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From whatever angle, therefore, this case is looked at, the appellant cannot succeed. The judgment of the learned Single Judge appears to me to be correct, and I would uphold the same.

(12) No other point having been argued by Mr. Goyal, this appeal has to be and is hereby dismissed. In view of the fact, however, that the appellant is likely to be foisted with substantial liability for payment to the employee due only to an erroneous impression of the appellant regarding the correct legal position, we leave the parties to bear their own costs in this appeal as well as in the writ petition.

Sharma, J.—I agree.

B. S. G:

Before M. L. Verma, J.

SMT. SARUPI AND OTHERS,—Petitioners.

versus

HAR GIAN AND OTHERS,—Respondents.

E.F.A. No. 219 of 1974

August 20, 1974.

Specific Relief Act (XLVII of 1963)—Section 28(1)—Court passing a decree for specific performance of contract of sale—Whether has to fix a period for deposit of sale consideration—No period fixed for deposit in the decree—Such period—Whether can be fixed and extended after the decree—Notice to the other party before fixation and extension of the period—Whether necessary—Decree for Specific performance fixing period for deposit of the sale consideration with no default clause—Deposit not made within the time fixed—Decree-holder—Whether can execute the decree within the period extended by the Court—Decree containing default clause of dismissal of the suit on the failure of the deposit within the fixed period—Court—Whether can extend such period—Deposit of money made in wrong Court and the Court accepting the same—Such deposit—whether invalid.

Held, that the Code of Civil Procedure, 1908 does not prescribe any particular form for the drawing up of a decree for specific performance as it does in the case of some other decrees. All that a

decree for specific performance can properly contain is an adjudication to the effect that the plaintiff was entitled to the enforcement of the contract which the defendant had entered into with him for the sale of a certain property for a certain specified sum. The power of the Court to fix a period for the deposit of the sale consideration is not provided for specifically in the Code of Civil Procedure. Usually when Courts pass decree for specific performance, they fix a time during which the plaintiff is enjoined to pay the consideration and thereby get a proper sale in respect of the property in his favour. But this is done more for purposes of convenience rather than in compliance with any provision of law. The decree for specific performance of the contract for sale is not a final decree of the character that completely debars the Court from fixing or extending the time for deposit of the purchase money. When a Court while passing a decree does not fix any period or date for deposit of the sale consideration it has undoubted jurisdiction for allowing time for deposit and also to allow extension of the same under the provisions of sub-section (1) of section 28 of the specific Relief Act, 1963. (Para 4)

Held, that the matter as to grant of time to deposit the purchase money is purely discretionary. Fixation of time for payment of purchase money is not a part of the controversy between the parties in suit for specific performance and the fixation of time does not determine any right of the parties. As such, it does not partake the nature of a decree. Therefore the circumstance that the Court allows time to deposit or extend the said time does not constitute modification of the decree or decision of any right between the parties. Such orders granting or extending time do not require the issuance of any notice to the other party before they are passed. (para 4)

Held, that when a decree for specific performance does not state what is to happen if the purchase money is not paid by the successful plaintiff within the time fixed, the decree will not lapse automatically on his default to make payment within the prescribed time. The default on his part to make the deposit within the time allowed by the decree would entitle the defendant to apply to the Court for rescission of the contract. But so long as he does not make application for the said relief, the decree for specific performance subsists and the decree holder can still execute it within the period of limitation by depositing the purchase money within the time allowed or extended by the Court.

Held, when the Court records a direction in the decree for specific performance that in the event of default of deposit of the purchase money within the prescribed time, the suit shall stand dismissed, it would be deemed that the Court has also, in substance, passed the order of rescission of contract as contemplated by the

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concluding portion of sub-section (1) of section 28 of the Specific Relief Act. It is in the case of such a decree that the Court is not, when the purchase money has not been deposited by the successful plaintiff within the prescribed time, be competent to extend the time for its deposit. (paras 5 & 6)

Held, that it is, no doubt, true that a litigant must be vigilant and take care to deposit an amount under a decree in the proper Court, but where a litigant goes to Court and asks for its assistance so that his obligation under the decree might be fulfilled by him strictly, it is incumbent on the Court, to ensure that the correct information is furnished to him. If the Court in supplying the information asked for by a litigant makes a mistake, the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. No act of Court should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court, he should be restored to the position he would have occupied but for that mistake. Hence when a deposit of money under a decree is made in a wrong Court and since such Court substantially contributes to the mistake committed by the depositor, the deposit made in the said Court is not invalid.

Execution First appeal from the order of the Court of Miss Kiran Anand, Sub Judge II Class, Gurgaon, dated 5th March, 1974 dismissing the objections filed by Shrimati Sarupi, judgment-debtor in execution proceedings.

G. R. Majithia, Advocate, for the appellants.

M. Punchhi, Advocate and Suresh Amba Advocates, for the respondents.

JUDGMENT

VERMA, J.—The brief facts giving rise to this appeal in an execution case are as under:

(2) Har Gian and Ram Hans (hereinafter called the respondents) obtained a decree for specific performance of contract of sale from the Court, then presided by Shri Dev Raj Khanna, Subordinate Judge First Class, Gurgaon, respecting land situate within the limits of village-Mewla Maharajpur, against Smt. Sarupi, her husband-Bhim Singh (now deceased, Mam Chand and Mam Chandi are his son and daughter respectively), hereinafter called the appellants, who were vendors, on March 15, 1961. Ram Devi, who is the mother of Smt. Sarupi, had been impleaded proforma defendant, being lessee of some of the aforesaid land. It was directed by the said decree that the respondents would pay Rs. 32,500 (hereinafter called the amount) to the appellants within one month. So,

they (the respondents) deposited the amount for payment to the appellants in the trial Court on April 11, 1961. The appellants and also Smt. Ram Devi preferred appeal to this Court. On July 19, 1961, it was directed by this Court that the appellants would not be dispossessed from the land and the respondents could withdraw the amount deposited by them, and they would be required to re-deposit the same in accordance with the final decision in the appeal. So, they withdrew the amount from the trial Court. Bhim Singh died pending the appeal and his son, Mam Chand and daughter, Smt. Mam Chandi had been impleaded as his legal representatives. The said appeal was dismissed on July 14, 1972. No time or date for re-deposit of the amount was, however, mentioned in the judgment and decree recorded by this Court on July 14, 1972. Therefore, the respondents made an application for fixation of the time for re-deposit of the amount and this Court by its order dated August 7, 1972, allowed one month's time for re-deposit of the amount. The respondents again moved application for extension of the time for re-deposit of the amount, alleging that certified copy of the order dated August 7, 1972, had not been supplied to them despite their making application for the same and the trial Court did not accept the re-deposit of the amount without the copy of the said order. On that application, this Court by its order dated October 24, 1972, extended time for deposit of the amount for one month. Both these orders dated August 7, 1972 and October 24, 1972, had been passed without any notice to the appellants. The respondents deposited the amount on November 24, 1972, i.e., within the time allowed by the order dated October 24, 1972, in the Court presided by Shri Tarlochan Singh, Subordinate Judge First Class, Gurgaon. He was, however, not successor of Shri Dev Raj Khanna, who had passed the decree for specific performance, and Miss Kiran Anand was his (Shri Dev Raj Khanna's) successor. Both these Courts, i.e., presided by Shri Tarlochan Singh and Miss Kiran Anand, are located in one and the same compound at Gurgaon. When the respondents took out execution of the decree, the appellants raised objections under section 47, Civil Procedure Code, that it (the decree) was inexecutable because neither the amount had been deposited within time allowed by the decree, nor it was deposited in the proper Court. The said objections were resisted by the respondents and the Executing Court framed this issue:—

“Whether the decree-holder deposited the requisite amount in accordance with the orders of the Court and in proper Court? If not, what is its effect?”

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Finding that issue in favour of the respondents, the Executing Court dismissed the aforesaid objections. Dissatisfied with the said result, the appellants have come to this Court in appeal.

(3) Broadly the facts narrated above are admitted by the parties. The contentions raised by Shri G. R. Majithia, learned counsel for the appellants, are two-fold and may be formulated as under:

- (a) That the effect of dismissal of the appeal by this Court on July 14, 1972, was that the decree of the trial Court was restored and the respondents were, therefore, required to re-deposit the amount within one month as had been allowed by the trial Court. That means that they were bound to deposit the amount on or before August 14, 1972. It was urged that since orders of this Court dated August 7, 1972 and October 24, 1972, had been passed at the back of the appellants and without notice to them, the same were ineffective. So, Shri Majithia, maintained that since the re-deposit of the amount had not been made within the period allowed by the decree, it (the decree) had lapsed and could not be executed.
- (2) That the amount having not been re-deposited in the Court which passed the decree, it (the re-deposit of the amount) could not be considered as valid deposit.

(4) As observed in *Someshwar Dayal and others, v. Widow of Lalman Shah and others* (1), the Code of Civil Procedure does not prescribe any particular form for the drawing up of a decree for specific performance as it does in the case of some other decrees, nor does the Code indicate the contents of such a decree as it does in the case of a decree in a pre-emption suit as provided by Order XX, rule 14 of the Code. All that a decree for specific performance can properly contain is an adjudication to the effect that the plaintiff was entitled to the enforcement of the contract which the defendant had entered into with him for the sale of a certain property for a certain specified sum. The power of the Court to fix a period for the deposit of the sale consideration was not provided for specifically in the Code of Civil Procedure. Sub-section (1) of

(1) A.I.R. (1958) Allahabad 488.

section 28 of the Specific Relief Act, the relevant provisions of which read as under:—

“Where in any suit a decree for specific performance of a contract for the sale..... of immovable property has been made and the purchaser...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...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.”

rather indicates a contrary intention. The said provision indicates that in the event of a party to the decree being in default, another party could move the Court which granted the decree for specific performance, for rescission of the contract. True, usually when Courts pass a decree for specific performance, they fix a time during which the plaintiff is enjoined to pay the consideration and thereby get a proper sale in respect of the property in his favour. But this appears to be done more for purposes of convenience rather than in compliance with any provision of law. The decree for specific performance of the contract for sale is not a final decree of the character that completely debars the Court from fixing or extending the time for deposit of the purchase money. The rule that an Appellate Court has the same powers as the original Court and can do what the original Court had done is incontrovertible. When this Court, while dismissing the appeal on July 14, 1972, did not fix any period or date for re-deposit of the amount, it had undoubtedly the jurisdiction for allowing one month's time on August 7, 1972, for re-deposit of the same and also to allow extension of time on October 24, 1972, enlarging the period of deposit up to November 24, 1972, under the provisions of section 28(i) of the specific Relief Act. The matter as to grant of time to deposit the purchase money is purely discretionary. Fixation of time for payment of purchase money is not a part of the controversy between the parties in suit for specific performance and it (fixation of time) does not determine any right of the parties. As such, it does not partake the nature of a decree. Therefore, the circumstance that this Court allowed on August 7, 1972, one month's time to re-deposit the amount or that it extended on October 24, 1972, the said time

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by another month, does not constitute modification of the decree or decision of any right between the parties. Therefore, both these orders did not require the issuance of any notice to the appellants before passing the same. As such, the same cannot be challenged on the ground that the same had been passed at the back of the appellants. Even assuming for the sake of argument—though not conceding—that the said orders, allowing time and extension of time, are assailable on the ground that no notice had been sent to the appellants before passing the same, the said orders are still valid and cannot be said to have been passed without jurisdiction. As such, the same are immune from any attack in the execution proceedings without being questioned in this Court on review or the like.

(5) When a decree for specific performance does not state what is to happen if the purchase money is not paid by the successful plaintiff within the time fixed, the decree will not lapse automatically on his (plaintiff's) default to make payment within the prescribed time. The default on his part to make the deposit within the time allowed by the decree would entitle the vendor to apply to the Court for rescission of the contract. But so long as he (the vendor) does not make application for the said relief, the decree for specific performance subsists and the decree-holder can still execute it within the period of limitation by depositing the purchase money within the time allowed or extended by the Court. Similar view was taken in *Rajan Patro v. Akur Sahu and others* (2).

(6) The case may be different when the Court records a direction in the decree for specific performance that in the event of default of deposit of the purchase money within the prescribed time, the suit shall stand dismissed. In such a case, it would be deemed that the Court has also, in substance, passed the order of rescission of contract as contemplated by the concluding portion of sub-section (1) of section 28 of the Specific Relief Act. It is in the case of such a decree that the Court may not, when the purchase money has not been deposited by the successful plaintiff within the prescribed time, be competent to extend the time for its deposit. The decision of the Calcutta High Court in *Bhutanath Dass and others v. Sahadeb Chandra Panja* (3) relied upon by the learned counsel for the appellants for contending that the decree had

(2) A.I.R. 1959 Orissa 74.

(3) A.I.R. 1962 Calcutta 485.

lapsed because the respondents had failed to deposit the amount within one month from July 14, 1972, when the appeal was dismissed, relates to the decree which specified the penal consequence in case of the decree-holder's default to make the deposit within the prescribed time. In the case in hand, neither the decree of the trial Court nor the decree of this Court dated July 14, 1972, contained any direction that the suit would stand dismissed if the respondents failed to deposit the amount before an appointed date or within specified period. Therefore, the facts of *Bhutanath Das's case* (supra) were quite different and the decision of that case does not render any assistance to the appellants. There is nothing to show, and it has not been alleged, that the appellants had made any application to the trial Court for rescission of the contract on account of the alleged default of the respondents in making deposit of the amount within the time. It is, thus, clear that the orders of this Court dated August 7, 1972 or October 24, 1972, allowing the time and then extending the same for making deposit, are covered by the provisions of section 28(1) of the Specific Relief Act and the same are valid. So, I, finding no force in the first contention of the learned counsel for the appellants, overrule the same.

(7) The judgment of this Court in *Nazar Singh v. Munshi Singh* (4) furnishes complete answer to the second contention of Shri Majithia. That was a case where a pre-emptor failed to pay the further pre-emptive money allowed by the Appellate Court in the trial Court. On the other hand, he had deposited the same in the Appellate Court. It was observed that the act of the lower Appellate Court in not refusing to accept the deposit and also its failure to direct that the deposit could be made in the trial Court, had substantially contributed to the mistake committed by the successful pre-emptor in depositing the amount in the Appellate Court. It was further observed that it was, no doubt, true that a litigant must be vigilant and take care, but where a litigant goes to Court and asks for the assistance of the Court so that his obligation under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished to him. If the Court in supplying the information asked for by a litigant makes a mistake, the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information, the Court cannot hold him

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responsible for a mistake which it had itself caused. It has been further observed in the said case "that there is no higher principle for the guidance of the Court than the one that no act of Court should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court, he should be restored to the position he would have occupied but for that mistake." In the case in hand, the appeal remained pending in this Court for 11 years. During the said period, Shri Dev Raj Khanna, who had passed the said decree, had been succeeded by several Subordinate Judges. Therefore, the respondents could not be expected to know as to who was the successor of Shri Dev Raj Khanna, when they or any one of them had gone to Gurgaon for re-depositing the amount. The Courts presided by Shri Tarlochan Singh and Miss Kiran Anand are located in the same compound at Gurgaon. Therefore, in these circumstances, the respondents could have been mistaken in believing that Shri Tarlochan Singh was the successor of Shri Dev Raj Khanna. The said mistake could be *bona fide*. If the Court of Shri Tarlochan Singh had seen its records and furnished information to the respondents that the decree did not relate to that Court and, as such, the amount could not be deposited in that Court, the respondents might have been put on right track and they would have taken steps to deposit the amount in the Court of the successor of Shri Dev Raj Khanna. Therefore, the Court presided by Shri Tarlochan Singh had substantially contributed to the mistake committed by the respondents in failing to deposit the amount in the appropriate Court. So, in view of the decision in *Nazar Singh's case* (supra), the respondents cannot be penalised for depositing the amount in the Court of Shri Tarlochan Singh, especially when the decree in the case in hand is for specific performance and the same subsists. So, the second contention of the learned counsel for the appellants is also without substance and the same is repelled.

(8) It, thus, follows from the discussion above that the decree directing the deposit of the amount has been substantially complied with. The deposit cannot, in the circumstances of the case, be termed as invalid. So, the order under appeal does not suffer from any infirmity and the appeal is bereft of any merit and the same fails.

(9) Consequently, I, maintaining the order of the Executing Court, dismiss this appeal, but having regard to the special circumstances of the case, I leave the parties to bear their own costs.