



2023:APHC:9926

HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI
CIVIL REVISION PETITION NO: 4268 OF 2015

Between:

1. DONDAPATI BHASKARA RAO S/o. Nageswara Rao
R/o. D.No. 1-84, Ganiatukuru Village, Kanchikacherla Mandal, Krishna
District.

...PETITIONER(S)

AND:

1. NANNAPANENI SIVA NAGESWARA RAO S/o. Venkata Subbaiah
R/o. Kanchikacherla Village and Mandal, Krishna District.

...RESPONDENTS

Counsel for the Petitioner(s): P PRABHAKAR RAO

Counsel for the Respondents: MANOJ KUMAR BETHAPUDI

The Court made the following: ORDER

**HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

CIVIL REVISION PETITION NOS.4268 & 4273 OF 2015**(In CRP No.4268 of 2015)****Between:**

Dondapati Bhaskara Rao, S/o. Nageswara Rao, 57 years,
R/o.D.No.1-84, Ganiatukuru village, Kanchikacherla
Mandal, Krishna District.

... Petitioner/Respondent/Judgment Debtor

Versus

Nannapaneni Siva Nageswara Rao, S/o. Venkata Subbaiah,
50 years, R/o. Kanchikacherla village and Mandal, Krishna
District.

... Respondent/Respondent/Decree Holder

(In CRP No.4273 of 2015)**Between:**

Dondapati Bhaskara Rao, S/o. Nageswara Rao, 57 years,
R/o.D.No.1-84, Ganiatukuru village, Kanchikacherla
Mandal, Krishna District.

... Petitioner/Respondent/Judgment Debtor

Versus

Nannapaneni Siva Nageswara Rao, S/o. Venkata Subbaiah,
50 years, R/o. Kanchikacherla village and Mandal, Krishna
District.

... Respondent/Respondent/Decree Holder

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DATE OF ORDER PRONOUNCED : 28.03.2023.

SUBMITTED FOR APPROVAL:**THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

1. Whether Reporters of Local Newspapers
may be allowed to see the Order? Yes/No
2. Whether the copy of Order may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
fair copy of the Order? Yes/No

B.V.L.N.CHAKRAVARTHI, J



*** HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CIVIL REVISION PETITION NOS.4268 & 4273 OF 2015

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**! Counsel for the Revision-petitioner/
Respondent/Judgment Debtor in
both CRPs :: Sri P.Prabhakara Rao**

**^ Counsel for the Respondent/
Respondent/Decree Holder in both
CRPs :: Sri Manoj Kumar
Bethapudi**

< Gist:

> Head Note:

? Cases referred:

... N I L ...

This Court made the following:



THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTI

CIVIL REVISION PETITION NOS.4268 & 4273 of 2015

COMMON ORDER:

Heard Sri P.Prabhakara Rao, learned counsel for revision-petitioner/judgment-debtor and Sri Manoj Kumar Bethapudi, learned counsel for respondent/decree-holder.

2. Civil Revision Petition No.4268 of 2015 was preferred by the Judgment-debtor against the Order, dated 13.08.2015 passed by XVI Additional District and Sessions Judge, Nandigama in E.A.No.22 of 2015 in E.P.No.5 of 2015 in O.S.No.9 of 2014, which was filed under Order XXI Rule 1 (a) read with Section 151 of the Code of Civil Procedure, 1908 (for brevity 'CPC') to permit the judgment-debtor to deposit the amount as per the terms of the decree.

3. Civil Revision Petition No.4273 of 2015 was preferred by the Judgment-debtor against the Order, dated 13.08.2015 passed by XVI Additional District and Sessions Judge, Nandigama in E.P.No.5 of 2015 in O.S.No.9 of 2014, wherein the Trial Court 'Rejected' the objections raised by the judgment-debtor and directed him to receive the balance sale



consideration and execute Registered Sale Deed in favour of the decree-holder.

4. Now, the point that arises for consideration is:-

“Whether the Trial Court committed any irregularity in the Orders, dated 13.08.2015 in E.A.No.22 of 2015 & E.P.No.5 of 2015 in O.S.No.9 of 2014?”

5. **P O I N T**: -

Section 28 of the Specific Relief Act, 1963 deals with 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. A decree for specific performance being in the nature of a preliminary decree, the Court after passing of the said decree does not become *functus officio*. It retains the jurisdiction to conclude the further steps to be taken in the suit. The decree-holder chooses to file an execution petition for getting the sale deed registered through the Court when the defendant who suffered the decree fails to obey the same. Though called 'execution proceedings', it is nothing but a continuation of the original suit. Therefore, to invoke the above provision, the person who has obtained a decree for specific performance ought to have deposited the money or other sum which the Court has ordered him to pay, within the period allowed by the decree or such further period as the Court may allow. In such an event the person who has suffered the decree has a right to apply to the Court in the same suit in which the decree was passed to have the contract rescinded.



7. Admittedly, the decree of the Trial Court passed in Original Suit No.9 of 2014, dated 25.04.2014, is as under:

(i) *“the defendant be and is hereby directed to receive the balance sale consideration of Rs.11,50,000/- payable by the plaintiff and execute registered sale deed in favour of the plaintiff in respect of the plaint schedule property within 30 days from the date of payment;*

(ii) *Or in alternative the defendant shall refund an amount of Rs.11,00,000/- to the plaintiff, that was received by him from the plaintiff on 05.01.2012 under Ex.A.1 agreement of sale and dated 28.04.2012 under Ex.A.2 part payment endorsement with interest at 12% per annum from the date of suit i.e., 31.01.2014 till the date of decree i.e., 25.04.2014 thereafter at 6% per annum till realization;”*

8. If the judgment-debtor/defendant was at fault, he was not willing to obey the decree, if the decree-holder/plaintiff had deposited the money after the expiry of the appeal period as stipulated in the decree or at least on the day he filed the execution petition, that would have been sufficient to demonstrate his *bonafides*. Apparently, the decree-holder deposited the balance sale consideration into the Court on 18.11.2014 i.e., approximately seven (07) months from the date of passing of decree i.e., on 25.04.2014.



9. The learned counsels for revision-petitioner and respondent fairly admits that the Trial Court while passing orders, did not consider the procedure under Order XXI Rule 12A of CPC, and did not follow the procedure as contemplated under Section 28 of the Specific Relief Act, 1963 while accepting the amount deposited by the decree-holder. Hence, it is obvious that learned trial Court committed a material irregularity.

10. In that view of the matter, this court is of the considered opinion that it is a fit case to set-aside both Orders mentioned above and to remand the case to the Trial Court to pass necessary orders afresh as per law, by giving an opportunity to hear both sides.

11. Therefore, both orders mentioned above are set-aside. Both matters are remanded to the Trial Court. The Trial Court is directed to dispose of both the matters afresh within a period of Three (03) months from the date of receipt of this order, as per law, uninfluenced by the observations in this order, and by giving an opportunity to both sides.



12. Accordingly, the Civil Revision Petitions are 'disposed of'.
There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any,
shall stand closed.

B.V.L.N.CHAKRAVARTHI, J

28th March, 2023.

DNB