



2025:KER:3329

O.P (C) No.683 of 2021

1

'C.R'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 15TH DAY OF JANUARY 2025 / 25TH POUSHA, 1946

OP(C) NO. 683 OF 2021

AGAINST THE ORDER DATED 25.02.2021 IN I.A NO.2853/2018 AND

1403/2020 IN OS NO.560 OF 2012 OF ADDITIONAL SUB COURT,

PALAKKAD

PETITIONERS:

- 1 T.M.LEELA,
AGED 72 YEARS,
W/O CHANDRAN,THEKKUMURI,THENUR POST,
THENUR AMSOM DESOM,PALAKKAD TALUK.
- 2 SANGEETHA,
AGED 47 YEARS,
D/O CHANDRAN,THEKKUMURI,THENUR POST,
THENUR AMSOM DESOM,PALAKKAD TALUK,
NOW RESIDING AT SANGEETHA ,W/O. JAYARAMAN,
LECTURER,KENDREEYA VIDHYALAYAM (DEFENCE) , PUNE.
REPRESENTED BY POWER OF ATTORNEY HOLDER,
T.M.LEELA,AGED 72, W/O CHANDRAN,
THEKKUMURI,THENUR POST,THENUR AMSOM
DESOM,PALAKKAD TALUK.

BY ADVS.
R.HARISHANKAR
SMT.PARVATHY NAIR



2025:KER:3329

O.P (C) No.683 of 2021

2

RESPONDENTS:

- 1 P.K.VASU,
 S/O KARUPPANDI, RESIDING AT PANTHAMPADAM,
 EDATHARA, PALAKKAD TALUK-678611.

- 2 VISWANATHAMANNADIAR,
 AGED ABOUT 82 YEARS,
 S/O CHINNATHARAKAN,
 RESIDING AT KAVUPARAMBU,
 THENUR AMSOM, PALAKKAD TALUK-678612.

BY ADVS.
T.R.HARIKUMAR
ARJUN RAGHAVAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 15.01.2025, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



2025:KER:3329

O.P (C) No.683 of 2021

3

'C.R'

K.BABU, J.

O.P (C) No.683 of 2021

Dated this the 15th day of January, 2025

JUDGMENT

The challenge in this Original Petition is to the common order dated 25.02.2021 passed by the Additional Subordinate Judge's Court, Palakkad, in I.A Nos.2853/2018 and 1403/2020 in O.S No.560/2012. The petitioners are the defendants. The respondents are the plaintiffs.

2. The plaintiffs instituted a suit for specific performance of a contract against the defendants in respect of an immovable property owned by the defendants. The Trial Court referred the matter to the Lok Adalat. The parties arrived at a settlement on 17.07.2018. The Lok Adalat passed Ext.P4 award based on Ext.P3 joint statement containing the terms of the agreement.

3. On 24.09.2018, the plaintiffs filed I.A No.2853/2018 under



2025:KER:3329

O.P (C) No.683 of 2021

4

Section 151 CPC (Ext.P5) seeking permission to deposit the balance sale consideration stating that the defendants did not perform their part of the contract. On 24.09.2020, the defendants filed I.A No.1403/2020 (Ext.P7) under Section 28(1) of the Specific Relief Act read with Section 151 CPC to rescind the contract and set aside the decree. The Trial Court considered both petitions together and passed the impugned order, allowing I.A No.2853/2018 and dismissing I.A No.1403/2020. This common order is under challenge at the instance of the defendants.

4. I have heard the learned counsel appearing for the petitioners/defendants and the learned counsel appearing for the respondents/plaintiffs.

5. The learned counsel for the defendants/petitioners submitted that the plaintiffs did not perform their part of the contract as they failed to pay the balance consideration within the stipulated time. The learned counsel further contended that the plaintiffs ought to have filed an application seeking an extension of



2025:KER:3329

O.P (C) No.683 of 2021

5

time if they desired to enlarge the time prescribed in the award. So, there are laches on the part of the plaintiffs, which is a ground for rescission of the contract. It is submitted that the defendants have established the ground for getting the contract rescinded and the decree set aside. The learned counsel relied on **Chanda v. Rattni [(2007) 14 SCC 26]**, **Prem Jeevan v. K.S. Venkata Raman [(2017) 11 SCC 57]**, **Bhupinder Kumar v. Angrej Singh [(2009) 8 SCC 766]** and **Raghavan M. K. v. Seerakath Mariyam Beevi [2021 (5) KHC 472]**.

6. The learned counsel for the plaintiffs/respondents submitted that the laches on the part of the defendants resulted in the non-performance of the contract. The learned counsel submitted that the first obligation based on Ext.P3 contract was on the part of the defendants to hand over the necessary documents as they agreed. The learned counsel further submitted that the defendants failed to lead best evidence to establish their contention that the documents were handed over as agreed. It is submitted



2025:KER:3329

O.P (C) No.683 of 2021

6

that the defendants have not established the grounds for getting the contract rescinded.

7. The terms of Ext.P3 agreement appended to the decree are the following:

1. The defendants shall execute the document in respect of the property in favour of the plaintiffs within one month from the date of award (17.07.2018) on receipt of the balance consideration from the plaintiffs.
2. The defendants shall hand over the prior documents, tax receipts, possession certificates, Encumbrance Certificates etc., in respect of the property within three weeks from 17.07.2018.
3. The defendants shall execute the document upon receipt of the balance sale consideration within seven days from the date of delivery of



2025:KER:3329

O.P (C) No.683 of 2021

7

the prior documents, etc.

4. If the defendants commit default in executing the document, the plaintiffs are at liberty to deposit the sale consideration before the Court and apply to get the document registered through the Court.

8. It is the case of the plaintiffs that they demanded the defendants to execute the sale deed, but they sought more time and it was on 20.09.2018 the defendants handed over 'the schedule' to the plaintiffs. However, they did not hand over the sale deed, prior documents and other documents. The defendants purposefully evaded from executing the document.

9. The defendants resisted the contentions of the plaintiffs. The plaintiffs were not ready and willing to pay the balance sale consideration, and therefore, they could not execute the sale deed. All the documents were handed over to the plaintiffs in time. The documents were handed over to the document writer of the



2025:KER:3329

O.P (C) No.683 of 2021

8

plaintiffs by name Smt.Sindhu on 18.08.2018. It was after that the thandaper number was obtained and therefore, the same was also handed over to Smt.Sindhu. The market value of the property has substantially increased after the decree. The delay on the part of the plaintiffs resulted in a loss to the defendants.

10. The Trial Court considered the rival contentions. The defendants filed an application to issue summons to two witnesses, including the plaintiffs' document writer, Smt.Sindhu. The Court summoned Smt.Sindhu and she appeared on 03.11.2021. But the defendants gave up the witness. The defendants also did not take any steps to examine defendant No.2, who was also included in the witness list.

11. The Trial Court held that the laches on the part of the defendants resulted in the non-performance of the terms of the compromise and hence, they are not entitled to get the contract rescinded. The Trial Court permitted the plaintiffs to deposit the balance sale consideration as per the joint statement.



12. The learned counsel for the plaintiffs relied on **Chanda v. Rattni** to contend that when the decree-holder failed to seek an extension of time, the defendant is entitled to the relief of rescission. **Chanda v. Rattni** was a case where there was an unreasonable delay of five months. It was a case in which there were clear laches on the part of the plaintiffs in paying the balance sale consideration. The Apex Court in **Chanda v. Rattni** distinguished **Kumar Dharendra Mullick v. Tivoli Park Apartments (P) Ltd. [(2005) 9 SCC 262]**, wherein the Supreme Court held that there was scope for extension of time and mere non-deposit did not deprive the plaintiff from getting any relief. In **Chanda v. Rattni**, the Supreme Court reminded that the Court cannot ordinarily annul the decree once passed as it is a discretionary relief. In **Bhupinder Kumar** (supra), the Apex Court held that in a suit for specific performance, which is in the nature of a discretionary remedy and on equity, the plaintiffs were not entitled to get the decree executed when he failed to place relevant materials about his inability to



2025:KER:3329

O.P (C) No.683 of 2021

10

tender or deposit the decreed amount.

13. In **Prem Jeevan v. K.S.Venkata Raman [(2017) 11 SCC 57]**, the Supreme Court observed thus:

“10. In absence of the said time being extended, the decree-holder could execute the decree only by making the payment of the decretal amount to the judgment-debtor or making the deposit in the court in term of the said decree. In the present case, neither the said deposit was made within the stipulated time nor extension of time was sought or granted and also no explanation has been furnished for the delay in the making of the deposit. No doubt, as contended by the learned counsel for the decree-holders, relying on the judgment of this Court in **Ramankutty Guptan v. Avara (1994) 2 SCC 642**, in an appropriate case the court which passed the decree could extend the time as envisaged in the Specific Relief Act, 1963. In the present case no such steps have been taken by the decree-holders.

11. In above circumstances, the contention advanced on behalf of the decree-holders, respondents herein, that unless the judgment-debtor seeks rescission of the contract in terms of Section 28 of the Specific Relief Act, the decree remains executable in spite of expiry of period for deposit, with the only obligation on the part of the decree-holders to pay interest, cannot be accepted.”

14. In **Chandran v. Musthafa [2011 (3) KLT 345]**, this Court held that the offer to pay the balance amount due to the defendants long after the agreement period cannot be entertained.

15. In **Raghavan**, this Court held that the extension of the time



2025:KER:3329

O.P (C) No.683 of 2021

11

will amount to rewriting the terms of compromise, which the Court cannot do even in exercise of the power under Section 28(1) of the Specific Relief Act in view of the self operative clause in the agreement.

16. In the precedents relied on by the learned counsel for the petitioners referred to above, the essential fact considered was the entitlement of the decree holder to get extension of time when there is a chronic default in paying the balance consideration stipulated in the agreement or laches on the part of the decree holder in complying with the terms of the agreement.

17. I shall analyse the facts in the present case on the touchstone of the principles discussed above. As I referred to above, the prior documents and other related documents were to be given to the plaintiffs within three weeks from 17.07.2018. It is the case of the plaintiffs that the defendants did not deliver the documents as agreed. It is the case of the defendants that they handed over the documents in time. In the counter filed by the



2025:KER:3329

O.P (C) No.683 of 2021

12

defendants, they admitted that they handed over the documents to Smt.Sindhu, the plaintiffs' document writer. They further admitted that it was on 20.09.2018, the thandaper number was given to the document writer. The Trial Court found that the defendants did not comply with the first obligation, that is, the delivery of the documents to the plaintiffs.

18. Apart from the pleadings, the defendants did not adduce any evidence to show that they delivered the documents as agreed, to the plaintiffs or Smt.Sindhu, the document writer. It is important to note that Smt.Sindhu was summoned as a witness in the Court on 03.11.2021. The witness was given up on her appearance based on the instructions of the defendants. The best evidence to prove that the relevant documents were handed over to Smt.Sindhu could be through the oral evidence of Smt.Sindhu. The Court may presume under Section 114(g) of the Indian Evidence Act that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. Therefore, the



2025:KER:3329

O.P (C) No.683 of 2021

13

necessary conclusion is that the defendants failed to show that they discharged the first obligation, that is, the duty to hand over the documents within three weeks. The plaintiffs were expected to tender the balance sale consideration only after the delivery of the documents. It has come out that the thandaper number, which was necessary for registering the document, was handed over to the plaintiffs belatedly.

19. Therefore, it is to be concluded that the defendants failed to perform their part of the contract. The plaintiffs were expected to seek an extension of time for paying the balance sale consideration only in a situation where the first obligation was performed by the defendants. It is important to note that the plaintiffs filed an application seeking permission to deposit the amount in terms of the agreement on 24.09.2018, 38 days after the time limit prescribed. The Trial Court noted that the thandaper number was issued only on 30.08.2018 and delivered the same to the plaintiffs only on 20.09.2018.



2025:KER:3329

O.P (C) No.683 of 2021

14

20. Based on this evidence, the Trial Court held that the defendants failed to discharge their responsibility to hand over the necessary documents to the plaintiffs for preparing the sale deed, and eventually, the defendants failed to execute the sale deed as per the terms of the agreement. The defendants have failed to establish any valid ground for rescission of the contract.

21. The power under Article 227 of the Constitution would be restricted to interference in cases of grave dereliction of duty or flagrant violation of law and would be exercised most sparingly in cases where grave injustice would be done unless the High Court interferes. It cannot be used as an appellate or revisional power.

22. The supervisory jurisdiction is not available to correct mere errors of fact or law unless the following requirements are satisfied-- (1) the error is manifest or apparent on the face of the proceeding, such as when it is based on clear ignorance or utter disregard of the provisions of law; and (2) a grave injustice or gross failure of justice occasioned thereby.



2025:KER:3329

O.P (C) No.683 of 2021

15

23. Therefore, I find no reason to interfere with the impugned common order.

The Original Petition (Civil) stands dismissed. All pending Interlocutory Applications, if any, stand closed.

Sd/-
K.BABU,
JUDGE

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2025:KER:3329

O.P (C) No.683 of 2021

16

APPENDIX OF OP(C) 683/2021

PETITIONER EXHIBITS

- | | |
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| EXHIBIT P1 | TRUE COPY OF AGREEMENT FOR SALE
EXECUTED BETWEEN PETITIONERS AND
RESPONDENTS DATED 14.02.2011. |
| EXHIBIT P2 | TRUE COPY OF THE WRITTEN STATEMENT
DATED 18.01.2013 FILED BY DEFENDANTS |
| EXHIBIT P3 | TRUE COPY OF THE COMPROMISE PETITION
DATED 17.07.2018 |
| EXHIBIT P4 | TREU COPY OF COMPROMISE PETITION DATED
17.07.2018 |
| EXHIBIT P5 | TRUE COPY OF I.A.2853/2018 IN
O.S.NO.560/2012 FILED BY RESPONDENTS ON
24.09.2018 |
| EXHIBIT P6 | TRUE COPY OF COUNTER STATEMENT FILED BY
PETITIONERS TO EXHIBIT P5 ON 12.03.2019 |
| EXHIBIT P7 | TRUE COPY OF I.A.1403/2020 FILED BY
PETITIONERS UNDER SECTION 28(1) OF
SPECIFIC RELIEF ACT |
| EXHIBIT P8 | TRUE COPY OF COUNTER STATEMENT FILED BY
RESPONDENTS ON 25-09.2020 TO EXHIBIT P7 |
| EXHIBIT P9 | TRUE COPY OF COMMON ORDER DATED
25.02.2021 OF ADDITIONAL SUB
COURT, PALAKKAD IN EXHIBIT P5 AND P7
PETITIONS |
| EXHIBIT P10 | TRUE COPY OF I.A.510/21 FILED BY
RESPONDENTS ON 08.03.2021 UNDER SECTION
28(3) OF SPECIFIC RELIEF ACT. |