

Kalpesh Manubhai Patel Versus Vs Mihirkumar Suryakantbhai Shah & Anr.

Court: Gujarat High Court

Date of Decision: Jan. 8, 2025

Acts Referred: Constitution of India, 1950 " Articles 227

Specific Relief Act, 1963 " Section 28, 28(1)

Limitation Act, 1963 " Section 5

Negotiable Instruments Act, 1881 " Section 138

Hon'ble Judges: Divyesh A. Joshi, J

Bench: Single Bench

Advocate: Salil M Thakore, Bhaumik H Shah, Nishit P Gandhi

Final Decision: Allowed

Judgement

Divyesh A. Joshi, J

1. By filing present petition under Articles 227 as well as under the provision of the Civil Procedure Code, 1908, the petitioner has prayed for

quashment of the order dated 12.10.2023 passed below Exh.1 as well as the order dated 14.10.2023 passed below Exh.9 by the learned Principal

Senior Civil Judge, Dabhoi in Special Execution Case No.1 of 2023 and thereby permit the petitioner to deposit the amount of Rs.3,03,59,025/- within a

period of three months before the Registry of the learned Principal Senior Civil Judge, Dabhoi.

2. Heard learned advocate, Mr. Salil Thakore for the petitioner, learned Senior Counsel, Mr. Shalin Mehta assisted by learned advocate, Mr. Nishit

Gandhi for the respondent no.1 and learned advocate, Mr. Bhaumik Shah, for the respondent no.2.

3. Learned advocate, Mr. Salil Thakore submitted that the petitioner herein is the original plaintiff, whereas the respondents herein are the original

defendants in the suit filed inter alia praying for a decree ordering the original defendants to execute the sale deed in favour of the original plaintiff for

the land bearing Block No.426 admeasuring 15,310 Sq.Mtrs. situated in Village : Thuvati, Sub District : Dabhoi, District : Vadodara (hereinafter

referred to as "the suit land", for short). Learned advocate submitted that as the petitioner was need of money, he obtained loan from the

respondents herein and at the time of availing the loan facility, a registered sale deed has been executed between the parties and at the time of

execution of the said registered sale deed, they have also entered into one Memorandum of Understanding (MoU) to the effect that on returning back

the amount by the petitioner, re-conveyance deed is to be executed in favour of the petitioner but the respondents herein have failed to adhere with the

terms and conditions mentioned in the MoU, therefore, the petitioner is constrained to file aforesaid suit against the respondents herein for specific

performance. Learned advocate submitted that however during the pendency of the suit, matter had been amicably settled between the parties and in

pursuance thereto, they have entered into terms of settlement by way of preparing consent terms and on the basis of the said consent terms, the

decree had been executed by the court concerned and as per the said consent terms, within a period of six months from the date of execution of the

decree, the petitioner has to pay borrowed amount of Rs.3,03,59,025/- and if the petitioner fails to repay the said amount to the respondents within six

months, in that event, as per the understanding between the parties, the said period would be extended for further period of 18 months and thus in

short, within 24 months, the petitioner herein had to repay the said amount to the respondents. He submitted that the decree had been passed by the

court concerned on 17.07.2021 and as per the recital of the consent terms, the period of 24 months would be completed on 16.07.2023. He submitted

that in fact, during interregnum period, the petitioner has tried to enter into MoU with the respondents but the respondents have resiled from his earlier

version and backed out from the terms and conditions mentioned in MoU, copy of MoU is produced along with the petition. He submitted that as the

said document is not signed by other side, therefore, he is not harping upon the said issue and is not binding to other side. He submitted that in the

beginning of month of July, 2023, the petitioner has tried to execute the terms and conditions on the basis of the consent decree but the respondents

have demanded amount of interest on the borrowed amount, therefore, the petitioner is constrained to issue notice to the respondents on 13.07.2023 as

they are not agreed to adhere with the terms and conditions, therefore on 17.07.2023, the petitioner, who is decree holder, had filed execution petition

before the competent court, whereupon the respondents appeared and filed purshis on 12.10.2023 specifically stating that they are ready and willing to

execute the terms and conditions mentioned in the consent terms and fulfill the conditions of the decree if the decreetal amount is to be paid to them

today and on the strength of the said purshis, the said application had been considered and two days' time had been granted to the petitioner to

deposit the said amount before the court concerned, however admittedly when the said order was passed, at that point of time, the petitioner was not

available in the court, therefore as soon as the petitioner has come to know about the said fact, immediately, the petitioner has preferred an application

to extend the time of three months to deposit the said decretal amount before the learned Civil Court on 14.10.2023 and the said application had been

opposed by the respondents with vehemence and after considering the rival submissions of the parties, learned Executing Court had extended the time

for further period of seven days i.e. 21.10.2023. He submitted that in fact, as per the consent terms of the decree, the applicant has to deposit the said

amount on or before 16.07.2023 but on the basis of consent given by the respondents herein, the time period had been extended till 21.10.2023 and the

action took place much after the expiry on 17.07.2023 on the basis of statement made by the respondents themselves before the learned Executing

Court by way of declaring the said fact through purshis.

4. Learned advocate submitted that being aggrieved by the aforesaid order of extending seven days time, the petitioner herein has preferred

present petition before this Hon'ble Court and at the relevant point of time, the order of the trial court has been stayed by this Hon'ble Court

and notice issued by this Court has already been served to them and in pursuance thereto, the respondents have filed an application in the present

proceedings on 01.12.2023 specifically stating that the period of three months to deposit the decretal amount before the trial court would going to get

expired on 13.01.2024, therefore, the petitioners be directed to deposit decretal amount of Rs.3,03,59,025/- before the Registry of this Hon'ble

Court on or before 13.01.2024 and upon instruction, a statement was made before this Hon'ble Court that the said amount will be deposited before

the Registry of this Hon'ble Court. He submitted that despite due diligence, due to non-availability of sufficient fund, the petitioner could not be

able to deposit entire decretal amount but he has deposited Rs.50,00,000/- before the Registry of this Hon'ble Court and has shown his bonafide,

thereafter, he has preferred an application to seek further extension to deposit the said amount, at that point of time, other side has raised objection and

after considering and appreciating the material available on record, the Coordinate Bench of this Court has granted extension observing that with a

view to just to test the bonafide of the petitioner, as a last chance, time to deposit the remaining amount is extended for a further period of 15 days i.e.

the amount to be deposited on or before 07.03.2024 and in fact, before 07.03.2024, the petitioner has already deposited residual amount before the

Registry of this Hon'ble Court. He further submitted that the petitioner has complied with the order and directions of this Hon'ble Court while

passing an order of extension. He further submitted that it is settled proposition of law that the time can be extended by the learned Executing Court

and as per Section 28 of the Specific Relief Act, learned Executing Court has got vital power to extend the time limit and as per the consent terms, the

petitioner has to deposit amount within a period of 24 months, however, the respondent was not adhering with the terms and conditions mentioned in

the consent terms, therefore, he was constrained to initiate execution proceeding and the respondents themselves appeared before the court

concerned and submitted an application inter alia stating that they are ready and willing to adhere with the terms and conditions and, thereafter, the

respondents have submitted purshis and time was granted by the Court, therefore, it can safely be said that the period of 24 months cannot be treated

as sacrosanct because they themselves have submitted purshis declaring the said fact, therefore, period is extended on the basis of action taken by the

respondents and the said application is preferred in the month of October, 2023, therefore, that period of three months was already waived by the

respondents. He submitted that as per the ratio laid down by the Hon'ble Supreme Court in numerous decisions, the learned Executing Court has

got valuable right to extend the period of time. He submitted that in fact, the petitioner herein is the original owner of the property and the respondents

are the Financier and though the petitioner had borrowed some amount by executing registered sale in favour of the respondents with a specific

condition that at the time of giving back the said amount, once again the property was re-transferred in the name of the petitioner and thus in short, the

petitioner is the original owner of the said property and the respondents are indulging into the business of finance by getting handsome amount of

interest, therefore by considering the present petition, the petitioner may be put to certain terms to pay the amount of interest upon the said amount for

so-called delay. He further submitted that in fact, as per the order of the learned Executing Court, the period of time is extended till 21.10.2023 and

other side has no objection about the same and they have not challenged the said order before any authority and, thereafter, the said order has not

been stayed by the Hon'ble Court and ultimately, the amount had been deposited by the petitioner and at the most, if period of delay is calculated

in a hypothetical manner, in that event, it can be said that there was hardly delay of 100 to 125 days in depositing the said amount and because of this

reason, the petitioner may not be deprived of his valuable rights of the ownership of the property.

5. Learned advocate has placed reliance upon the decision of the Hon'ble Supreme Court in case of Sardar Mohar Singh Vs. Mangilal @

Mangtya, reported in (1997) 9 SCC 217, more particularly, Paragraph No.4 of the said decision, which read as under,

“4. From the language of Ss. (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.16,000.00 to compensate the petitioner for loss of enjoyment of the money. The said amount is given to the respondent in a sum of Rs.

16,000.00 rightly for the reason that parties contracted for non-performance of the contract. They quantified the damages at Rs. 2,000.00

for 8 years. The court has given Rs. 16,000.00 obviously in terms of the contract.

6. Learned advocate has placed reliance upon the decision of the Hon'ble Supreme Court in case of Narender Vs. Kundan Singh, reported in

2023 SCC OnLine SC 420, more particularly, Paragraph No.6, which reads as under,

"6. Having considered the circumstances, this Court is of the opinion that since there is no dispute with respect to the finality of the

decree, the failure on the part of the appellant to deposit the amount within time should not act so prejudicially as to rob him of his

entitlement to the property. In these circumstances, the appellant/ decree holder is directed to deposit an additional sum equivalent to 9% of

the amount already deposited (â, 7,44,900/-) calculable from 7,44,900/-) calculable from the date of agreement in question i.e. 12.05.2006

till 31.12.2022. This amount shall be deposited with the Trial Court within four weeks. Any amounts deposited by the appellant in the

meanwhile (i.e. â, 7,44,900/-) calculable from 5,00,000/- pursuant to the order of this Court) shall be adjusted towards such above

additional sum payable. Upon ascertaining that these amounts have in fact been deposited, the Trial Court shall require the judgment

debtor/ respondent to execute the sale deed within a further period of two months.

7. Learned advocate has placed reliance upon the decision of the Hon'ble Supreme Court in case of V.S. Palanichamy Chettiar Firm Vs. C.

Alagappan & Anr., reported in (1999) 4 SCC 702, wherein the Hon'ble Supreme Court has considered the decision of the Hon'ble Supreme

Court in case of Ramankutty Guptan Vs. Avara, reported in (1994) 2 SCC 624 and considering the said decision, the Hon'ble Supreme Court has

observed in Paragraph No.15 as under,

"15. In Ramankutty Gutan V/s. Avara, (1994) 2 SCC 642 : (1994 AIR(SCW) 1533), the appellant was the judgment-debtor in a suit for

specific performance agreement for sale of immovable property. The question before the Court was whether application under Section 28 of

the Act was maintainable on the execution side in a decree passed in the same suit by the appellate Court. Plaintiff-respondent's suit for

specific performance though dismissed by the trial Court was decreed by the appellate Court which granted one month time to deposit the

balance amount of consideration. The judgment-debtor filed second appeal in the High Court against the decree which was dismissed. The

decree-holder deposited the amount after the time fixed by the appellate Court but before the second appeal was dismissed. Decree-holder

applied for execution of the decree. The judgment-debtor filed an application in these very proceedings under Section 28 of the Act for

rescission of the contract which had resulted in passing of the decree on the ground that the balance consideration was not deposited

within one month of the decree by the trial Court. The Executing Court dismissed the application on the ground that deposit had been made

within the time while holding that the application was not maintainable on the execution side. The High Court on revision also held that the

application was not maintainable in the executing Court. This led the judgment-debtor to come to this Court. This Court observed that 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. The Court held, after noticing the conflict of decisions by the Bombay High Court and the Andhra Pradesh High Court,

that when the Court which passed the decree and the executing Court is the same, application under Section 28 can be filed in the executing

Court. However, where decree is transferred for execution to a transferee executing the certainly the transferee Court is not the original

Court and the executing 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. Then dealing with the contention of the judgment-debtor that deposit was not within the time allowed by the

appellate Court, the Court said (Para 8 of AIR) :

The question then is whether it is a fit case for our interference. It is seen that the decree for specific performance became final. While the

second appeal was pending, the balance consideration was deposited and no steps have been taken to bring it to the notice of the High

Court that the respondent had committed default in compliance of the appellate decree depositing within the given time the balance

consideration. Moreover, the respondent has been in possession of the land for a long time. The execution is on midway. Under these

circumstances, the command of Art. 136 of the Constitution is to draw the curtain and allow the application to lie in quietus where it was

laid and dismiss the appeal.

8. Referring to the above decisions of the Hon'ble Supreme Court, learned advocate submitted that in view of above judicial pronouncements as

well as other pronouncements, the Hon'ble Courts have extended the time even in consent decree. It is, therefore, urged that considering the

above facts of the case, the present petition may be allowed and the matter may be remanded back before the concerned Executing Court for

deciding the issue afresh.

9. Per contra, learned Senior Counsel, Mr. Mehta has opposed the present petition with a vehemence and submitted that certain sequence of events

are required to be seen before deciding the present petitioner. He submitted that the act, conduct, behavior and approach of the petitioner in the

proceeding clearly demonstrate the factual aspect and lack of bonafide on his part. He submitted that number of defaults have been made by the

petitioner at regular interval in the proceedings and conduct of the petitioner clearly goes on to show that he has taken entire procedure and system of

the legal department at a ride and make the mockery of the procedure of law. He submitted that first in point of time, at the time of borrowing amount

from the respondents, they have entered into MoU and as per the terms and conditions of the MoU, the petitioner has to pay the said amount within a

period of six months and though the MoU was executed on 03.11.2018, the petitioner has failed to adhere with the terms and conditions mentioned in

the MoU. Not only that, he has tried to throw mud on the face of the respondents by filing suit for specific performance. He submitted that even in the

said proceedings, the respondents appeared and they have agreed upon and settled before the court and they have entered into consent terms and on

the basis of the consent terms, the decree had been drawn by the court concerned. Learned Senior Counsel has referred to the recital of the decree

and submitted that specific terms and conditions are mentioned in the consent terms that within a period of six months, the petitioner has to pay the

said amount to the respondents and after receiving the same amount, the respondents have to transfer the said property in the name of the petitioner

by executing registered sale deed but the petitioner has failed to adhere with the said terms and condition and waited till completion of period of 24

months because as per the condition, if the petitioner fails to pay amount within a period of six months, in that event, the said period would be extended

for further period of 18 months. He submitted that despite completion of said period, instead of complying with the terms of the consent terms,

straightway he had issued notice to the respondents through his advocate on 13.07.2023 just four days before the period gets expired to pay the said

amount with sole intent to create sympathy in his favour and as soon as copy of notice is served to the respondents, they have immediately given reply

to the said notice specifically stating that they are ready and willing to execute the sale deed in favour of the petitioner if the amount would be paid to

them, inspite of that, by suppressing the said fact, straightway the petitioner had instituted execution petition before the competent court on the basis of

the decree passed by the competent civil court, however, if the contents of said application is seen, in that event, it is found out that just a day before

the decree gets expired, the execution petition is filed with a sole intend to defraud the rights of the respondents. He referred to the prayer clause of

the execution petition, wherein they have come with a specific case that the respondents have demanded interest upon the said property and not

strictly adhered with the terms and conditions mentioned in the consent terms submitted before the learned civil court, therefore, they were

constrained to file execution petition, which was filed on 17.07.2023 and the first returnable date was fixed on 24.08.2023, however the respondents

were not at all aware about filing of execution petition because no notice was issued upon them due to non-payment of the process fees, however

when they have approached the learned civil court to verify the status of the matter, they came to know about the institution of the execution petition

before the learned civil court and thus, in short, two months' period have been passed in the execution petition and, thereafter on 12.10.2023, the

respondents have appeared and submitted purshis specifically stating that they are ready and willing to adhere with the terms and conditions mentioned

in the consent terms if the amount mentioned in the consent terms is to be paid to them today and at the relevant time, the petitioner and/or his

advocate was not present in the court but the court concerned has considered the said purshis and extended the time for two days and the respondents

have shown grace and generosity in favour of the petitioner, which is to be treated as fighting point against him. He submitted that in fact, thereafter

on 14.10.2023, the petitioner appeared and he sought three months' time, to which, the said application had been seriously objected by the

respondents and after considering all those material, the learned Judge has granted seven days' time. He referred to the averments made in

application and submitted that before the learned Executing Court, he has sought extension of three months' time, therefore being aggrieved by the

said order, the petitioner preferred an application with a specific prayer to extend the time of three months to deposit the said amount before the

learned Executing Court. He further submitted that if the Hon'ble Court would go through the proceedings, in that event, it would be found out that

even after obtaining the said order from this Hon'ble Court, he has not deposited and not shown any bonafide, therefore the respondents herein

were constrained to file Civil Application before this Hon'ble Court to direct the petitioner to deposit the decretal amount because the money of

the respondents has also time value. He submitted that the petitioner herein has made a statement before this Hon'ble Court that on or before

13.01.2024, they will deposit entire amount but despite the said fact, the petitioner has not adhered with the statement made by learned counsel at the

instance of his client before this Hon'ble Court and they have failed to deposit the said amount and, thereafter, they have filed an application for

extension of 15 days' time, which had been entertained despite the said fact, the respondents herein have raised serious objection about the same

and at the time of giving extension of time, the Hon'ble Court has observed that without prejudice to the rights and contentions of the parties, just

to test the bonafide of the petitioner, 15 days' time has been granted. He submitted that in short, on number of occasions, time was granted by

different forum knowinglyfully well that if any application would be preferred before the competent court, in that event, without following principles of

natural justice, the said application would not reach to its logical conclusion. In short, after fulfilling required procedure, this application would be

decided, therefore, with a sole intent to kill the valuable time of the respondents, at regular interval, different applications have been preferred by

throwing mud on the face of the respondents raising finger upon the approach and attitude of the respondents, on the contrary, the respondents have

shown grace on each and every occasion when opportunity arose and have also gracefully stated that they are ready and willing to fulfill the terms

and conditions agreed upon the parties.

10. Learned Senior Counsel submitted that if the recital of the plaint is to be seen, in that event, it is found out that the suit cannot be treated as is filed

for specific performance but in fact, the suit is filed for re-conveyance to be done on the basis of MoU executed between the parties. In short, this is a

case of reverse transaction and adverbial litigation and the petition preferred by the petitioner is not required to be entertained solely on the ground that

there is consistent default on the part of the petitioner at regular interval as before almost all forum, they have made statement to deposit the amount

but despite making such statement, they have not adhered with the same and thus, the conduct of the petitioner clearly goes on to show that they have

engaged the respondents into litigation with sole intent to buy time and made entire judicial and judicial system as mockery. He further submitted that

in fact, MoU had been executed on 03.11.2018 and as per the terms and conditions of the said MoU, within a period of six months, the petitioner had

to pay the amount borrowed by him but now more than six years have been passed. He submitted that at the time of institution of every litigation, the

petitioner has come with a case that there was no cooperation on the part of other side but to substantiate the said claim, not a single piece of

document is produced nor concrete evidence/ material were produced before the competent court, therefore, the said arguments canvassed by learned

advocate for the petitioner is not tenable and in fact, the petitioner had no means on any given point of time and the said fact is clearly found out from

the material supplied by the respondents. He submitted that petitioner has been convicted in the offence punishable under Section 138 of the NI Act

by the concerned court, however, the respondents are not aware about the fact as to whether any appeal is preferred or not against the said

conviction order and he has been acquitted or not but the fact remains that he is convicted under Section 138 of the NI Act and the said fact has

already been brought to the notice of the petitioner by filing detailed reply along with necessary supporting documents and upto now, no rejoinder is

filed by the applicant. He submitted that even the petition of the petitioner would become infructuous by passage of time because at the time of

preferring the application before the learned Executing Court, the petitioner has come with a specific case that the period of three months is not time to

be extended but the said application was partly allowed and seven days time was granted by the trial court, therefore, the present petition is filed

with sole intent to extend the said time admittedly period of three months is extended to 13.01.2024 and we are in the month of December, 2024 and in

the memo of petition, upto now, he has not filed any application for amendment, therefore, the petition preferred by the petitioner is merit less and is

required to be dismissed.

11. Learned Senior Counsel further submitted that lastly he would like to bring to the notice of this Hon'ble Court that by way of preferring

petition under Article 227 of the Constitution of India, the order passed by the learned trial court is challenged, however if the Hon'ble Court is

well aware about the settled proposition of law that in the supervisory jurisdiction, the Hon'ble Court has to see that whether the view adopted by

the trial court is improbable view and if there is no clear defect found out in the operative part, in that event, the petition is not required to be

entertained. He submitted that as per the principle laid down by the Hon'ble Supreme Court in case of Prem Jeevan Vs. K.S. Venkata Raman &

Anr., reported in (2017) 11 SCC 57, the present petition being devoid of merits is required to be dismissed.

12. Learned Senior Counsel submitted that so far as the submissions made by learned advocate for the petitioners relying upon the decisions of the

Hon'ble Supreme Court are concerned, there is no dispute about the proposition of law, more particularly, the provision of Section 28 of the

Specific Relief Act but in the facts of the present case, the said decisions are not helpful to the petitioner.

13. Having regard to the rival submissions canvassed by learned advocates for the parties, following facts are emerging,

03.11.2018 MoU came to be executed between the petitioner and the respondents.

23.12.2020 The petitioner herein instituted Special Civil Suit No.4/2020 before the court of learned Principal Civil Judge, Dabhoi against the

respondents herein inter alia praying for specific performance on the strength of the MoU dated 03.11.2018.

17.07.2021 In the suit, compromise was arrived at between the parties, whereby it was agreed that the petitioner shall make the payment of

Rs.3,03,59,025/- within a period of 24 months and on receipt of the said amount from the petitioner, the respondents shall execute the sale deed in

favour of the petitioner for the land in question. It is also categorically stated in the said consent deed that if the petitioner fails to make the payment

within 24 months from the date of consent deed, in that event, the petitioner will have no right to get back his land.

17.07.2021 Accordingly, on the strength of the said consent deed, decree was drawn.

16.07.2023 As per the consent deed, time to make the payment was expiring on 16.07.2023, however for the reasons best known, not a single penny

was paid by the petitioner to the respondents.

13.07.2023 On the contrary, the petitioner issued notice upon the respondents seeking performance of the decree.

15.07.2023 On receipt of the aforesaid notice, the respondents submitted their detailed reply denying the allegations leveled against the respondents. In

the said notice, the respondents have pointed out about the bankruptcy suffered by the petitioner as also criminal proceedings under Section 138 of the

NI Act facing by the petitioner.

17.07.2023 The petitioner filed Special Execution Petition No.1/2023 and showed his readiness and willingness to make the payment of

Rs.3,03,59,025/-, however, no payment was made.

24.08.2023 It was the first returnable date of the aforesaid execution petition but because of non-payment of process fees, the process could not be

issued upon the respondents and, thereafter, the matter was adjourned to 12.10.2023.

12.10.2023 The respondents appeared before the court concerned and submitted *Āĉâ,~ĒœpurhisĀĉâ,~â,,ĉ* along with the list of documents, whereby the

respondents have stated in a very categorical terms that they are ready to accept the amount if the same is paid by the petitioner as claimed by them

in the execution application.

12.10.2023 The learned Judge concerned passed an order directing the petitioner to make the payment on or before 12:30 p.m. of 14.10.2023.

14.10.2023 Instead of complying with the aforesaid order, the petitioner filed an application, Exh.9 for extension of time for 3 weeks. However at the

time of hearing of said application, a statement was made by the petitioner to grant 15- 20 days *Āĉâ,~â,,ĉ* time to make the entire payment as per consent

decree.

14.10.2023 The learned Judge concerned granted seven days *Āĉâ,~â,,ĉ* time i.e. upto 21.10.2023 to make the payment and disposed of Special Execution

Case No.1/2023, however despite granting time by the learned Judge concerned, not a single penny was paid by the petitioner.

20.10.2023 The petitioner filed present petition before this Hon^{ble} Court inter alia praying for extension of time of three months to deposit the said

amount. 08.11.2023 The aforesaid writ petition came up for admission hearing, wherein notice was issued and stay was also granted against the

execution, implementation and operation of the order dated 14.10.2023 till returnable date.

01.12.2023 Since no amount was deposited, Civil Application No.1 of 2023 was filed for direction.

02.01.2024 The Coordinate Bench of this Court directed the petitioners to deposit Rs.3,03,59,025/- on or before 13.01.2024 and the aforesaid

application was disposed of accordingly.

â†’ Despite above order to deposit entire amount, the petitioner deposited Rs.50,00,000/-.

16.01.2024 Civil Application No.1 of 2024 has been filed for extension of time.

22.02.2024 The Coordinate Bench of this Court granted time to deposit remaining amount upto 07.03.2024 and, thereafter, the said application was

disposed of.

14. To considering the issue involve in the present matter, the aforesaid sequence of incident of events are required to be examined carefully. It is the

specific case of the petitioner herein that he had entrusted the suit property to the respondent by executing registered sale deed as the petitioner was

in dire need of money at the relevant point of time and, therefore, they had also entered into MoU that certain amount had been taken as a finance and

after repaying the said amount along with interest, the respondent herein had to once again execute registered sale deed in his favour and, thereafter,

the suit had been preferred by the petitioner before the competent civil court for specific performance and during the pendency of the suit

proceedings, compromise has been arrived at between the parties and they have prepared consent terms and on the basis of the said consent terms,

the suit had been decreed in favour of the petitioner. It is the express condition of the consent terms that the petitioner herein has to repay the said

amount within a period of six months and due to some unavoidable circumstances, he could not be able to arrange the said amount within that period,

in that event, maximum period to pay the said amount to the respondent is extended for further period of 18 months and thus in short, 24 months

period had been given to the petitioner to repay the said amount to the respondent. Admittedly, the said decree had been passed by the competent

court on the basis of the consent terms on 17.07.2021 and period of 24 months would be completed on 16.07.2023 but before completion of 24

months period, the petitioner herein had issued notice to the respondent specifically stating that they are not adhering with the terms and

conditions mentioned in the consent terms and the said notice was replied by the respondent specifically stating that they are ready and willing to fulfill

the terms and conditions mentioned in the consent terms, however despite said fact, the petitioner herein filed execution petition before the competent

court with a specific ground that the respondent herein has not scrupulously followed the terms and conditions mentioned in the consent decree and

that is why, they are constrained to file execution petition before the competent court. However, the record reveals that as soon as the said fact about

institution of the execution petition came to the notice of the respondents, immediately on the same day, they have made discloser statement before the

competent court specifically stating that they are ready and willing to fulfill their obligation as per terms and conditions mentioned in the consent terms

if the amount mentioned in the decree is to be paid to them by the petitioner today itself, however after considering and appreciating the material

available on record, the learned Judge granted 2 days time but subsequently it had been extended for 7 days and thus in short, the execution

petition is filed by the petitioner solely on the count that the respondent herein has not adhered with the terms and conditions mentioned in the consent

terms and failed to fulfill his obligation as per consent terms and tried to create picture that the petitioner is ready and willing to fulfill all the terms and

conditions mentioned in the consent terms scrupulously and deposit the amount before the court concerned within no time. Further, the record shows

all together different picture because as soon as the respondent has filed appearance and made a statement that he is ready and willing to execute the

decree subject to compliance with the terms and conditions mentioned in the consent terms, in that event, the petitioner has resiled from his earlier

version and made an application to grant 3 months period to deposit the amount before the Executing Court and satisfied the decree. However,

the said view adopted by the petitioner clearly goes on to show that with malafide intention to kill the valuable time of the parties, the said application is

preferred as the applicant has managed funds and is ready and willing to fulfill the terms and conditions of the consent terms in true spirit, in that

event, he need not have to seek time from the Hon'ble Court but he has come with specific case that due to fault on the part of the respondent, he

is constrained to file execution petition before the Hon'ble Court before the period of time could elapse. The basic foundation and ground

mentioned in the execution petition lacks merits, hence, this Court is of the opinion that the learned Judge concerned has rightly decided the said

application by granting 7 days time, therefore, I do not find any perversity, illegality and error in the impugned order.

15. In a matter filed under Article 227 of the Constitution of India, the law is well settled so far as jurisdiction which to be exercised by Court having

power conferred under Article 227 of the Constitution of India by way of supervisory power, is concerned that the same has very limited scope and

same can only be exercised if there is error apparent on the face of record or there is flagrant violation of statutory rule. This Hon'ble Court

sitting under Article 227 of the Constitution of India has got limited jurisdiction as has been held by the Hon'ble Supreme Court rendered in the

case of Shalini Shyam Shetty Vs. Rajendra Shankar Patii, reported in (2010) 8 SCC 329 holding therein regarding the scope of Article 227, which

relates to the supervisory powers of the High Courts and by taking aid of the judgment rendered by the Hon'ble Full Bench of Calcutta High

Court in the case of Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, reported in AIR 1951 Calcutta 193, wherein it has been laid down that Article

227 of the Constitution of India does not vest the High Court with limit less power, which may be exercised at the court's discretion to remove the

hardship of particular decisions. The power of superintendence confers power of a known and well recognized character and should be exercised on

those judicial principles which give it its character. In general words, the High Court's power of superintendence is a power to keep the

subordinate courts within the bounds of the authority, to see that they do what their duty requires and that they do it in a legal manner. The power of

superintendence is not to be exercised unless there has been;

(a) an unwarranted assumption of jurisdiction, not vested in a court or tribunal; or

(b) gross abuse of jurisdiction; or

(c) an unjustifiable refusal to exercise jurisdiction vested in courts or tribunals.

16. Thus in view of above, what is required to be seen is that when there is unwarranted assumption of jurisdiction and/or gross abuse of jurisdiction

and/or an unjustifiable refusal to exercise the jurisdiction vested in the court. However considering the facts of the case, as discussed above, it is found

out that from time to time, the learned Judge concerned has exercised the jurisdiction and/or discretion in favour of the petitioners by extending time to

deposit the amount so that the respondents may act as per MoU executed between the parties, however despite exercise of jurisdiction and/or

discretion in favour of the petitioner, the petitioner has failed to act accordingly and on the contrary, he was passing time by filing one application and

another. Not only that, as stated above, consensus decree was drawn on the strength of the consent deed with a rider to make the payment of entire

decretal amount within 24 months but despite that, the petitioner waited for completion of those 24 months and immediately thereafter, application

was preferred for extension of time to deposit the amount. Over and above that, in the present proceeding also, despite order of the Coordinate Bench

of this Court to deposit entire amount, the petitioner has deposit part thereof and, thereafter, deposited remaining amount after much time, which

clearly goes on to show that the petitioner is passing time on one pretext or another and by doing so, the petitioner has, without any order from this

Hon'ble Court, has taken much time to deposit the amount. Therefore considering the overall facts of the case, in my considered opinion, no relief

can be granted in favour of the petitioner.

17. At this stage, I would like to refer to the decision of the Hon'ble Supreme Court in case of Periyakkal Vs. Dakshyani, reported in 1983 (2)

SCC 127, which has been referred to by the learned Judge concerned while passing impugned order. I have carefully considered the said decision and

found that the time can be extended in rarest of rare case and not in ordinary course. Therefore if the facts of the present case are examined, in that

event, it is found out that there was intentional delay on the part of the petitioner in making payment and by doing so, the petitioner has tried to buy the

time, which in my considered opinion, cannot be permitted to be allowed. Therefore, the relief as prayed for in the petition cannot be granted.

18. Considering the judgments which are relied by learned advocate for the petitioner, there is no dispute about the ratio laid down in the respective

judgment of the Hon'ble Supreme Court, however, each judgment is required to be considered with respect to the facts of the present case. In the

present case it is found that the petitioner is passing time on one reason or another and there is no bonafide mistake on his part in depositing the

amount as agreed between the parties. Therefore, the reliance placed upon the decisions of the Hon'ble Supreme Court by learned advocate for

the petitioner is not helpful to the petitioner.

19. In view of overall and in totality, I am of the opinion that there is no infirmity or illegality committed by the learned Judge while passing impugned

order and the present petition does not warrant any interference by this Court. Hence, the present petition is bereft of merit and is hereby rejected.

Notice is discharged. Interim relief stands vacated.

20. Connected application stands disposed of accordingly.

FURTHER ORDER

After the pronouncement of the judgment, learned advocate, Mr. Thakore has requested for extension of stay granted by this Court for a period of

four weeks, to which, learned advocate for the respondents has not objection.

Accordingly, the stay granted by this Court shall continue for a further period of four weeks.