

P. R. YELUMALAI

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v.

N. M. RAVI

(Civil Appeal No. 3213 of 2015)

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MARCH 27, 2015

**[J. CHELAMESWAR AND  
PINAKI CHANDRA GHOSE, JJ.]**

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*Decree: Execution of – Decree holder did not make the deposit within the time stipulated by court nor the deposit of balance consideration was made through the mode as stipulated by court – Payment made after stipulated date – Execution application dismissed by trial court – Held: Since decree holder failed to comply with the terms of decree, suit stood dismissed automatically – Decree holder was rightly held to be not entitled to seek execution of decree which does not exist in the eyes of law.*

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**Disposing of the appeals, the Court**

**HELD:** The judgment passed by the trial court showed that the period of one month granted for depositing the balance consideration started from the date of decree. The decree was signed on 27.2.2007. Therefore, the period of one month started from 27.2.2007 and ended on 26.3.2007. After extension of two months was granted, the last date for depositing the amount of balance consideration fell on 26.5.2007. As the Civil Court was not working on 26.5.2007 and next date i.e., 27.5.2007 was Sunday, the Plaintiff-Buyer was to deposit the amount on 28.5.2007, which was the

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A re-opening day. However, there is no evidence on record to show that he made efforts to deposit the balance consideration on 28.5.2007 or made an application on 28.5.2007. The R.O. is dated 29.5.2007 and deposit was made on 29.5.2007. Thus, the Plaintiff-Buyer failed to comply with the decree and the suit stood dismissed automatically. The trial court rightly held that the decree-holder did not make the deposit within the time stipulated by the Court nor the deposit of the balance consideration was made through the mode as stipulated by the Court, and that being the case, the suit will have to be deemed as dismissed. The decree-holder was not entitled to seek execution of decree, which did not exist in the eye of law. The trial court gave a finding that there was no evidence to show that the plaintiff had made any effort to deposit the amount on the 28.05.2007. The application was dismissed on its merits and not merely on the technical grounds. The Plaintiff-Buyer has clearly defaulted on time of depositing as well as the mode of payment. [Paras 12 to 14] [174-G-H; 175-A-G]

*Md. Alimuddin v. Waizuddin and Anr.* (1998) 9 SCC 108: 1997 (2) SCR 199 – distinguished.

F *Johri Singh v. Sukh Pal Singh* (1989) 4 SCC 403: 1989 (1) Suppl. SCR 17: 1989 (1) Suppl. SCR 17 – referred to.

#### Case Law Reference

G 1997 (2) SCR 199 distinguished. Para 11  
1989 (1) Suppl. SCR 17 referred to. Para 14

H CIVILAPPELLATE JURISDICTION : Civil Appeal No. 3213 of 2015.

From the Judgment and Order dated 22.08.2011 of the High Court of Karnataka at Bangalore in WP No. 6449 of 2010. A

WITH

C .A. No. 3214 of 2015. B

Lata Krishnamurti, Dr. B. Kalaivannan, Neeraj Shekhar, P. R. Mala, Pranav Diesh, Karan Kalia, I. Elangovan, Ashutosh Thakur, Anjana Chandrashekar, for the appearing parties.

The Judgment of the Court was delivered by C

**PINAKI CHANDRA GHOSE, J.** 1. Leave is granted in both the matters.

2. These cross appeals have been filed against the judgment and order dated 22.08.2011 passed by the High Court of Karnataka at Bangalore in Writ Petition (Civil) No.6449 of 2010, whereby and whereunder the High Court of Karnataka has set aside the order dated 15.02.2007 passed by the Trial Court in O.S. No.439 of 2006 and remitted the matter to the Trial Court for disposal afresh in accordance with law. D E

3. The factual background of the case is that on 04.08.2006, one P.R. Yelumalai, who is the appellant in the first appeal, entered into an Agreement of Sale with N.M. Ravi, the respondent in the first appeal, is the absolute owner of the property. The total consideration for the sale was Rs.41,60,000/-, out of which a sum of Rs.8 Lakhs was paid as advance money towards the total consideration amount. Thereafter, the Seller vide legal notice dated 04.09.2006 sought to cancel the agreement of sale which was refused by the Buyer. This led to filing of a suit for specific performance of the contract by the Buyer P:R. Yelumalai (hereinafter H

A referred to as “the Plaintiff-Buyer”), before the II Additional Civil  
Judge (Sr. Division), Kolar, being O.S. No.439/2006. The  
Seller N.M. Ravi (hereinafter referred to as “the Defendant-  
Seller”) conceded to the Plaintiff-Buyer’s prayer for  
performance of the said agreement stating that he had no  
B objection to the Court decreeing the suit in favour of the  
Plaintiff-Buyer. Accordingly, the suit was decreed on  
15.02.2007 and the Plaintiff-Buyer was directed to deposit the  
balance sale consideration of Rs.33,60,000/- by way of  
C demand draft, in Court within one month from the date of  
decree and the Defendant-Seller was directed to execute  
regular sale deed in favour of the Plaintiff-Buyer, within three  
months from the date of decree. It was made clear by the  
Trial Court in the decree that if the balance amount of sale  
D consideration is not deposited within one month from the  
date of decree, the suit shall be deemed to have been  
dismissed.

4. The Plaintiff-Buyer did not deposit the said amount  
E within one month as stipulated in the decree but he filed an  
application for extension of time for depositing the amount  
of balance sale consideration and vide order dated  
17.03.2007, the Additional Civil Judge (Sr. Division) extended  
the time by two months. After the extension order, the last  
F date for deposit of the amount fell during the Summer Vacation  
of the Court. The Plaintiff-Buyer did not deposit the said  
amount even on the re-opening day after Summer Vacation,  
i.e. 28.05.2007. But allegedly, he filed a Memo for issue of  
Receipt Order (R.O.) for depositing the said amount. However  
G as per the records, the R.O. was issued on 29.05.2007 and  
the amount was deposited on the same day by cash.

5. Admittedly, the Defendant-Seller was not served with  
a copy of the Memo and was not notified with regard to the  
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alleged deposit. The Defendant- Seller sold the property in question to Sri Rajesh on 20.06.2007, under a registered sale deed. The Plaintiff-Buyer filed Execution Petition No.88/2008 on 17.03.2008 in the Court of IInd Additional Civil Judge (Sr. Division), which was dismissed on 20.10.2008. The IInd Additional Civil Judge observed as follows:

"7. It is also the contention of the J.Dr. there is no evidence that D.Hr. has deposited the balance consideration on 29.5.2007. Therefore records in O.S.439/2006 were secured by the court and perusal of the same, it is revealed that in the order sheet after 170/07 there is an endorsement of the office that consideration amount of Rs.33,60,000.00 is deposited under J.D.No.177/07 (R.O. No.295806) dated 29.5.2007 and the same endorsement is found in the certified copy of the order sheet produced by the D.Hr. in this case. However, the counsel for the J.Dr. argued that he has also obtained copy of the order sheet and in his order sheet in O.S. 439/06 said endorsement is not there and therefore, he impliedly contended that endorsement has been subsequently got written in the order sheet. However, when there is no allegation made against the court officials merely because the endorsement was written in the order sheet after the certified copy of the order sheet in O.S.439/06 was issued to the J.Dr. it does not mean that endorsement is correct. Further it is seen that J.Dr. has produced the copy of the order sheet obtained by him in this case and perusal of the same reveals that he has applied for the copy on 29.5.2007 and obtained it on the same day. Therefore, there is all the chance that after issuance of the certified copy of the J.Dr. the deposit of amount may be noted in the order sheet on the same date, but after issue of certified copy

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A of the J.Dr.

8. It is also the contention of the J.Dr. that even if it is presumed that vacation period has to be excluded by calculating the extended period of 2 months, then D.Hr. was required to deposit the balance consideration on 28.5.2007 as that was the re-opening day for the civil courts. A perusal of the calendar of 2007 does reveal that re-opening day was 28.5.2007 and not on 29.5.2007 as contended by D.Hr. xxx

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xxx xxx xxx

9. Thus the D.Hr. is entitled for seeking exclusion of vacation period while calculating the extended period of 2 months of deposit of balance consideration. Admittedly the judgment was passed on 15.2.2007. However, a perusal of order dated 15.2.2007 makes it clear that period of 1 month given to plaintiff/D.Hr. to deposit the balance consideration starting from the date of decree and not from the date of order dated 15.2.2007, because order clear states that D.D. of Rs.33,60,000.00 will have to be deposited within one month from the date of decree. Further order sheet in O.S.439/06 makes it clear that decree is signed on 27.2.2007. Therefore, initially the period of one month started from 27.2.2007 and ended on 26.3.2007 and since period was extended for 2 months on 17.2.2007 normally last date for deposit of balance consideration fell on 26.5.2007 and the civil court was not working on 26.5.2007 and next date i.e., 27.5.2007 was Sunday.

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10. Hence, the D.Hr. was required to deposit the balance consideration on 28.5.2007, which was the re-opening day. However, to show that he made efforts to deposit

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the balance consideration on 28.5.2007 and made an application for issue of R.O. on 28.5.2007 itself there is no material placed before the court by the D.Hr. Hence, as the endorsement on the order sheet in O.S. 439/06 reveals that R.O. is dated 29.5.2007 and deposit is made on 29.5.2007 it is clear that even though the D.Hr. was required to make the deposit on the re-opening day i.e., 28.5.2007, he has failed to do so and has deposited it only on the next day....”

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6. The aforesaid order of dismissal passed by the Trial Court on 20.10.2008 in Execution Petition No.88/2008, was challenged by the Plaintiff-Buyer before the Karnataka High Court by filing Writ Petition No.13541/2008. The High Court of Karnataka did not find any error in the order passed by the Executing Court and dismissed the writ petition on 7.1.2010. However, it permitted the Plaintiff-Buyer to move the Court which had passed the decree, for seeking extension of time in depositing the amount of balance sale consideration.

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7. On 10.02.2010, the Plaintiff-Buyer filed an application under Section 148 of the Code of Civil Procedure (“CPC”, for short) for extension of time till 29.5.2007. The Additional Civil Judge (Sr. Division) vide order dated 15.02.2010, rejected the application for extension of time on the following reasoning:

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“Whereas the order of this Court itself is very clear, that the plaintiff as to deposit the balance amount within two months from the date of its order. Under the said circumstances the plaintiff need not wait till last date, knowing the said day is vacation. Further the plaintiff has taken chance to deposit on re-opening day, where he could not deposit, but deposited on the next day without seeking further extension of time according to

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A his whims and fancies. Further, the plaintiff has not placed any materials to show that he had approached the court on 28.8.07. But the orders sheet at page 8, it reveals that consideration amount of Rs.33,60,000/ - is deposited under J.D. No.170/07 (R.O. No.0295806 dated 29.5.07). Hence from the said order sheet, it is clear that the plaintiff has approached the court on 29.5.07 i.e. the very next day of re-opening day, where there is a delay of one day in depositing of consideration amount.

C Further, the order of Hon'ble High Court in W.P. No.13541/08 is dated 7.1.2010. Whereas the Hon'ble High Court of Karnataka held that the trial court shall pass appropriate orders within one week thereof. But on perusal of said orders it reveals that the plaintiff had applied for copy of said order on 4.2.2010 and obtained copy on 5.2.10 and appeared before this court with the said orders on 10.2.2010 and filed the present application for extension of time to deposit the balance sale consideration amount. But the plaintiff instead of filing the present application within one week from the date of order of Hon'ble High Court, he has filed the present application on 10.2.2010 where there is a delay of more than three weeks in filing the present application. Though the plaintiff is aware of the order of the Hon'ble High Court on 7.1.2010, but he has not applied for certified copy of the said orders on same day. But he has applied for the copy of the said order after lapse of one month which is also delayed by one month. Therefore, under said circumstances, the plaintiff has not made out any grounds to allow the said application for extension of time to deposit the balance sale consideration amount of Rs.33,60,000/-.

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Thus under the said circumstances the application filed by the plaintiff U/Sec.151 of CPC is hereby rejected with costs."

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8. Aggrieved by the said order, the Plaintiff-Buyer again filed a writ petition before the Karnataka High Court, being Writ Petition No.6449/2010. The High Court remanded the matter to Trial Court by formulating four questions to be answered by it, which were: (i) whether the amount deposited on 29.05.2007 amounts to a deemed extension of time and a valid deposit; (ii) whether one Rajesh who has purchased the property is a notified purchaser; (iii) whether the appellant is entitled to extension of time when third party interest is created; and (iv) whether the suit stood dismissed on 28.05.2007 or earlier when the amount was not deposited in terms of the decree. The High Court directed the Trial Court to dispose of the matter within two months from the date of receipt of the order. Aggrieved by the order of remand passed by the Karnataka High Court, the parties are before us.

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9. The learned counsel for the Plaintiff-Buyer contended that this is not a proper case to be remanded back to the Trial Court for fresh consideration and the High Court should not have remanded the case. He further contended that Execution Case No.88/08 was solely dismissed on the ground of one day delay although there were valid reasons for the alleged delay. He further contended that the High Court failed to appreciate that the request for issue of Receipt Order (R.O.) on the re-opening day, is deemed compliance with limitation period as provided in Section 4 of the Limitation Act and, hence, the High Court directed the Plaintiff-Buyer to file an application for extension of time by a single day. This request of the Plaintiff-Buyer to

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A issue the R.O. on re-opening day is to be construed as deemed compliance under the Limitation Act read with Section 28(6) of the Karnataka Civil Courts Act, 1964. Learned counsel for the Plaintiff- Buyer also contended that the Trial Court also failed to consider the matter on merits

B in O.S. No.439/2006 and dismissed the application for extension of time solely on technical ground, and in contravention of Section 5 of Limitation Act. According to the learned counsel, in view of Section 5 of the Limitation Act,

C both the Trial Court and the High Court erred in not condoning the delay from 07.01.2010 to 10.02.2010 in filing the application for extension of time before the Trial Court. Further, the learned counsel argued that the acceptance of deposit of money by the Court on 29.05.2007, in itself amounted to

D implied grant of extension of time by the Court. In support of the said contention, he relied on the case of ***Md. Alimuddin v. Waizuddin and Anr.***, (1998) 9 SCC 108. He also submitted that the procedure should only be an aid to achieve justice and procedural technicalities should not be used to abuse the

E process of law. On the point of the third party interest being created in the suit property, he submitted that the purchaser (Sri Rajesh) of the suit property is not a bona fide purchaser. Alternatively, he argued that the concept of bona fide purchaser does not find relevance when the principles of lis pendens apply.

F He submitted that as per Section 52 of the Transfer of Property Act, 1882, no transfer of any immoveable property during the pendency of any suit or proceeding in relation to that property can take place except with the authority of the Court in which such suit or proceeding is pending. On the basis of

G these submissions, he contended that the title of the purchaser as per sale deed dated 20.06.2007 is defective as against him.

H 10. Learned counsel for the Defendant-Seller, on

the other hand, contended that under Section 28(1) of the Specific Relief Act read with Section 151 of CPC, the Trial Court alone has power to extend the time to satisfy the conditional decree. When the Trial Court had exercised its discretion and granted extension of two months' time for making payment of the balance consideration amount, even then the Plaintiff-Buyer failed to pay on time and in the prescribed mode. In addition to this, counsel for the Defendant-Seller contended that the Plaintiff-Buyer has not given notice to the respondent of delayed payment by cash. Defendant-Seller had no notice of delayed payment by cash. The learned counsel submitted that as per Order XXI Rule 2 of CPC, the judgment-debtor is required to give notice to the decree-holder of the deposit of any money in Court. He contended that in the present case, even though the Plaintiff-buyer is a decree-holder, yet the obligation of notice would apply to him also. In absence of this notice, learned counsel contended that the Defendant-Seller was in his right to sell the property to a third party. He further reinforces the justification for sale deed dated 20.06.2007 by pointing out that the decree in this case was a conditional one and self operative in case of non-compliance. Since, the decree clearly mentioned that if the amount of balance consideration is not deposited within the period stipulated therein, the suit shall be deemed to have been dismissed. The Plaintiff-Buyer lost his right under the decree as soon as the time granted under the decree expired by not complying with the decree. The learned counsel further argued that the mode of deposit of the amount was not in terms of the decree as the amount was deposited in cash while the decree required the deposit to be made in the form of demand draft. Thus, the learned counsel submitted that the Plaintiff-Buyer had completely failed to obey the commands in the decree.

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A            11. Arguments were also made by the learned counsel  
on both sides as to which Court had the power to grant  
extension of time and several authorities were cited on this  
point. However, we find that after the execution Court had  
dismissed the execution proceeding on the ground of delay  
B in depositing the amount, the same question was dealt with  
by the original side of the Trial Court as well in the application  
for extension of time. Since both the Courts have given  
concurrent findings that the case for extension of time was not  
C made out, we are of the opinion that dealing with the question  
as to which Court had the jurisdiction to decide this point,  
will be an exercise in futility. It would suffice to say that the  
Court has the discretion to extend the time upon an application  
made by the party required to act within a stipulated time  
D period. Extension of time can be granted even after the expiry  
of the period originally fixed. In **Johri Singh v. Sukh Pal  
Singh and Ors.**, (1989) 4 SCC 403, this Court observed:

E            “This Section empowers the Court to extend the time  
fixed by it even after the expiry of the period originally  
fixed. It by implication allows the Court to enlarge the  
time before the time originally fixed. The use of ‘may’  
shows that the power is discretionary, and the Court is,  
therefore, entitled to take into account the conduct of the  
F party praying for such extension.”

12. From a perusal of the judgment and decree dated  
15.2.2007 passed by the Trial Court, it is clear that the period  
of one month granted for depositing the balance consideration  
G started from the date of decree. From the records it appears  
that the decree was signed on 27.2.2007. Therefore, the  
period of one month started from 27.2.2007 and ended on  
26.3.2007. After extension of two months was granted, the last  
date for depositing the amount of balance consideration fell  
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on 26.5.2007. As the Civil Court was not working on 26.5.2007 and next date i.e., 27.5.2007 was Sunday, the Plaintiff-Buyer was to deposit the amount on 28.5.2007, which was the re-opening day. However, there is no evidence on record to show that he made efforts to deposit the balance consideration on 28.5.2007 or made an application on 28.5.2007. The R.O. is dated 29.5.2007 and deposit was made on 29.5.2007. Thus, the Plaintiff-Buyer failed to comply with the decree and the suit stood dismissed automatically.

13. The Trial Court rightly held that the decree-holder did not make the deposit within the time stipulated by the Court nor the deposit of the balance consideration was made through the mode as stipulated by the Court, and that being the case, the suit will have to be deemed as dismissed. The Trial Court further held that the decree-holder is not entitled to seek execution of decree, which does not exist in the eye of law and consequently the Trial Court dismissed the execution petition. Further, we have already discussed the order of the Trial Court in the application for extension of time and we do not take the contention of the Plaintiff-Buyer that the application was dismissed solely on the technical ground and that the application was filed after a delay of 3 weeks. The Trial Court has discussed full merits of the application and given a finding that there is no evidence to show that the plaintiff had made any effort to deposit the amount on the 28.05.2007. The application was dismissed on its merits and not merely on the technical grounds. Further, we accept the submission of the learned counsel for the Defendant-Seller that the Plaintiff-Buyer had even failed to make the deposit through the mode of payment as required by the decree.

14. Having given above findings, the obvious corollary is that since the Plaintiff-Buyer failed to comply with the terms

A of the decree, the suit stood dismissed as the order passing  
the decree was a peremptory order. In light of this, we do not  
find it necessary to address the arguments made by the  
counsel on the point of bona fide purchaser. Further, the  
contention that the acceptance of deposit made by the Plaintiff-  
B Buyer on 29.05.2007 is an implied grant of extension of time  
is a misplaced one. Reliance cannot be placed on *Md.*  
*Alimuddin v. Waizuddin and Anr.*, (1998) 9 SCC 108, as in  
that case there was an application for extension of time which  
C was granted, though at the risk of the depositor, along with the  
deposit of amount. This Court in the said case held that when  
the Court had allowed the application for extension of time in  
its wisdom, there was no reason to disturb it later. In the  
D present case, there is rather a reverse situation wherein the  
Trial Court has dismissed the application for extension of time  
giving due reasons. In view of above findings, the question  
as to whether the Plaintiff-Buyer was required to give notice  
of the amount deposited also need not be answered,  
although we believe that had the Plaintiff-Buyer, irrespective  
E of any obligation under law, given notice of the deposit made  
to the Defendant-Seller it would have helped the case of the  
Plaintiff- Buyer.

15. Thus, in the present case, the Plaintiff-Buyer has  
F clearly defaulted on time of depositing as well as the mode of  
payment. The decree was self- operative and the suit stood  
dismissed for non-compliance of the decree. Further, the  
Plaintiff-Buyer also failed to make out a case for condonation  
of delay. In view of these findings, we are of the opinion  
G that the questions formulated by the High Court in the order  
of remand are not required to be answered by the Trial Court.  
Consequently, the appeal filed by the Plaintiff-Buyer is  
dismissed and the appeal filed by the Defendant-Seller is  
H allowed. There shall be no order as to costs.