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areas of the district in which they were posted. The Director further authorised and said Food Inspectors to institute prosecution against the persons committing offence under the said Act, within the limits of their notified areas. The State Government had not authorised the Food Inspectors to institute the prosecution. This complaint has been filed by the Food Inspector on the basis of the authority delegated to him by the Director,—*vide* afore-mentioned notification of March 9, 1973. In view of the Supreme Court's dictum the Director was not competent to further delegate his powers to the Food Inspectors. The impugned complaint has, therefore, been filed against the petitioner by an incompetent person who had no authority to do so. Consequently the present complaint is without authority and I have no hesitation to quash the proceedings including the chargesheet based on this complaint. This criminal revision is accepted and the proceedings based on the complaint including the charge-sheet are held to be incompetent and unauthorised and as a consequence thereof the present petitioner is discharged.

R.N.R.

Before J. V. Gupta, J.

AMAR NATH JAIN,—*Petitioner.*

versus

RAM PARKASH DHIR,—*Respondent.*

Civil Revision No. 1113 of 1979.

March 6, 1987.

Specific Relief Act (XLVII of 1963)—Section 28—Decree for specific performance of contract—Amount deposited within stipulated period—Stay of execution on appeal—Withdrawal of amount

permitted—Appellate Court not fixing time for re-deposit—Amount re-deposited in executing court—No application moved under Section 28—Such deposit whether valid—Effect of provisions of Section 28.

Held, that no time was admittedly fixed by the lower appellate Court while disposing of the appeal as was specifically required but in any case the amount was deposited within the reasonable time by the decree-holder. The judgment-debtor had not moved any application under Section 28 of the Specific Relief Act, 1963 till then. Not only that, the decree-holder was allowed to deposit the amount by the executing court itself. Thus, on the facts and circumstances of the case, it will be presumed that the time was extended for depositing the said amount. It is well established that no one should be allowed to suffer for the act of a Court. The power under Section 28 of the Act is undoubtedly discretionary and the Court cannot on flimsy grounds annul the decree once passed by it. A clear case of default has to be established against the decree-holder for rescinding a contract or to nullify the decree of specific performance. In any case, Section 28 of the Act itself *inter-alia* provides for the extension of time. The time could thus be extended even at the revisional stage. (Para 5)

Petition Under Section 115 C.P.C. for revision of the order of the Court of Shri S. K. Chopra, Sub Judge 1st Class, Ludhiana, dated 16th February, 1979, dismissing the execution application.

Vijay Jhanji, Advocate, for the Petitioner.

H. L. Sibal, with S. C. Sibal and R. K. Handa, Advocates, for the Respondent.

JUDGMENT

(1) This is decree-holder's revision petition whose execution application has been dismissed by the executing Court,—*vide* impugned order February 16, 1979.

(2) The facts are not in dispute and, in brief, are as follows. The plaintiff-decree-holder filed the suit for the specific performance

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of the agreement to sell dated August 4, 1971, which was decreed by the trial Court on March 28, 1974. Therein, the trial Court passed the decree to the following effect:

“I decree the plaintiff's suit with costs. I grant his prayer for possession of 3/4th share of the disputed house by specific performance of agreement dated 4th August, 1971. The plaintiff shall deposit the balance amount of Rs. 11,600 within one month. He shall have to bear the costs of stamp and registration of the sale deed that may be executed ultimately.”

Against the said judgment and decree of the trial Court, appeal was filed which was ultimately heard by the First Additional District Judge, Ludhiana, who dismissed the same on February 11, 1976. During the pendency of the appeal, the judgment-debtor was granted the stay of the execution of the decree by this Court passing the following order on September 13, 1974;

“The stay is confirmed, provided the appellant furnishes security bond to the satisfaction of the trial Court to satisfy the decree in case he fails to get the decree set aside. In that case, the plaintiff-respondent will be entitled to withdraw the amount deposited by him, till further direction in that respect to be given by the Court deciding the appeal.”

Admittedly, the decree-holder had deposited the amount of Rs. 11,500 within one month as directed by the trial Court, i.e., on April 25, 1974. However, the said amount was withdrawn in view of the above-said order passed by this Court. While disposing of the appeal, no time was allowed to re-deposit the amount as was contemplated by the order of this Court dated September 13, 1974, noticed above. The operative part of the decree of the appellate Court reads as under:

“I do not find any merit in this appeal which is dismissed, with costs, confirming the judgment and decree passed by the trial Court.”

Having waited for compliance of the decree by the judgment-debtor, for which he had furnished security bond in compliance of this

Court order dated September 13, 1974, the decree-holder, of his own, deposited the sale price on October 29, 1976 and, thereafter, sought the execution of the decree on November 3, 1976. In the said execution application, objections were filed on behalf of the judgment-debtor purporting to be under section 28 of the Specific Relief Act, (hereinafter called the Act). According to the judgment-debtor, the agreement to sell stood rescinded because it was incumbent upon the plaintiff to deposit the sum of Rs. 11,500 within one month of the order of the appellate Court which had confirmed the order of the trial Court, but the plaintiff defaulted in depositing that amount within time as he was not ready with the said money earlier and could deposit the same only on October 29, 1976. The agreement and the decree accordingly stood discharged. It was contested on behalf of the decree-holder *inter alia* on the ground that the appellate Court had not given any direction as to when the balance sale price was to be re-deposited. Moreover, the judgment-debtor had given security for complying with the decree and he waited for the judgment-debtor to make a move in that direction. However, when the judgment-debtor failed to do the needful within a reasonable time, he applied to the Court and re-deposited the amount under the orders of the Court which tantamounted to the permission of the Court to deposit the amount by exercising the discretion to extend the time for such deposit. According to him, the balance sale price having been already deposited under the orders of the Court and there being no direction by the appellate Court as to when the balance sale price was to be re-deposited, the decree-holder must be deemed to have complied with the decree and that the objections raised by the judgment-debtor were not tenable. On the pleadings of the parties, the executing Court framed the following issues:

1. Whether the decree for specific performance is liable to be rescinded on the grounds alleged in the objection petition?
2. Whether the deposit is proper ?
3. Relief.

The learned executing Court came to the conclusion that it stood established that the deposit made by the plaintiff on October 29,

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1976, was not a proper one as he had not deposited the amount within one month from the order of the first appellate Court or in any case from the order of this Court in the regular second appeal which was dismissed *in limine* on June 9, 1976. It was consequently, held that the agreement to sell stood rescinded with the result that the decree passed in favour of the plaintiff had become impossible of performance. Dissatisfied with the same, the decree-holder, has filed this revision petition in this Court.

(3) The learned counsel for the petitioner contended that after furnishing security in view of the order of this Court dated September 13, 1974, it was obligatory on the judgment-debtor to satisfy the decree; more particularly when his appeal was dismissed up to this Court. Moreover, the judgment-debtor never moved the application under section 28 of the Act, before re-deposit of the amount by the decree-holder on October 29, 1976. The amount will be deemed to have been deposited within reasonable time. In any case, in the circumstances of this case, the deposit will be deemed to have been made within the extended time which may be presumed in this case. Since the amount was deposited before any application was filed by the judgment debtor under section 28 of the Act, argued the counsel, the decree-holder was entitled to execute the decree. In support of the contention, the learned counsel relied upon *Sarupi v. Har Gian* (1), *Dharam Das v. Peare Lal* (2), and *Gurdit Singh v. Jagjit Singh* (3),

(4) On the other hand, the learned counsel for the judgment-debtor submitted that since no time was allowed by the appellate Court while disposing of the appeal, it would be presumed that the decree-holder was entitled to re-deposit the amount within the same time, i.e., 30 days, which was allowed by the trial court. Since the amount was not deposited within the said period, the deposit made on October 29, 1976, by him, was belated. Moreover, the decree-holder never moved any application for extension of time to the appellate Court. Therefore, no fault could be found with the impugned order of the executing Court. Reliance in support of

(1) A.I.R. 1975, Punjab and Haryana 231.

(2) A.I.R. 1955 NUC (Allahabad).

(3) (1987-1) Punjab Law Reporter 129.

this contention was placed on *Dattatraya v. Shaikh Mahaboob* (4), *Satvaji v. Sakharlal* (5), *Sulleh Singh v. Sohan Lal* (6) and *Panni v. Daya Ram* (7).

(5) After hearing the learned counsel for the parties and going through the case law cited at the bar, I am of the considered opinion that on the facts and circumstances of this case, the money re-deposited by the decree-holder on October 29, 1976, was deposited within the reasonable time and in any case, extension for depositing the same will be presumed when it was allowed to be deposited by the executing Court. The judgments relied upon by the learned counsel for the judgment-debtor are not at all applicable to the facts of this case. In the present case, the trial Court passed the decree on March 28, 1974 and the appellate Court dismissed the appeal on February 11, 1976. Therefore, even rule 12-A of Order XX of the Code of Civil Procedure, as introduced by the Code of Civil Procedure (Amendment) Act, 1976, which reads as follows:

“Where a decree for specific performance of a contract for the sale or lease of immovable property orders that the purchase-money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.”

has also no applicability to this case. Besides, in case a decree-holder fails to deposit the amount within the time allowed, its effect has also not been provided thereunder, as has been done under rule 14 of the said order. It is section 28 of the Act, which contemplates such a situation. In that situation, the vendor may apply in the same suit in which the decree was 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. Admittedly, no time was fixed by the lower appellate Court while disposing of the appeal as was specifically required by this Court's order dated September 13, 1974, but in any case, the amount was deposited within

(4) A.I.R. 1970 S.C. 750.

(5) A.I.R. 1914 Bombay 132.

(6) 1975 P.L.J. 400.

(7) (1985-2) P.L.R. 157.

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the reasonable time on October 29, 1976, by the decree-holder. The judgment-debtor had not moved any application under section 28 of the Act till then. Not only that, the decree-holder was allowed to deposit the amount by the executing Court itself. Thus, on the facts and circumstances of the case, it will be presumed that the time was extended for depositing the said amount. It is well established that no one should be allowed to suffer for the act of a Court. In any case, section 28 of the Act itself *inter alia* provides for the extension of time. Thus, on the facts and circumstances of this case, time could be extended even in this revision petition. It was a fit case where the executing Court should have itself extended the time; more particularly when the decree-holder was allowed to deposit the amount on October 29, 1976. As observed earlier, the judgment-debtor had already furnished security for the performance of the decree to be passed in appeal. He never moved the execution Court that he was ready and willing to perform his part of the decree but he was unable to do so because the decree-holder had not deposited the amount. Before any application could be filed by the judgment-debtor under section 28 of the Act, the decree-holder had already deposited the amount on October 29, 1976. On the facts and circumstances of this case, the *ratio* of the decision of this Court in *Sarupi's case* (supra), will apply, wherein it was observed,—

“When a decree is silent as to what is to happen if the purchase money is not paid within the time fixed, the decree will not lapse automatically on the plaintiff's failure to pay within the prescribed time. The default will, however, entitle the vendor to apply for rescission of the contract under section 28(1). But so long as the vendor does not apply for such relief, the decree 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.”

In *Gurdit Singh's case* (supra), it was observed by this Court that the power under section 28 of the Act is undoubtedly discretionary and the Court cannot on flimsy grounds annul the decree once passed by it. A clear case of default has to be established against the decree-holder for rescinding a contract or to nullify the decree of specific performance. No such case was made out by the judgment-debtor so far as the present case is concerned. The view taken

by the executing Court that since no specific order was passed extending the time, nor any application had been made for extending the time, it could not be deemed that the Court had used its discretion for extending time for such deposit, is wholly misconceived. Admittedly, the Court had the power to extend the time and once the decree-holder was allowed to deposit the amount, on the facts and circumstances of this case, it will be presumed that the time was extended even though no application in that behalf was made.

(6) Consequently, this revision petition succeeds and is allowed, with costs. The impugned order is set aside and the case is sent back for proceeding with the execution application in accordance with law. The parties have been directed to appear in the executing Court on April 15, 1987. The records of the case be sent back forthwith.

S.C.K.

Before D. S. Tewatia and M. R. Agnihotri, JJ.

SHIV DAYAL SINGH RAMESH CHANDER AND OTHERS.
—Petitioners.

versus

STATE OF HARYANA AND OTHERS.—Respondents.

Amended Civil Writ Petition No. 1105 of 1986

March 17, 1988.

Haryana Rural Development Act (VI of 1986)—Sections 5(3), 6(5) and 11—Ad valorem fee/cess levied on actual sales of agricultural produce in notified market areas—Dealers made liable for recovery of such fee from next purchaser—Fee appropriated to the Haryana Rural Development Fund for the purpose of development of notified market areas—Vires of Act challenged on the ground of absence of element of quid-pro-quo and that fee is in fact a tax not leviable by the State—Element of quid pro quo—Whether necessary ingredient of fee,—Stated—Levy of fee—Whether justified—Whether has a rational nexus to services rendered—Act—Whether constitutional—Section 11—Validating retention of fee/cess recovered under