

A

YESHODA AND ANR.

v.

K. NAGARAJAN

SEPTEMBER 25, 1996

B

[K. RAMASWAMY AND S.B. MAJUMDAR, JJ.]

Specific Relief Act, 1963:

C

S.28—Suit for specific performance—Decree—Application by judgment debtor for extension of time to comply with the order—Application by decree-holder for rescission of decree—High Court extending time—Held, High Court has correctly exercised the discretion—Section 148 C.P.C. gives power to Court to enlarge the time to comply with the orders of the Court from time to time.

Code of Civil Procedure, 1908:

D

S.148—High Court allowing time to judgment debtor to comply with the decree in a suit for specific performance—Held, High Court has correctly exercised the discretion.

E

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 18603 of 1996.

From the Judgment and Order dated 19.6.96 of the Karnataka High Court in I.A. No. 3 in R.F.A. No. 225 of 1984.

F

P. Mahale for the Petitioners.

The following Order of the Court was delivered :

G

This special Leave Petition arises from the order of the Division-bench of the Karnataka High Court dated June 19, 1996 in I.A. No. 3 in RFA No. 225/84. The admitted position is that in the suit for specific performance the High Court has agreed with the suggestion of the respondent to pay a further sum of Rs. 1,80,000. The High Court has extended three months' time from April 21, 1994 for deposit of the amount. Special Leave Petition filed in this Court was dismissed on September 23, 1994 and within three months thereafter on January 17, 1995 the amount came to be deposited. An application under Section 28 of the Specific Relief Act

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was filed to rescind the decree on the ground that the respondent had committed default in compliance of the conditional decree of the deposit of the amount. The respondent had filed an application for extension of time. The application for rescission of the decree was dismissed and the application for extension of time was allowed. Thus this special leave petition.

It is contended by Mr. Mahale, learned counsel for the petitioner, that after the expiry of the time prescribed by the court, the petitioner has a right to seek rescission of the decree for specific performance for non-compliance. The Court, therefore, has no power to enlarge the time. We find no force in the contention. Section 148, CPC gives power to the court to enlarge the time for complying with the orders of the court from time to time. Under those circumstances, the court has correctly exercised the discretion since the amount came to be deposited within three months from the date of dismissal of the application under Section 28.

The special leave petition is accordingly dismissed.

R.P.

Petition dismissed.