2026 INSC 451

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(Arising out of Special Leave Petition (C) No. 14479 of 2025)

HABBAN SHAH **...APPELLANT(S)**

VERSUS

SHERUDDIN **...RESPONDENT(S)**

J U D G M E N T

PANKAJ MITHAL, J.

1. Heard Shri Manoj Swarup, learned senior counsel for the defendant-appellant and Shri Divyesh Pratap Singh, learned counsel for the plaintiff-respondent.

2. Leave granted.

3. A short but an intricate question of law which arises for our consideration in this appeal is: whether the decree of specific performance passed by the court of first instance on 31.10.2012 directing for the execution of sale deed on deposit of the balance sale consideration within three

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months would be inexecutable for the reason that the balance sale consideration was not deposited within the time stipulated.

4. The suit property is an agricultural land admeasuring 12 *kanals* and 19 *marlas* situate in village Shikarpur, Tehsil Tauru, District Mewat in the state of Haryana. The said land belonged to Habban (defendant-appellant). He entered into an agreement to sell the said land to Sheruddin (plaintiff-respondent) for a sale consideration of Rs.5,00,000/- per acre and received a sum of Rs.80,000/- in advance. It was agreed that the sale deed shall be executed on or before 15.03.2006 and that balance sale consideration would be payable at the time of execution and registration of sale deed.

5. Upon non-execution of the sale deed within the time stipulated, the plaintiff-respondent instituted a suit for specific performance of the aforesaid agreement to sell dated 19.10.2005. The said suit after contest by the defendant-appellant was decreed on 31.10.2012 by the court of first instance. The said decree specifically provided that the defendant-appellant shall execute the sale in

favour of plaintiff-respondent in respect of suit land in terms of the agreement after receiving the balance sale consideration within a period of three months from the date of the judgment and if the sale is not so executed, the plaintiff-respondent would be entitled to get it executed through the process of the court.

6. It is not in dispute that the aforesaid decree was challenged in a first appeal wherein on 17.12.2012 an interim order was passed restraining both the parties from alienating suit property till 25.01.2013. The said interim order was not extended and as such lapsed on 25.01.2013 itself. Finally, the said appeal was dismissed on 11.11.2014 upholding the decree of the first court.

7. The decree so passed by the court of first instance and confirmed by the first appellate court was taken to the High Court by means of a second appeal by the defendant-appellant. Ultimately the same was also dismissed on 12.01.2017. It may be worth noting that in the second appeal no interim order of any nature was ever passed.

8. In the meantime, the plaintiff-respondent as a decree holder on 04.03.2013 applied for the execution of the

aforesaid decree dated 31.10.2012. However, the said execution was dismissed for want of prosecution on 01.08.2014. It appears that the execution may not have been pressed for the reason that an appeal was preferred by the other side which continued to remain pending wherein though an interim order was passed for a short period which lapsed with the efflux of time.

9. Subsequently, the plaintiff-respondent moved another application dt. 08.01.2015 for execution of the aforesaid decree of specific performance. In the said execution, the defendant-appellant filed objections dated 14.07.2015 to the effect that the execution is barred by time as the execution has been moved after a gap of three years and that the decree allowed only three months' time for depositing the balance sale consideration.

10. The objections filed in the aforesaid Execution Petition were dismissed by the Executing Court *vide* order dated 07.09.2015 primarily on the ground that the plaintiff-respondent was always ready and willing to perform his obligation and that the balance sale consideration could

not have been deposited due to the interim order passed in the first appeal or due to its pendency.

11. Not satisfied by the above order passed by the Executing Court, the defendant-appellant preferred Civil Revision No.7232 of 2015 before the High Court specifically contending that the decree of specific performance, in unequivocal terms directed for the execution of the sale deed upon receiving the balance sale consideration within a period of three months. Therefore, the plaintiff-respondent was under an obligation to deposit the balance amount within three months and since neither the amount was deposited nor any extension of time to deposit the same was applied, he is not entitled to execute the decree. The decree as such has become inexecutable.

12. The aforesaid revision preferred by the defendant-appellant has been dismissed by the High Court by order impugned dated 24.03.2025, more or less on similar grounds as assigned by the Executing Court with a further reasoning that the plaintiff-respondent had in the meantime moved an application on 05.03.2013 and again on 08.01.2015 for the deposit of the balance sale

consideration and the second application seeking permission to deposit the balance amount was allowed on 09.10.2015 by the Executing Court and the amount of Rs.6,92,410/- was duly deposited.

13. The above orders passed by the Executing Court and the Revisional Court dismissing the objections of the defendant-appellant and affirming the same, have been assailed in this appeal.

14. The submission of Shri Manoj Swarup, learned senior counsel for the defendant-appellant is that the decree provided for the deposit of balance sale consideration within a period of three months and since it was not deposited within the time provided, the decree is no longer executable. The plaintiff-respondent never moved any application for the extension of time to deposit the balance sale consideration and has not even explained the reason for the delay in making the deposit. Therefore, the defendant-appellant is entitled to the revocation of the contract in accordance with provisions of Section 28 of the Specific Relief Act, 1963[1]. In support of his contentions, he

[1] Hereinafter referred to as 'the Act'

has relied upon a number of decisions, to be precise four in number, of this Court in which the latest is ***Balbir Singh and Another v. Baldev Singh (Dead) Through his legal representatives and Others***[2].

15. From the other side, it is contended that the decree of specific performance is clear enough and is an executable decree. The court of first instance had decreed the suit after recording clear finding of fact that the plaintiff-respondent was always ready and willing to perform his obligations under the agreement. Therefore, the question of readiness and willingness does not arise at this stage of the execution. The plaintiff-respondent never denied to deposit the balance sale consideration rather it was on account of the defendant-appellant filing an appeal and obtaining interim order restraining parties from alienating the property that it was not possible for the plaintiff-respondent to deposit the amount. There was no need on his part to deposit the amount as directed, as under the order of the appellate court sale/alienation was not permissible. Moreover, once the application of the plaintiff-

[2] (2025) 3 SCC 543

respondent to permit him to deposit the balance sale consideration was allowed, it was no longer open for the defendant-appellant to allege non-compliance of the decree. In such a scenario, the delay, if any, in depositing the amount stands condoned or in other words the time for making the deposit stands extended. It is also submitted that the defendant-appellant is not entitled to any benefit under Section 28 of the Act as he never moved any application for rescinding the contract as envisaged therein.

16. It is in the above factual position that we have to examine whether the decree of specific performance passed by the court of first instance is executable or has become inexecutable on account of default in depositing the balance sale consideration within the time stipulated under the decree.

17. The operative portion of the judgment and decree dated 31.10.2012 reads as under:-

> *"As a sequel to the findings on issue wise, the suit of the plaintiff is decreed with costs. The defendant is directed to execute the sale deed in favour of the plaintiff in reject to the suit land in view of the agreement to sell dated 19.10.2005 after receiving the balance*

sale consideration within the period of three months from the date of this judgment failing which the plaintiff will be at liberty to get execute the sale deed by approaching this court. The defendant is also directed to hand over the possession over the possession of the suit land legally and the defendant is restrained from alienating the suit land. Decree-sheet be prepared accordingly. File be consigned to the record-room after due compliance."

18. A simple reading of the aforesaid directions contained in the order would reveal that the court had directed the defendant-appellant to execute the sale deed in favour of the plaintiff-respondent in terms of the agreement after receiving the balance sale consideration within the period of three months from the date of the judgment. Therefore, the direction is to the defendant-appellant to execute the sale deed within a period of three months after receiving the balance sale consideration. There appears to be no specific direction to the plaintiff-respondent that the balance sale consideration has to be deposited by him within three months. The direction in this regard is specifically to the defendant-appellant to execute the sale deed within three months on receipt of the balance sale consideration, which by implication means that there is

reciprocal obligation upon the plaintiff-respondent to deposit the amount within three months. It is only by necessary implication that the plaintiff-respondent was required to deposit the amount within three months.

19. It is trite to mention that in view of Order XX Rule 12A CPC it is mandatory that every decree of specific performance of a contract must specify the period within which the sale consideration/the balance sale consideration should be paid. It is in consonance with the aforesaid provision that the decree of specific performance in the case at hand provides for the execution of the sale deed after receiving the balance sale consideration within a period of three months.

20. Thus, we assume that there was a specific direction to the plaintiff-respondent to deposit the amount within three months of the judgment and therefore, the issue as stated earlier is; whether non-deposit of the balance sale consideration within the time stipulated above would be fatal and would make the decree inexecutable which otherwise is an executable decree.

21. Before we dwell on the merits of the above issue, we would like to mention that a feeble attempt was made to contend that the execution as filed by the plaintiff-respondent is barred by time and that the first execution having been dismissed, the second was not maintainable.

22. As regards limitation, the decree is dated 31.10.2012 whereas the second execution was filed on 08.01.2015 i.e., within three years of the decree and as such the same was clearly within time. Article 136 of the Schedule to the Limitation Act, 1963, provides for a period of twelve years from the decree or the time when it becomes enforceable in law for filing an application for the execution of any decree. The execution in the case at hand was moved within the aforesaid period of twelve years and as such cannot be said to be barred by limitation.

23. The aforesaid execution is maintainable even otherwise for the simple reason that the first application was not decided on merits but was simply dismissed for want of prosecution. In this connection, reference may be made to paragraph 25 of ***Bhagyoday Cooperative Bank Limited***

v. Ravindra Balkrishna Patel[3], wherein also a second Execution Petition was filed after the first was dismissed on the ground of default and the court held that mere dismissal of the first application on the ground of default does not preclude the decree holder from filing a fresh execution within limitation.

24. In view of the above, the objections to the limitation and maintainability of the execution are not tenable and stand overruled.

25. Now coming to the merits of the executability of the decree for specific performance dated 31.10.2012. It may be noted that the aforesaid decree is an executable decree but is a conditional decree. It provides for the execution of the sale deed by the defendant-appellant within three months, subject to the plaintiff-respondent depositing the balance sale consideration. Therefore, as stated earlier, the decree imposes reciprocal obligations upon both the parties. The obligation of executing the decree is upon receipt of the balance sale consideration. Therefore, by necessary implication for the purposes of executing the sale deed, the

[3] (2022) 14 SCC 417

plaintiff-respondent had to deposit/pay the balance sale consideration within the time stipulated for depositing the aforesaid amount or for executing the sale deed, as the case may be.

26. Admittedly, in the present case, the plaintiff-respondent had not deposited the balance sale consideration within the period of three months stipulated under the decree. He had not even moved any application within the said time for seeking extension of time, either under Section 148/151 of the CPC or under Section 28 of the Act.

27. The interim order dated 17.12.2012 passed in first appeal preferred by the defendant-appellant, only restrained the parties from alienating the suit property. It nowhere prohibited the plaintiff-respondent from depositing the balance sale consideration as a prelude to the execution of the sale deed. Moreover, the aforesaid stay order elapsed on 25.01.2013 and the first appeal itself was dismissed on 11.11.2014. No doubt, the plaintiff-respondent had moved application on 05.03.2013 seeking extension of time for depositing the balance sale consideration but no orders were ever passed on the said application. The said

application was filed after the stay in the first appeal had expired. Therefore, there was no application seeking extension of time within the period of three months stipulated under the decree.

28. Subsequently, plaintiff-respondent filed second application to deposit balance sale amount on which the court permitted the deposit of balance sale consideration *vide* order dated 09.10.2015, in pursuance whereof the balance amount was deposited. This was done much after the first appeal itself was dismissed. The question, therefore, is whether such permission to deposit or the deposit itself would *ipso facto* amount to condoning the delay in making the deposit and resultantly it amounts to deemed extension of time. The answer of the above proposition is an absolute 'No'.

29. In this connection, it would be profitable to refer to a decision of this court in ***P.R. Yelumalai v. N.M. Ravi***[4]. In the said case the court was dealing with a similar issue where the decree holder failed to make the deposit within the time stipulated under the decree. The court refused to

[4] (2015) 9 SCC 52

accept the plea that once the deposit is made and accepted by the court, though beyond the period stipulated under the decree, it would amount to deemed extension of time. It was held that the conditional decree is self-operative, therefore, non-compliance of any condition leads to automatic dismissal of the suit. In a case, the deposit is not made within the time permitted and no application is moved for the extension of time within the said time, it would amount to failure to comply with the condition of the decree which leads to the automatic dismissal of the suit. In other words, it was held that the suit for specific performance of a contract stands automatically dismissed when the conditions under the decree are not complied with by the decree holder and he is not entitled to seek execution of the decree as it ceases to exist in the eyes of law due to deemed dismissal of the suit.

30. This being the position in law, the submission that the plaintiff-respondent had deposited the balance sale consideration with the permission of the court and the same was accepted and as such the condition stands complied with, cannot be accepted.

31. One of the other arguments is that the defendant-appellant had not even filed any application under Section 28 of the Act for rescinding the contract, therefore, no relief to the above effect could be granted to the defendant-appellant.

32. The aforesaid argument does not tie down our hands as this aspect of the matter stands covered by one another decision of this court rendered in ***Prem Jeevan v. K.S. Venkata Raman and Another***[5].

33. In the aforesaid case one of the contentions advanced on behalf of decree holder was that unless an application seeking recession of the contract in terms of Section 28 of the Act is filed, judgment debtor is not entitled to the relief of rescinding the contract. The court upon due consideration held that failure of the judgment debtor to seek recession of the contract in terms of Section 28 of the Act does not imply that the decree which has become inexecutable would revive and would be executable when the deposits were not made in time and no application for extension of time was moved.

[5] (2017) 11 SCC 57

34. In view of the above decision, it is settled that moving of an application under Section 28 of the Act for rescinding the contract for non-compliance of the condition is not mandatory rather optional and immaterial and that the court in a given circumstance is not powerless to treat the contract as having rescinded for non-compliance of the condition.

35. In view of the ratio laid down in ***P.R. Yelumalai*** (supra) that the suit for specific performance of contract stands automatically dismissed, no sooner than the condition contemplated under the decree is not complied with, coupled with the fact that there is no mandatory requirement of moving an application for rescinding a contract in terms of Section 28 of the Act in view of ***Prem Jeevan*** (supra), we are of the opinion that the plaintiff-respondent having not only failed to deposit the balance sale consideration within the time stipulated under decree but also having failed to move any application for extension of time within the time permitted disentitled himself from executing the decree. There is neither automatic extension of time nor condonation of delay in

making the deposit. The decree ceases to exists due to non-compliance and becomes inexecutable.

36. Shri Manoj Swarup, learned senior counsel for the defendant-appellant had placed strong reliance upon the recent decision of this court in ***Balbir Singh and Another v. Baldev Singh (Dead) through its legal representatives and others***[6]. The aforesaid decision reiterating the earlier precedents holds that the language of Section 28(1) of the Act establishes that the court does not lose its jurisdiction after the grant of decree for specific performance and it does not become *functus officio* as the very said provision gives discretionary power to the court to grant extension of time to comply with the conditions under the decree and even for the recession of the contract. Thus, the court retains its power and jurisdiction to deal with the decree of specific performance till the sale deed is executed or the decree is rendered inexecutable.

37. The court therein took cognizance to the fact that neither the deposit was made within the stipulated time nor extension of time was sought or granted within the time

[6] (2025) 3 SCC 543

permitted. Further, no explanation was furnished for the delay in making the deposit and as such held the view taken that the decree is inexecutable is correct.

38. The aforesaid decision though relied upon by both the sides does not render much assistance to the plaintiff-respondent rather helps the defendant-appellant.

39. The above discussion leads us to the following conclusions:

i. The decree passed in a suit for specific performance is in the nature of a preliminary decree.

ii. Since the decree of a specific performance is in the nature of preliminary decree, the Court passing the same does not become functus officio as soon as the decree is passed but retains control over the decree even after the passing of the decree till the sale deed is executed or the decree is rendered inexecutable.

iii. Section 28 (1) of the Act provides for depositing or paying the balance sale consideration within the time allowed or to seek recession of the contract in the event of default even though the decree of specific performance has been granted.

iv. Sub-Section (4) of Section 28 of the Act bars a separate suit for any relief which can be claimed in the same suit by moving an application under Section 28 of the Act.

v. The power of the Court under Section 28 of the Act is discretionary and can be exercised on equitable consideration. The exercise of such discretion must be equitable to both the sellers and purchasers.

vi. The default, if any, subsequent to decree for the specific performance resulting in the recession of contract has to be decided having regard to the broad terms of Section 28 (1) and Section 28 (4) in exercise of equity jurisdiction so as to give quietus to the dispute; and

vii. It is not mandatory to move an application under Section 28 and that the Court in the given circumstances is not powerless to treat the contract as having rescind it for non-compliance of the condition.

40. The plaintiff-respondent has placed reliance upon ***Dr. Amit Arya v. Kamlesh Kumari***[7] which is also a very recent decision of this court. In the said case, the court observed that the power to extend time granted can be exercised by the court, however, non-grant of extension of time cannot be the end of the transaction. Such non-extension of time would be a classic example of a hyper technical approach which the court must eschew in view of ***Ram Lal v. Jarnail Singh (now Deceased), through its LRs and Others***[8], wherein it has been observed that "non-payment of balance sale 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 decree holder amounts to a positive refusal to complete his part of the contract".

41. In view of the above decision, we have to examine whether there was any positive act on part of the plaintiff-respondent for non-compliance of his obligation of

[7] 2025 SCC OnLine SC 2886
[8] 2025 SCC OnLine SC 584

depositing the balance sale consideration as per the decree.

42. At the cost of repetition, we must remind that the decree for specific performance was passed on 31.10.2012 and the interim order granted in first appeal lapsed on 25.01.2013, but the plaintiff-respondent neither deposited the balance sale consideration, if he was ready and willing to perform his obligation, within the period of three months contemplated under the decree nor cared to move any application seeking extension of time for depositing the balance amount on any ground, much less for the reason that the decree had not attained finality and was subject matter of appeal. This shows that the plaintiff-respondent was shying away from performing his obligation.

43. It is pertinent to mention here that the relief of specific performance of an agreement is an equitable and a discretionary relief in terms of Section 16 (C) and Section 20 of the Act. It is not mandatory upon the court to grant the relief of specific performance even if it legally appears to be correct.

44. In ***N.P. Thirugnanam (Dead), by LRs v. Dr. R. Jagan Mohan Rao and Others***[9], the court observed that to adjudge whether the plaintiff is ready and willing to perform his part of the contract, it must take into consideration the conduct of the plaintiff, both prior to the filing of the suit and subsequent to the filing of the suit along with other attending circumstances. The court is not bound to grant the relief of specific performance merely because there was a valid agreement or at one point of time the plaintiff was ready and willing to perform his obligation. The relief of specific performance is an equitable remedy and it is on the discretion of the court to grant or not to grant such a relief.

45. Once it is accepted that the relief of specific performance is an equitable and a discretionary relief, therefore, he who seeks equity must ensure that equity is done to the opposite party. The final end of law is nothing but justice, therefore, the parties to the suit for specific performance should be informed by equity. In other words, he who seeks equity must do equity.

[9] (1995) 5 SCC 115

46. In view of the above legal position when the relief of specific performance is an equitable and a discretionary relief and the same having been granted, the plaintiff-respondent must perform his part of the obligation in time. The condition to deposit the balance sale consideration within three months under the decree partakes the condition under the agreement and makes the aforesaid time as an essence of the agreement. Therefore, the plaintiff-respondent is obliged to establish his readiness and willingness to perform his obligation by depositing the balance sale consideration strictly within the time allowed. It is not at all equitable to condone the delay on his part in depositing the balance sale consideration or extending the time for the same, more particularly when due to non-compliance, the suit itself stands automatically dismissed and the decree vanishes. The conduct of the plaintiff-respondent disentitles him the relief which was earlier granted in view of the long passage of time since 2005 when the agreement was entered into till date as in between land prices might have increased manifold.

47. In the end, an attempt has been made from the side of the plaintiff-respondent to contend that when valuable rights have accrued in his favour on account of the decree of specific performance, such rights cannot be taken away and that the view which assist the decree must be adopted.

48. It is true that the rights accrued ought not to be disturbed unless there are strong reasons for the same. In the present case, the plaintiff-respondent got the decree by establishing his readiness and willingness to perform his part of the agreement but nonetheless he failed to establish his continuous readiness and willingness till the execution of the sale deed. If he was ready and willing to perform his part of the agreement till the stage of decreeing the suit, there would have been no problem on his part in immediately complying with his obligation under the decree by depositing the balance sale consideration within the time permitted. The plaintiff-respondent having failed to abide by such a condition indicates that he was not actually ready and willing to perform his obligation under the decree which obligation, in essence, took the shape of a condition under the agreement. In such circumstances,

the plaintiff-respondent disentitled himself from the benefit of the decree of specific performance. Therefore, the submission that the view which assist the decree must be adopted is not tenable in the facts and circumstances of the present case.

49. It is trite to mention that Section 28 of the Act provides that the Court has to pass an order as the justice of the case may require. The parties approaching the Court must have the feeling that justice has been done to either of them in the facts and circumstances of the case particularly when the decree relates to specific performance of a contract based upon equity, equality and fairness. Therefore, it is incumbent upon the Court to pass an equitable order accordingly, balancing the equities between the parties.

50. In the above context, post-hearing, we interacted with the learned counsel for the parties. Shri Manoj Swarup, learned senior counsel for the defendant-appellant, submitted that the defendant-appellant is not in a position to offer any amount and that at best he can leave one-half acre out of the two and a half acres involved in the

agreement, i.e., 4 *kanals* to make good the loss, if any, suffered by the plaintiff-respondent. It may be worth noting that the defendant-appellant had received part of the sale consideration amounting to Rs. 80,000/- on 19.10.2005. Therefore, in the facts and circumstances, we consider it prudent to order refund of the earnest money with simple interest so as to adjust the equities.

51. We have deliberately not touched the submission of the parties on the doctrine of merger as facts in that regard were not clear on record. Moreover, the parties have proceeded to make their submissions on the basis of the judgment and decree passed by the court of first instance rather than that of the first appellate Court or the second appellate Court. The first appellate Court and the Court of second appeal have not granted any time either for the execution of the sale deed or for the deposit of balance sale consideration. Therefore, the time provided by the Court of first instance under the decree is the material time within which the parties were required to fulfil their reciprocal obligations. Accordingly, we have not dealt with the decision in the case of ***Surinder Pal Soni vs. Sohan Lal***

(Dead) through LRs.[10] which is primarily on the doctrine of merger.

52. In view of the aforesaid facts and circumstances, the decree of specific performance dated 31.10.2012 is rendered inexecutable on account of non-compliance of the condition to deposit the balance sale consideration within the time of three months stipulated therein and the contract as a whole stand rescinded in terms of Section 28 of the Act.

53. Accordingly, the impugned judgment and order dated 24.03.2025 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Revision No.7232 of 2015 and that of the Executing Court dated 07.09.2015 dismissing the objections, are hereby set aside. The objections are upheld and the execution proceedings are directed to be closed with the direction to the defendant-appellant to refund of the part sale consideration or the earnest money of Rs.80,000/- received by him with simple interest at the rate of 8 percent per annum from the date of its receipt i.e.,19.10.2005 till its refund. In the event, the

[10] (2020) 15 SCC 771

defendant-appellant is unable to refund the said amount, it would be open for him to sell his ½ acre of the said land to the plaintiff-respondent or to any other third party if he refuses to purchase and may make the payment of the aforesaid amount by the sale of the said land within a period of three months.

54. The appeal is allowed accordingly.

55. Pending application(s), if any, stands disposed of.

..... J.
(PANKAJ MITHAL)

..... J.
(S. V. N. BHATTI)

NEW DELHI;
MAY 6, 2026.