment debtor is not accepting the amount in compliance of the decree and is not getting the sale deed executed / registered. Therefore, the decree holder is ready to deposit the said amount in the court but after the said date no amount has been deposited by the decree holder and the order book dated 26.11.2020 also shows that Rs. 57,50,000 has been deposited by the decree holder on the said date. But it has also been mentioned in the order book that the earlier judgment and decree was conditional and as per the condition the amount was to be deposited within one month and it will take time to decide whether the judgment and decree can be implemented in the circumstances of the case or not. In such a situation, to ascertain whether the decree holder wants to deposit the amount or not, order dated 26.11.2020 was passed on which the amount was deposited by the decree holder on the said date.

Therefore, it is clear that the judgment and decree passed was conditional and the entire consideration amount was to be paid to respondent no. 1 or deposited in the court within one month, but after submitting the application on 03.04.2017 by the decree-holder, no amount was deposited before 26.11.2020. Therefore, as the amount has not been deposited within the stipulated time as per the condition of the decree, the decree cannot be executed and the execution case is dismissed.

The decree-holder shall be entitled to receive back the amount deposited by him.”

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15. Aggrieved by the judgment and order of the Execution Court, the appellant filed a Revision Petition before the High Court under Article 227 of the Constitution which was dismissed by the impugned order.
16. We have heard Mr. Saurabh Mishra, learned Senior Counsel, for the appellant, Mr. Ajay Marwah, learned counsel, for the respondent, and have perused the record.

Submissions on behalf of the Appellant

17. The learned counsel for the appellant submitted:
 - (i) The appellant (i.e., the decree-holder) had issued notice well within time calling upon the judgment-debtor to execute the sale deed in terms of the decree. Not only that, the appellant deposited the entire amount under order of the Execution Court dated 26.11.2020 and had thereby complied with the terms and conditions of the decree.
 - (ii) The judgment debtor had filed an appeal against the decree which came to be dismissed on 06.11.2023. On dismissal of the first appeal, the decree of the Trial Court merged with that of the Appellate Court and therefore, the deposit of the balance amount cannot be said to be delayed.
 - (iii) Assuming there was delay, in the facts of the case, it was liable to be condoned. Moreover, the application to rescind the contract and dismiss the execution application was not made till the deposit was made. Once, under orders of the Court, the amount was deposited, the contract could not have been rescinded. Therefore, the application to rescind the contract was not maintainable.
 - (iv) The High Court as well as the Execution Court adopted a hyper-technical approach inasmuch as they failed to consider that the facts and circumstances of the case warranted extension of time to make the deposit.
 - (v) Section 28 of the Specific Relief Act, 1963³ not only empowers the Court which passed the decree of specific performance of the contract to rescind the contract for non-deposit of the purchase money within the period allowed by the Court, but also empowers the Court to extend the said period.

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- (vi) The power of rescission including extension of time period for deposit is not to be exercised mechanically. Rather, a justice oriented approach is required upon consideration of entire facts and circumstances including the conduct of the parties. Here, the judgment-debtor was not interested in complying with its part under the contract/ decree and had filed a first appeal impugning the decree which came to be dismissed on 06.11.2023. What is relevant is that even before dismissal of the appeal, the decree holder had deposited the balance amount on 26.11.2020. In such circumstances, there was no justification to rescind the contract and dismiss the execution application.
- (vii) Even otherwise, if the judgment-debtor is to suffer some loss on ground of delay, the Court has power to direct the decree holder to deposit an additional amount to compensate the judgment-debtor, for which the appellant is ready.

Submissions on behalf of the respondent

18. *Per contra*, learned counsel for the respondent submitted:

- (i) Order sheet of the Execution Court reveals that at the time of registration of the execution case, in 2017 itself, the Court directed the appellant to make payment of the balance amount yet, despite repeated directions, such deposit was not made until 26.11.2020.
- (ii) Permission to make such deposit was without prejudice to the right of the judgment debtor, therefore there is no question of waiver of right to seek rescission of the contract. Besides, the judgment debtor was not served with notice of the execution proceedings. As soon as the judgment-debtor came to know about the execution proceedings, application under Section 28 was filed.
- (iii) Mere filing of appeal against the decree does not operate as a stay on the operation of the decree, therefore the appellant cannot take advantage of pendency of the appeal in delaying payment/ deposit.
- (iv) The question of merger of trial court decree in the order of appellate court does not arise as the first appeal was dismissed for want of prosecution on 06.11.2023.

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- (v) The appellant had paid a meagre amount by way of advance, and had failed to comply with the direction in the decree therefore, equitable relief of extension of time is not available to him.
- (vi) The Execution Court was justified in dismissing the execution application and the High Court justifiably upheld the order of the Execution Court.

Issues

19. Upon consideration of the rival contentions, the following issues arise for our consideration in this appeal:
 - (A) Whether the decree of specific performance passed by the trial court merged in the order of the appellate court even though the appellate court dismissed the appeal for non-prosecution?
 - (B) Whether respondent's application under Section 28 of the 1963 Act was maintainable after the Court had granted permission to make deposit of the balance amount and, pursuant thereto, the amount was also deposited?
 - (C) Whether the rescission of the contract and consequential dismissal of the execution application vitiated by a pedantic approach of the court(s) below as they failed to consider the facts and circumstances of the case as also whether the decree could be saved by compensating the judgment-debtor for the delay in deposit of the balance sale consideration?

Issue (A)

20. The argument on behalf of the appellant is that the trial court decree merged with the appellate court decree and therefore, in absence of any direction in the appellate court decree to make deposit, the contract could not have been rescinded by invoking Section 28 of the 1963 Act. *Per contra*, on behalf of the respondent, it is submitted that there is no decree of the appellate court as the appeal was dismissed for non-prosecution. Hence, there is no question of merger.
21. On the issue of merger of the trial court decree in the appellate court decree, the law is settled. The doctrine of merger is based on the principle of propriety in the hierarchy of the justice-delivery system. The said doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point

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of time. Once the superior Court has disposed of the *lis* before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior Court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the Court, tribunal or the authority below. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority/ court⁴. However, the doctrine of merger would only apply in a case when a higher forum entertains an appeal or revision and passes an order on merit and not when the appeal or revision is dismissed on the ground of delay in filing the same⁵.

22. Section 2 (2)⁶ of the Code of Civil Procedure, 1908⁷, which defines a decree, specifically excludes an order of dismissal in default from the ambit of a decree. As a sequitur, for there to be a merger of the trial court decree in the appellate court decree, there must be an adjudication on merits, though it is immaterial whether the decree or order under appeal is set aside or modified or simply confirmed. In our view, dismissal of the appeal for non-prosecution would not merge the trial court decree in the order of the appellate court. In the present case, there is no dispute that the appeal of judgment-debtor was dismissed for non-prosecution; therefore, in our view, there would be no merger of the trial court decree in the appellate court order. Issue (A) is answered accordingly.

Issue (B)

23. The next argument on behalf of the appellant is that once the Execution Court permitted the appellant to deposit the balance

4 Kunhayammed and others v. State of Kerala and Another (2000) 6 SCC 359; Chandi Prasad & Ors. v. Jagdish Prasad & Ors. (2004) 8 SCC 724.

5 State of Kerala & Anr. v. Kondottiparambanmoosa & Ors. (2008) 8 SCC 65

6 **Section 2 (2).** – “Decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include -

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation. - A decree is preliminary when further proceedings have to be undertaken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

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consideration even after expiry of the period fixed by the trial court decree, it would be deemed that the Court had extended the time to deposit. Therefore, the application to rescind the contract for non-deposit was not maintainable and ought to have been dismissed. On this aspect, we notice that the order of the Execution Court, dated 26.11.2020, permitting deposit did not determine the rights of the parties *qua* rescission of the contract. Rather, the deposit was permitted just to test the *bona fides* of the decree holder in pursuing the execution. Though such deposit becomes a relevant factor for determining whether the decree holder had been throughout ready and willing to perform his obligation under the contract/ decree, it would not extinguish the right of the judgment-debtor to seek rescission of the contract. We, therefore, hold that by permitting the decree holder to make deposit to show his *bona fides*, the Court did not foreclose the right of the judgment debtor to seek rescission of the contract under Section 28 of the 1963 Act. Issue (B) is decided accordingly.

Issue (C)

24. Before we address Issue (C), it would be apposite to notice the provisions of Section 28⁸ of the 1963 Act. A plain reading of sub-

8 **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 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) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.

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section (1) of Section 28 would indicate that it enables the vendor or lessor to apply in the same suit in which the decree is made to have the contract rescinded on failure of the purchaser or lessee, as the case may be, to pay or deposit the purchase money or other sum within the period allowed by the decree or such further period as the court may allow. Upon receipt of such application the court may, by order, rescind the contract. Use of phrases “may, by order, rescind” and “such further period as the court may allow” make it clear that the provision leaves discretion in the court either to rescind the contract and, consequently, the decree, or to extend the time for making payment/ deposit. Sub-section (4) makes it clear that no separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be. Therefore, what is clear is that the court that passed the decree does not become *functus officio* on passing the decree. It retains control over the decree even after it is passed. By use of the expression “may, by order, rescind” in sub-section (1), the legislative intent is clear that it is a discretionary power and, therefore, there is no automatic rescission in the event of default. As a sequitur, the Court that passed the decree is vested with the power to extend the period stipulated in the decree for deposit. Further, the language of sub-section (4) makes it clear that not only the vendor or lessor, but also the purchaser or lessee, can apply to the Court that passed the decree either to rescind the contract or to extend the time period for payment/ deposit. Now, we shall notice few decisions where this Court has construed Section 28 of the 1963 Act and laid down principles guiding the exercise of power thereunder.

25. In ***Sardar Mohar Singh v. Mangilal***⁹, a three-Judge Bench of this Court held:

“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

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to deal with the decree of specific performance. It would also be clear that the court has power to enlarge the time in favor 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 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 rupees 16,000 to compensate the petitioner for loss of enjoyment of the money..."

(Emphasis supplied)

26. In ***K. Kalpana Saraswathi v. P.S.S. Somasundaram Chettiar***¹⁰, while holding that the Court has power to extend time for making deposit, this Court, in the words of Krishna Iyer, J., observed:

"4. It is perfectly open to the court in control of a suit for specific performance to extend the time for deposit, and this court may do so even now to enable the plaintiff to get the advantage of the agreement to sell in her favor. The disentitling circumstances relied upon by the defendant respondent are offset by the false pleas raised in the course of the suit by him and rightly negated. Nor are we convinced that the application for consideration and extension of time cannot be read, as in substance it is, a petition for more time to deposit. Even so, specific performance is an equitable

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relief and he who seeks equity can be put on terms to ensure that equity is done to the opposite party even while granting the relief. The final end of law is justice, and so the means to it too should be informed by equity. That is why he who seeks equity shall do equity. ...”

27. In **Bhupinder Kumar v. Angrej Singh**¹¹, after considering earlier decisions, this Court observed that when the Court passes the decree for specific performance, the contract between the parties is not extinguished. The decree for specific performance is in the nature of a preliminary decree and the suit is deemed to be pending even after the decree. The Court proceeded to observe:

“22. Sub-section (1) of Section 28 makes it clear that the Court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes *functus officio*. On the other hand, Section 28 gives power to the court to grant an order of rescission of the agreement and it has the power to extend the time to pay the amount or perform the conditions of decree for specific performance despite the application for rescission of the agreement/decreed. In deciding an application under Section 28 (1) of the Act, the court has to see all the attending circumstances including the conduct of the parties.”

(Emphasis supplied)

28. In **Ramankutty Guptan v. Avara**¹², this Court answered two questions. One, whether an application under Section 28 of the 1963 Act is maintainable in the court of first instance when the decree has been passed by the appellate court. Second, whether the execution court can entertain an application under Section 28 if it happens to be the court in which the suit was instituted. After taking note of the provisions of Section 37 of CPC, it was held:

“8 ... Therefore, it is clear that the decree of the appellate court would be construed to be the decree passed by the court of first instance. It is settled law that an appeal

11 (2009) 8 SCC 766

12 (1994) 2 SCC 642

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is a continuation of the suit. Therefore, when a decree for specific performance has been dismissed by the trial court, but decreed by the Appellate Court, it should be construed to be in the same suit. When the decree specifies the time for performance of the conditions of the decree, on its failure to deposit the money, Section 28(1) itself gives power to the Court to extend the time on such terms as the Court may allow to pay the purchase money or other sum which the Court has ordered him to pay. In *K. Kalpana Saraswathi v. P.S.S. Somasundaram Chettiar*, this Court held that on an oral prayer made by the counsel for the plaintiff for permission to deposit the entire amount as directed by the trial court this Court directed the appellant to deposit the amount within six months from that date together with interest and other conditions mentioned therein. An application for extension of time for payment of balance consideration may be filed even in the court of first instance or in the appellate court in the same suit as the decree of the trial court stands merged with that of the appellate court which decree is under execution. It is to be seen that the procedure is the handmaid for justice and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve substantial justice. Therefore, technicalities would not stand in the way to subserve substantive justice. Take a case where the decree is transferred for execution to a transferee executing court, then certainly the transferee court is not the original court and execution court is not the “same court” within the meaning of Section 28 of the Act. But when an application has been made in the court in which the original suit was filed and the execution is being proceeded with, then certainly an application under Section 28 is maintainable in the same court.”

(Emphasis supplied)

29. Following the view taken in *Ramankutty Gupta* (supra), in *V.S. Palanichamy Chettiar Firm v. C. Alagappan & Anr.*¹³, this Court held:

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“16. In view of the decision of this Court in Ramankutty Guptan case when the trial court and the executing court are the same, the 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-debtor can also seek rescission of the contract of sale or take up this plea in defence to bar the execution of the decree.”

(Emphasis supplied)

30. In **Ramankutty Guptan** (supra), though it was clarified that the phrase “*in the same suit*” as used in Section 28 would mean in the suit itself and not in the execution proceedings, it was held that if the execution application has been filed in the same court in which the original suit was instituted i.e., the court of first instance, the application can be entertained though it should be numbered as an interlocutory application on the original side.
31. Following the aforesaid decisions, in **Ishwar (Since Deceased) thr. Lrs and Others v. Bhim Singh and Another**¹⁴, this Court held:
- “22. The law is, therefore, settled that an application seeking rescission of contract, or extension of time, under Section 28 (1) of the 1963 Act, must be decided as an application in the original suit wherein the decree was passed even though the suit has been disposed of. As a sequitur, even if the Execution Court is the Court of first instance with reference to the suit wherein the decree under execution was passed, it must transfer the application filed under Section 28 to the file of the suit before dealing with it.”
32. In **Ram Lal v. Jarnail Singh**¹⁵, this Court held that it should be borne in mind that appeal is a continuation of the original proceedings and the power of the Court to extend the time for depositing the amount can be exercised even at the appellate stage by the Court. It was further held that Order XX Rule 12A of CPC requires the Court which passes the decree for specific performance of a contract for the sale

14 2024 SCC OnLine SC 2338

15 2025 SCC OnLine SC 584

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or lease of immovable property to specify the period within which the purchase money or the other sum is to be paid by the purchaser or the lessee. It was held that where an appeal is filed against the decree passed by the trial court and the appeal is disposed of, the appellate court should specify the time for deposit of balance sale consideration. In that light, this Court held that if the appellate court fails to specify any time period, then it is expected of the decree-holder to make the deposit within a reasonable period of time. This Court thereafter proceeded to summarise the law *qua* execution of decree of specific performance in the following terms:

“44. The decree for specific performance is in the nature of a preliminary decree. Both the parties have reciprocal rights and obligations flowing out of the decree. The decree may fix the time limit for performance and in some cases may also provide for the consequences for non-performance within the time limit or the decree may even be silent on this aspect.

45. The decree enforces specific performance of the contract. The contract between the parties is thus not extinguished by passing of a decree for specific performance and it subsists despite the decree. Section 28 (1) of the Act makes it clear that the court does not become *functus officio* after the grant of the decree for specific performance and it retains its power and jurisdiction to deal with the decree till the sale deed is executed.

46. The court has been conferred with the power to extend the time to pay the amount and while taking into consideration the delay that is sought to be condoned by the plaintiff, the court does not adjudge the same like an application under section 5 of the Limitation Act, where each day's delay must be explained. The Court is given the discretion to extend the time, and the provision therefore seeks to provide complete relief to both the parties in terms of the decree for specific performance.

47. The power and jurisdiction granted under Section 28 (1) of the Act, enables the court to extend the period for payment of the purchase money if it has not been paid within the period allowed by the decree. It also enables

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the judgment debtor to seek for rescinding the contract for non-compliance of the directions given in the decree and while considering this application, the court is given the discretion to rescind the contract or in an appropriate case to even extend the time for paying the purchase money.

48. It should also be borne in mind that appeal is a continuation of the original proceedings and the power of the Court to extend the time for depositing the amount can be exercised even in the appellate stage by the Court.

49. In the considered view of this court, the Appellate Court, after deciding the appeal on merits, could have called upon the plaintiff to deposit the balance sale consideration by fixing a time limit. This would have at least given an opportunity to the plaintiff to fulfill his obligation. The non-payment of the balance consideration within the time period fixed by the Trial Court does not amount to abandonment of the contract and consequent rescinding of the same. The real test must be to see if the conduct of the plaintiff will amount to a positive refusal to complete his part of the contract. There must be an element of willful negligence on the part of the plaintiff before a court proceeds to invoke Section 28 of the Act and rescind the contract.

50. This litigation is an eye-opener for the appellate courts reminding that they owe a duty to comply with the provisions of Order XX Rule 12A of the CPC. Where an appeal is filed against the decree passed by the trial court and the appeal is disposed of, the appellate court should specify time to deposit the balance sale consideration. It is too much to say that since the Trial Court had granted 2 months' time to the decree holder to deposit the balance sale consideration the same time period would apply even to the decree that may be drawn by the appellate court. What is executable is the decree passed by the appellate court. The appellate court owes a duty to specify the time period. If during the specified time period the decree holder is not in a position to deposit the balance sale consideration or, in other words, fails to deposit the balance

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sale consideration and later upon expiry of the specified time period seeks permission to deposit, then it would be within the discretion of the trial court to grant further time to deposit the balance sale consideration or decline. This discretion has to be exercised judiciously keeping in mind various factors like *bona fide* of the decree holder, the cause for failure to deposit the balance sale consideration in time, the length of delay and also the equities that might have been created during the interregnum period in favor of the judgment debtor. It is the cumulative effect and considerations of such factors that should weigh with the court concerned while permitting the decree holder to deposit the sale consideration beyond the time period that might have been prescribed by the trial court in its final decree.”

(Emphasis supplied)

33. Upon consideration of the provisions of Section 28 of the 1963 Act as also the decisions noticed above, in our view, the legal principles, *inter alia*, guiding the exercise of power under Section 28 of the 1963 Act could be summarized as under:
- (i) A decree for specific performance of a contract is in the nature of a preliminary decree and therefore, till the deed is executed pursuant to the decree, the Court that passed the decree is vested with the jurisdiction to either rescind the contract / the decree for non-payment/non-deposit within the stipulated period or extend the period for making such payment/ deposit.
 - (ii) Neither there is an automatic rescission of the contract/ decree for non-payment/ non-deposit within the period stipulated by the decree, nor there is an automatic extension of time by making such deposit, if the stipulated period for payment/ deposit has expired. However, where the decree stipulates that on failure to pay / deposit within the specified period, the decree shall stand rescinded or the suit shall stand dismissed, the decree is rendered inexecutable on failure to pay/ deposit¹⁶.

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- (iii) Prayer to extend the time for making deposit in compliance of the conditions stipulated in the decree may be made prior to, or even after, expiry of the period stipulated therefor¹⁷.
- (iv) There is no form prescribed for making the prayer to extend the time to make such payment or deposit. Therefore, the prayer seeking permission to deposit the defaulted amount may be treated as one for extension of time to deposit. Such prayer may be made even orally while the Court seeks to address an application for rescission of the contract/ decree or when the decree is put for execution, provided the execution court is the one which passed the decree. However, if the decree is passed by the appellate court, such prayer/ application may be made before the court of first instance having regard to the provisions of Section 37 of CPC. Further, what is important is that such an application must be treated as an application in the suit and numbered accordingly.
- (v) As specific performance of a contract is an equitable relief, while considering the prayer for rescission of the contract/ decree, or for extension of time to make deposit in compliance of the decree, the Court must be guided by principles of equity. Therefore, while considering the prayer for extension of time to make deposit, to balance the equities, the Court would have to consider the attending facts and circumstances of the case, the conduct of the parties and whether, by putting the decree holder to such additional terms and conditions, the judgment debtor could be adequately compensated for the delay.
- (vi) Though each day's delay in deposit need not be explained as in an application under Section 5 of the Limitation Act, the test is whether from the conduct of the decree holder it could be logically inferred that he had no intention to complete his part of the contract. If it appears so, and there appears an element of willful negligence on the part of the decree holder in complying with the terms of the decree, the Court may invoke its power under Section 28 and rescind the contract.

17 Johri Singh v. Sukhpal Singh and Others (1989) 4 SCC 403

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- (vii) Under Order XX Rule 12 A of CPC, when a decree for specific performance of a contract for the sale, or lease of immovable property, orders that the purchase-money or other sum is to be paid by the purchaser or lessee, the Court must specify the period within which the payment shall be made. Therefore, where the suit for specific performance is dismissed by the trial court but decreed by the appellate court, or where the appeal against the decree for specific performance is dismissed on merits, the Court must fix the time within which such payment is to be made. If no time limit is fixed, the compliance thereof would have to be within a reasonable period. As to what would be the reasonable period would depend on facts of the case.
34. In light of the aforesaid legal principles, we shall now consider whether the Execution Court (i.e., the Court which passed the decree) or the High Court (i.e., the Revisional Court) took into consideration all the relevant facts which were essential for determining whether the contract/ decree was liable to be rescinded or the decree holder was entitled to the discretionary relief of extension of time to make deposit, and if so, on what terms.
35. The decree of specific performance passed in favour of the appellant dated 03.03.2017 directed that the plaintiff shall pay to the defendant no.1 entire consideration amount @ Rs.16,00,000 per acre for the land bearing Khasra No. 1463/ 12 dh/2, area 3.75 acres, situated at Mauza Rampur Chaurasi, Circle Raigon, Tehsil Raghuraj Nagar, District Satna within one month or deposit the same in the Court. It was provided that upon payment by the plaintiff of the said amount to defendant No.1 or depositing it in the Court, defendant No.1 shall register the sale of the said land in favor of the plaintiff within two months, and if defendant No.1 does not do so, then after fulfilling all the legal formalities for registration of the disputed land by the plaintiff and paying the stamp duty as per rules, the contract of sale shall be executed by the Court on behalf of defendant No.1 in favor of the plaintiff.
36. On 3.4.2017, the decree holder (i.e., the appellant) filed an application before the Court praying for execution/ registration of the sale deed on payment of the due amount of Rs.57,00,000. In the application, it was stated that the applicant had sent legal notice to the judgment debtor, but the judgment debtor neither accepted

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the sum nor executed or registered the sale deed. On 18.7.2017 the decree holder filed a formal application for execution. Though the application was registered, no order was passed to deposit the amount in Court till 23.04.2019. Prior to 23.04.2019, the direction was to pay to the judgment-debtor, which was not possible because he was not willing to accept having already preferred an appeal against the trial court's decree.

37. On 23.04.2019, for the first time direction to deposit the amount in Court was made while simultaneously issuing notice to the judgment-debtor, fixing 08.05.2019. Thereafter, on the following date i.e., 08.05.2019, even though the judgment debtor was not served by that date, the Court directed that the decree holder should pay the due amount. Simultaneously, while issuing notice to the judgment-debtor, the Court fixed 13.08.2019. On 13.08.2019, the Court directed that if the decree holder submits the amount along with the process fee, notice shall be issued to the judgment-debtor to be present on 28.11.2019. Simultaneously, it ordered that the decree holder shall deposit the amount on 28.11.2019. On 28.11.2019, the Court fixed 27.04.2020 requiring the presence of judgment debtor on that date, and directed the decree holder to deposit the amount on 27.04.2020. Unfortunately, on 27.04.2020 there was a lockdown due to Covid-19 pandemic, and therefore, the matter was taken up on 26.11.2020 when, under orders of the Court, the balance amount was deposited. In between, First Appeal No.311 of 2017 filed by the defendant(s)/ judgment-debtor(s) against the trial court's decree was pending, which came to be dismissed for non-prosecution on 06.11.2023.
38. The Execution Court dismissed the execution application by simply observing that the decree was conditional, the amount was to be paid within one month, but no amount was deposited till 26.11.2020, even though the application was submitted on 03.04.2017, therefore the decree cannot be executed.
39. The High Court dismissed the revision petition by a short order affirming the view of the Court below.
40. Neither the Execution Court nor the High Court took into consideration that though the decree fixed a time frame for deposit of the balance consideration, it did not provide for the consequences of failing to adhere to the time schedule. In such circumstances, in our view, there could be no automatic rescission of the decree for specific

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performance. Thus, the Court while exercising its power under Section 28 of the 1963 Act was required to consider whether the decree was liable to be rescinded or the decree holder was entitled to get extension of time up to the date of deposit in Court. Though, while granting the relief of extension, it was open for the Court to balance the equities by putting the decree holder to such terms as may adequately compensate the judgment debtor for the delay.

41. As we find that neither the Execution Court nor the High Court has considered the matter in proper perspective and in accord with the settled principles governing the exercise of power under Section 28 of the 1963 Act, we deem it appropriate to set aside both the impugned orders, namely, the order of the High Court and of the Execution Court, and restore the Execution Application and all other applications filed therein *qua* rescission of contract/ extension of time to deposit to their original number on the file of the Execution Court/ the Court of first instance for a fresh consideration in accordance with the law and in light of the observations made in this judgment. Further, the Court shall deal with those application(s) as application(s) in the suit and shall be numbered as such. Issue C is decided accordingly.
42. The appeal is allowed in the aforesaid terms. Pending applications, if any, shall stand disposed of.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Nidhi Jain