



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

DR. AMIT ARYA ... **APPELLANT(S)**

Versus

KAMLESH KUMARI ... **RESPONDENT(S)**

JUDGMENT

SANJAY KAROL, J.

Leave Granted.

2. This appeal arises out of a judgment and order dated 8th August 2022 of the High Court of Punjab & Haryana at Chandigarh in CR.No.979 of 2018 (O&M), titled ***Kamlesh Kumari v. Dr. Amit Arya***. The dispute pertains to the execution of an ‘*agreement to sell*’ between the parties regarding a property located in the District of Panchkula. A certain sum of

money was deposited as ‘*earnest money*’, but the matter did not proceed further. A suit for specific performance¹ was decreed by the Trial Court², which was eventually affirmed on second appeal³ by the High Court. Seeking execution, the plaintiff/decreed holder, the appellant herein, filed the said application⁴, in which the respondent’s objections were dismissed.⁵ The appeal against the dismissal of such objections gave rise to the impugned judgment, which accepted the objections and dismissed the execution petition.

BACKGROUND AND PREVIOUS PROCEEDINGS

We may, by way of a table, recall some important dates which are essential to putting the dispute in context:

Serial No.	Particulars	Date
1.	Date of Agreement Total sale consideration Rs.9,05,000/-	11 th December 2004
2.	Trial Court Judgment	14 th May 2011
3.	Judgment in First Appeal	22 nd April 2013
4.	Judgment in Second Appeal	8 th February 2016

¹ Civil Suit No. 47 of 2006

² Addl. Civil Judge (Sr. Divn.) Panchkula, by judgment dated 14th May 2011

³ RSA 4080 of 2013 (O&M); judgment dated 8th February 2016

⁴ Execution Application No.35 of 2016

⁵ Judgment dated 20th January 2018.

5.	Date of Execution Application	4 th July 2016
6.	Deposit worth Rs.7,39,700/- by the decree holder ⁶	26 th August 2016
7.	Deposit worth Rs.65,300/- by the decree holder ⁷	13 th December 2016

3. Facts are to the effect that :

3.1 The parties entered into an agreement to sell a plot of land admeasuring 2 biswas, 10 biswasi situated in Kalka, District Panchkula, on 11th December 2004. To that effect, Rs.1,00,000/- was paid as ‘earnest money’.

3.2 The appellant filed a suit for specific performance and permanent injunction against the Respondent, restraining her from alienating the suit land by way of sale, mortgage, gift, or otherwise in favour of any third party. In the alternative, it was prayed that the appellant be paid Rs.2,46,000/- with an interest @18% from the date of the agreement till actual payment.

3.3 The Trial Court framed nine issues for consideration, which read as under :

“1. Whether the defendant entered into an agreement to sell dated 11.12.2004 with the plaintiff of the suit

⁶ Annexure P-5 to the paperbook

⁷ Annexure P-7 to the paperbook

property, as detailed in the head note of the plaint, situated in Kalka, Tehsil Kalka, District Panchkula, as alleged.? OPP.

2. Whether the plaintiff is entitled for the relief of possession, as prayed for.? OPP.

3. Whether the plaintiff is entitled for the relief of permanent injunction, as prayed for.? OPD.

4. Whether the plaintiff is entitled for the alternative relief for the recovery of Rs.2,46,000/- along with interest @18% per annum from the date of its actual realization, as prayed for.? OPP.

5. Whether the plaintiff has no cause of action to file the present suit.? OPD.

6. Whether the suit of the plaintiff is not maintainable in the present form.? OPD.

7. Whether the plaintiff has not come to the court with clean hands,? OPD.

8. Whether the plaintiff is estopped from filling the present suit by his own act and conduct? OPD

9. Relief.”

Issue No.1 was decided in favour of the appellant and, consequently, **Issue No.4** was rejected. **Issue Nos.2, 3, 5, 6 and 8** were decided in favour of the appellant as a result of the finding in **Issue No.1**. **Issue No.7** was not pressed by the respondent-defendant but decided against the said party by the Court. The relief granted by the Court, which is the genesis of the present dispute, reads as under: -

“18. As a sequel to findings of this court on the aforesaid issues, the suit of the plaintiff succeeds and is decreed with costs. Resultantly, the plaintiff is entitled for possessions of the suit land and defendant is directed to execute the sale deed in favour of the plaintiff on receiving balance sale consideration of Rs.8,05,000/- from the plaintiff, in terms of the agreement to sell dated 11.12.2004 Ex.P1 within two months from today, failing which the plaintiff shall be at liberty to get executed the sale deed from the court on deposit of necessary expenses. The defendant is also restrained from alienating the suit land in favour of any other person, except the plaintiff. Decree sheet be drawn accordingly. File be consigned to the record room, after due compliance...”

3.4 On First Appeal⁸ before Addl. District Judge, Panchkula, it was held that the finding of the Trial Court *qua* specific performance could not be sustained for the reasons that, **(a)** no document of ownership had been produced and proved; **(b)** the agreement to sell contained a clause stipulating that if a sale deed was not executed before the specified date of 10th March 2005 then the appellant would be liable to pay double the amount of earnest money, and the sale deed was indeed not executed before the specified date; **(c)** the parties adduced evidence regarding readiness and willingness but the same was not considered in the judgment of the Trial Court, neither was a specific issue framed to that effect, i.e., whether there

⁸ Civil Appeal No.94 of 2011 decided on 22.04.2013

was any entitlement to the relief of specific performance. As such, it was concluded that the respondent herein entitled to recovery of double the earnest money, i.e., Rs.2,00,000/-.

3.5 The appellant herein preferred a second appeal wherein the sole issue to be considered was whether the appellant herein was entitled, either to specific performance or to the grant of alternate relief. It was held therein that the presence of a clause regarding the date by which the sale deed had to be executed would not bar a suit of specific performance. It was further held that neither non-consideration of the affidavit nor the non-framing of the issue regarding specific performance would be a reason for the First Appellate Court to interfere with the finding of the Trial Court. Insofar as the readiness and the willingness is concerned, the Court concluded, on appreciation of evidence and in consideration of the sum total of circumstances, the appellant herein remained ready and willing to perform his part of the agreement. As such, the judgment of the First Appellate Court was set aside, and that of the Trial Court was restored.

3.6 The appellant filed Execution Application No.35 of 2016 on 4th July 2016. Objections were filed thereagainst on 3rd September 2016. The primary ground taken therein

that the application was filed with a delay of 87 days which is after the two months' period provided by the judgment and the decree does not exist in the eyes of law; the balance consideration has not been paid even at the time of filing the execution application which displays lack of readiness and willingness to perform his part of the contract; the delay cannot be condoned at any cost.

3.7 The Civil Judge, (Jr. Divisional)-cum-JMIC, Kalka *vide* order dated 20th January 2018 dismissed the objections. It is against the dismissal of such objections that the impugned order came to be passed, taking the opposite view, allowing the objections.

3.8 The High Court observed as follows :

“...The execution was filed on 04.07.2016 i.e. after 87 days of the 02 months extended time granted by this Court and further part amount of Rs.7,39,700/- was deposited on 26.08.2016 i.e. after about 138 days of the extended time w.e.f. 08.04.2016 and finally even the remaining amount of Rs.65,300/- was deposited on 30.12.2016 i.e. about 245 days with effect from the extended time i.e. 08.04.2016.

From the conduct of the decree-holder, it is apparent that though, he was willing to get the sale deed executed but apparently he was not ready with the money which he never deposited within 02 months extended time as noticed above.

There is no dispute with regard to the judgments cited by counsel for the respondent/judgment-debtor i.e. ***Surinder Pal Soni's case (supra)*** and ***Raman Kutty's***

case (supra), however, on facts the judgments are distinguishable as in ***Surinder Pal Soni's case (supra)***, the plaintiff has deposited the balance sale consideration within 01 month from the passing of the original decree of the trial Court and in ***Raman Kutty's case (supra)***, it is held that the application for extension of time was filed before the Appellate Court whereas in the instant case, the petitioner has not shown any readiness to deposit the balance sale consideration with the trial Court immediately within 02 months even, after the judgment passed by this Court and never moved any application before the Appellate Court/this Court to allow him to deposit the balance money subject to final outcome of the case.

In view of the judgment of the Hon'ble Supreme Court in ***Prem Jeevan's case (supra)***, the time of 02 months w.e.f. 08.04.2016, does not automatically result in extension of time merely by filing the execution application. Even otherwise, in the absence of any application filed by the respondent/judgment-debtor for extension of time in view of ***Bhupinder Kumar's case (supra)***, the decree becomes inexecutable.

It is worth noticing that the Executing Court has wrongly assumed that in the light of the judgments relied upon in the impugned judgment, the time stands extended once the execution application is filed and subsequently, the amount is deposited.

In fact, no such power lies with the Executing Court as in view of the judgment in ***Raman Kutty's case (supra)*** relied upon by the decree-holder himself, it is held that where there is default of making the balance sale consideration, the application for extension of time is maintainable before the Appellate Court where decree of trial Court merged. Admittedly, no application was filed after decision of the regular second appeal judgment on 08.02.2016, for extending the time and therefore, the Executing Court has wrongly assumed that merely by filing the execution, the time to deposit the balance amount stands extended

as even otherwise, the Executing Court has no power to extend the time even if an application is filed...”

4. Aggrieved by the judgment of the High Court, the appellant is before us. The question that arises is with respect to the two-month’ time limit imposed by the Trial Court. Given that the execution application was filed beyond the said period, could action be taken pursuant thereto. It is also to be considered whether the judgment of the Trial Court would merge with that of the High Court and in the absence of any direction for executing the sale deed within a time bound period the High Court was justified in interpreting the direction issued by the Trial Court in decreeing the suit holding the period of two months within which the sale was to be executed.

5. The Specific Relief Act, 1963 provides for specific performance of a contract, etc. For our purposes, Section 28 is relevant, which reads as under: -

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

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind

the contract either so far as regards the party in default or altogether, as the justice of the case may require.

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

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

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

- (a) the execution of a proper conveyance or lease by the vendor or lessor;
- (b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease

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

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

6. It is important to take note of the scope of Section 28. Reference may be made to *V.S. Palanichamy Chettiar Firm v. C. Alagappan*⁹. The relevant part of Para 15 is extracted below:

“15. 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 a decree is transferred for execution to a transferee executing court then 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.”

7. Unquestionably, the power to extend the time granted within the decree for performance of its conditions can be extended on such terms as the Court may deem fit. However, it is a matter of record that in this case no such extension was granted. However, such non-grant of extension of time cannot, in our view, be the end of the transaction. Taking such a view would be a classic example of a hyper-technical approach which, this Court has observed, ought to be eschewed [see

⁹ (1999) 4 SCC 702

Ramankutty Gupta v. Avara¹⁰]. We are supported in such a view by a recent order of this Court in ***Ram Lal v. Jarnail Singh***¹¹, whereby it has been observed that, “*the 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 plaintiff will amount to a positive refusal to complete his part of the contract.*”

8. In view of the above, the position that since the execution has been filed beyond the 60-day period on the 87th day and, therefore, the decree cannot be acted upon – is clearly contrary to law.

9. On the issue of merger of decree, we may notice the recent judgment of this Court in ***Balbir Singh & Anr. v. Baldev Singh***¹² wherein Pardiwala, J. discussed in detail, the application of the *doctrine of merger* as below :

“28. *The doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point of time. The doctrine of merger applies irrespective of whether the appellate court has affirmed, modified or reversed the decree of the trial court. The doctrine has been discussed and explained*

¹⁰ (1994) 2 SCC 642

¹¹ 2025 SCC OnLine SC 584

¹² 2025 SCC OnLine SC 103

*succinctly by this Court in **Surinder Pal Soni v. Sohan Lal (Dead) through Legal Representatives**, (2020) 15 SCC 771.*

*29. In **Kunhayammed v. State of Kerala**, (2000) 6 SCC 359, while explaining the doctrine of merger, this Court held thus:*

“12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject 11 matter of challenge laid or which could have been laid shall have to be kept in view.”

10. Relying upon **Chandi Prasad v. Jagdish Prasad**¹³, in **Shanthi v. T.D. Vishwanathan**¹⁴, this Court held that when a higher forum entertains an appeal on merits, the doctrine of merger would apply.

¹³ (2004) 8 SCC 724

¹⁴ (2019) 11 SCC 419

11. In *Ram Lal (supra)*, this Court was seized of a matter wherein there was a delay of two years in filing the execution petition and four years in depositing the balance sale consideration.

12. In the present facts, it has been held by the Court below that the appellant was ready and willing to perform his part of the contract. The doctrine of merger, as we have already discussed, means that at one point in time, only one decree can subsist. If the order dismissing the objections has been set aside and the execution petition dismissed, there is no decree that could be executed, and as such, the question of extension of time would not arise. Even otherwise, given the finding of readiness and willingness, alluded to above, it would be justified to accept that the delay of 27 days would not strike at the heart of the agreement. The decree of the Trial Court would merge with the final decision of the High Court.

13. Given the above discussion, the judgment of the High Court is set aside, and that of the executing Court dismissing the objections filed by the respondent is restored to its original number and status. Let a copy of this judgment be sent to the Executing Court, which shall then proceed in accordance with law to execute the decree of specific performance passed by the Trial Court.

With the above observations, the appeal is allowed.
Pending application(s), if any, shall stand disposed of.

.....J.
(SANJAY KAROL)

.....J.
(MANOJ MISRA)

**New Delhi;
December 19, 2025.**