**AFR**

**Reserved on 30.7.2026**

**Delivered on 6.8.2026**

2026:AHC:164205

# HIGH COURT OF JUDICATURE AT ALLAHABAD

## MATTERS UNDER ARTICLE 227 No. - 6695 of 2026

Duliram Maurya

…..Petitioner(s)

Versus

Nandram

…..Respondent(s)

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Counsel for Petitioner(s) : Rahul Sahai

Counsel for Respondent(s) : Lalit Kumar

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**Court No. – 9**

**HON'BLE ROHIT RANJAN AGARWAL, J.**

1. Defendant petitioner (Duliram Maurya) had entered into an agreement to sale on 3.7.1991 for the land in dispute for a total sale consideration of Rs. 25000/-. On the same day Rs. 13000/- was paid by the plaintiff respondent whereas balance Rs. 12000/- was to be paid at the time of execution of sale-deed.

2. Plaintiff respondent (Nandram) instituted Original Suit No. 109 of 1993 seeking relief for specific performance of contract/agreement to sale. In the said suit five issues were framed, and the trial court vide judgment and decree dated 18.8.1998 had dismissed the suit holding that there had been no transaction for execution of any sale-deed and disputed agreement to sale was in fact a mischief under the garb of loan taken by defendant/petitioner.

3. Against the said judgment, plaintiff respondent filed a Civil Appeal No. 101 of 1998, which was allowed vide judgment/decree dated 22.11.2003 and the suit of plaintiff respondent stood decreed. The appellate court directed the defendant petitioner to execute the sale-deed within two months, while plaintiff respondent was directed to deposit the balance sale consideration within a period of one month.

4. Defendant petitioner filed a second appeal before this Court being Second Appeal No. 235 of 2004. In the said second appeal no interim order was passed, thus, plaintiff respondent initiated execution proceedings on 6.8.2012 which was registered as Execution Case No. 1 of 2012. The second appeal filed by defendant petitioner was dismissed on 23.9.2019. As the plaintiff respondent did not comply the directions of appellate court, as such, an application 26-C was filed by the defendant petitioner under Section 28 of the Specific Relief Act 1963 (hereinafter referred as the ‘Act of 1963’) for dropping the execution proceedings.

5. Plaintiff respondent filed his objections to the said application and also filed application 31-C and 55-C on 17.11.2025 seeking extension of time for depositing the balance sale consideration and condoning the delay. By order dated 23.12.2025 application 26-C filed by defendant petitioner was rejected and application 31-C and 55-C filed by plaintiff respondent was allowed. Against the said judgment, Civil Revision No. 3 of 2026 was filed which has been dismissed by the order dated 6.4.2026. Hence, present writ petiton.

6. Sri Rahul Sahai, learned counsel appearing for defendant petitioner submitted that the appellate court decreed the suit of plaintiff respondent on 22.11.2003 and plaintiff was required to deposit the balance sale consideration within one month, but neither the amount was deposited nor any execution proceedings were initiated. According to him, it was nearly after nine years that execution proceedings were initiated on 6.8.2012. Though, an application was moved for extension of time but time was not extended by the executing court and application kept pending.

7. He further contended that the second appeal was dismissed on 23.9.2019, which was not contested by plaintiff respondent, and after four years when defendant petitioner moved application 26-C under Section 28 of the Act of 1963 that objection to the said application was filed by plaintiff respondent and it was only on 17.11.2025 that an application seeking extension of time to deposit the balance sale consideration was moved, which should not have been allowed by the court below. According to him, extending benefit to plaintiff respondent to deposit sale consideration after more than 20 years will only lead to travesty of justice.

8. He also submitted that specific performance of a contract is an equitable relief, while considering the prayer for rescission of contract or decree or for extension of time to make the deposit, the court must be guided by principle of equity. The decree being sought to be executed is

of the year 2003 and execution proceedings were initiated after lapse of nine years and, thereafter, the plaintiff respondent, after the second appeal having been dismissed in the year 2019, moved an application for condoning the delay and extending the time for deposit of balance sale consideration on 17.11.2025. Reliance has been placed upon the decision of Apex Court rendered in case of **Habban Shah Vs. Sheruddin MANU/SC/0441/2026**.

9. Sri Lalit Kumar, learned counsel appearing for plaintiff respondent, submitted that Section 28 of the Act of 1963 also provides for seeking extension of time by the decree holder. According to him, when the execution proceedings were initiated in the year 2012, application for extending the time was moved by the plaintiff respondent and also for a direction by the court to allow to deposit the money, but the application remained pending. According to him, after the second appeal was dismissed, plaintiff respondent on 17.11.2025 moved an application 31-C and 55-C for extension of time which has been allowed by the execution court at a cost of Rs. 1000/-. He further submitted that the decree of the year 2003 merged in the judgment of this Court rendered in second appeal in the year 2019.

10. According to him, as the second appeal was pending consideration before this Court, execution proceedings were not pressed and it was only after the decision in the second appeal that application seeking extension of time for depositing the balance sale consideration was moved. He further submits that doctrine of merger would apply and period would not be counted from the year 2003. He has heavily relied upon the judgment of Apex Court rendered in cases of **Anand Narayan Shukla Vs. Jagat Dhari, 2026 (2) ARC 481** and **Balbir Singh & Another Vs. Baldev Singh (Dead) Through His Legal Representatives & Others, 2025 (3) SCC 543**.

11. I have heard learned counsel appearing for parties and perused the materiel on record.

12. From reading of the directions contained in the order impugned, it reveals that defendant petitioner has been directed to execute the sale-deed in favour of plaintiff respondent in terms of the agreement, after receiving the balance amount with a cost of Rs. 1000/-. The sole point for consideration is that whether such extension of time for depositing the balance sale consideration could have been passed by the executing court after lapse of more than 20 years since the suit was decreed, and dismissing the application moved by defendant petitioner under Section 28 of the Act of 1963 for rescission of contract.

13. Before adverting to decide the issue in hand, a cursory glance of Section 28 of the Act of 1963 is necessary for better appreciation of case, which is as under;

> "**28. 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.
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> (2) Where a contract is rescinded under sub-section (1), the court—
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> (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
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> (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 the lessee as earnest money or deposit in connection with the contract.
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> (3) If the purchase 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: —
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> (a) the execution of a proper conveyance or lease by the vendor or lessor;
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> (b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.
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> (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.
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> (5) The costs of any proceedings under this section shall be in the discretion of the court."

14. Section 28 of the Act of 1963 deals with rescission in certain circumstances of contract for the sale or lease of immovable property, the specific performance of which has been decreed. Sub-section (1) provides that where a suit for specific performance of a contract has been decreed and 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 was made, to have the contract rescinded on an application being made to the court. The said power is discretionary and should not ordinarily annul

the decree once it has been passed. However, the said section provides for complete relief to both the parties in terms of the decree. It does not cease to have the power to extend the time though the trial court had earlier directed for payment of balance amount to be made by certain dates and on failure the suit stood dismissed.

15. In **Chanda Vs. Rattni and another, 2007 (14) SCC 26** the Apex Court held that relief under Section 28 of the Act of 1963 is discretionary. Further it was held that decree for specific performance is a preliminary decree. The power under Section 28 is discretionary and court cannot ordinarily annul the decree once passed by it. Though, the power to annul the decree exist. Relevant paragraph no. 9 is extracted hereasunder;

> "**9.** The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The court does not cease to have the power to extend the time even though the trial court had earlier directed in the decree that payment of balance price to be made by certain date and on failure the suit to stand dismissed. The power exercisable under this section is discretionary."

16. Similar view was taken by the Apex Court in case of **Balbir Singh (Supra)** wherein in paragraph 25 the same view was upheld, which is extracted hereasunder;

> "The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The court does not cease to have the power to extend the time even though the trial court had earlier directed in the decree that payment of balance price to be made by certain date and on failure the suit to stand dismissed. The power exercisable under this section is discretionary."

17. In **Habban Shah (Supra)** the Apex Court held that even in case defendant/judgment debtor had not filed application under Section 28 of the Act of 1963 for rescinding the contract it is not mandatory rather optional and immaterial and the court in such circumstances is not powerless to treat the contract as having been rescinded. Relevant paragraph nos. 31 to 34 is extracted hereasunder;

> "**31.** One of the other arguments is that the defendant-appellant had not even filed any application under Section 28 of the Act for rescinding the contract, therefore, no relief to the above effect could be granted to the defendant-appellant.

> **32.** The aforesaid argument does not tie down our hands as this aspect of the matter stands covered by one another decision of this court rendered in *Prem Jeevan* v. *K.S. Venkata Raman*[5].
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> **33.** In the aforesaid case one of the contentions advanced on behalf of decree holder was that unless an application seeking recession of the contract in terms of Section 28 of the Act is filed, judgment debtor is not entitled to the relief of rescinding the contract. The court upon due consideration held that failure of the judgment debtor to seek recession of the contract in terms of Section 28 of the Act does not imply that the decree which has become inexecutable would revive and would be executable when the deposits were not made in time and no application for extension of time was moved.
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> **34.** In view of the above decision, it is settled that moving of an application under Section 28 of the Act for rescinding the contract for non-compliance of the condition is not mandatory rather optional and immaterial and that the court in a given circumstance is not powerless to treat the contract as having rescinded for non-compliance of the condition."

18. In **P.R. Yelumalai v. N.M. Ravi, 2015 (9) SCC 52** the Apex Court took a view that in case deposit was accepted beyond the period prescribed under the decree it would not amount to deem extending of time. It was held that conditional decree is self operative, therefore, non-compliance of any condition leads to automatic dismissal of the suit. If the deposit was not made within time prescribed it would amount to failure of decree which leads to automatic dismissal of the suit. Relevant paragraph no. 11 is extracted hereasunder;

> "**11.** The learned counsel for the defendant seller, on the other hand, contended that under Section 28(1) of the Specific Relief Act read with Section 151 CPC, the trial court alone has power to extend the time to satisfy the conditional decree. When the trial court had exercised its discretion and granted extension of two months' time for making payment of the balance consideration amount, even then the plaintiff buyer failed to pay on time and in the prescribed mode. In addition to this, the counsel for the defendant seller contended that the plaintiff buyer has not given notice to the respondent of delayed payment by cash. The defendant seller had no notice of delayed payment by cash. The learned counsel submitted that as per Order 21 Rule 2 CPC, the judgment-debtor is required to give notice to the decree-holder of the deposit of any money in court. He contended that in the present case, even though the plaintiff buyer is a decree-holder, yet the obligation of notice would apply to him also. In the absence of this notice, the learned counsel contended that the defendant seller was in his right to sell the property to a third party. He further reinforces the justification for sale deed dated 20-6-2007 by pointing out that the decree in this case was a conditional one and self-operative in case of non-compliance. Since the decree clearly mentioned that if the amount of balance consideration is not deposited within the period stipulated therein, the suit shall be deemed to have been dismissed. The plaintiff buyer lost his right under the decree as soon as the time granted under the decree expired by not complying with the decree. The learned counsel further argued that the mode of deposit of the amount was not in terms of the decree as the amount was deposited in cash while the decree required the deposit to be made in the form of demand draft. Thus, the learned counsel submitted

> that the plaintiff buyer had completely failed to obey the commands in the decree."

19. In **Sardar Mohar Singh v. Mangilal, (1997) 9 SCC 217** the Apex Court held that court can grant extension of time and it does not become *functus officio* after the grant of decree. It is because Section 28 itself gives power to order of rescission of decree which would indicate that till sale-deed is executed in execution of decree, the trial court retains its power and jurisdiction to deal with the decree of specific performance. Relevant paragraph no. 4 is extracted hereasunder;

> "**4.** From the language of sub-section (1) of Section 28, it could be seen that the court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes *functus officio*. The very fact that Section 28 itself gives power to grant order of rescission of the decree would indicate that till the sale deed is executed in execution of the decree, the trial court retains its power and jurisdiction to deal with the decree of specific performance. It would also be clear that the court has power to enlarge the time in favour of the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, in spite of an application for rescission of the decree having been filed by the judgment-debtor and rejected. In other words, the court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance. It is true that the respondent has not given satisfactory explanation of every day's delay. It is not, unlike Section 5 of the Limitation Act, an application for condonation of delay. It is one for extension of time. Under these circumstances, the executing court as well as the High Court had exercised discretion and extended the time to comply with the conditional decree. Accordingly, we do not find any valid and justifiable reason to interfere with the order passed by the High Court confirming the order of the executing court when in particular, the High Court has further enhanced a sum of Rs 16,000 to compensate the petitioner for loss of enjoyment of the money. The said amount is given to the respondent in a sum of Rs 16,000 rightly for the reason that parties contracted for non-performance of the contract. They quantified the damages at Rs 2000 for 8 years. The Court has given Rs 16,000 obviously in terms of the contract."

20. Similarly, in **Bhupinder Kumar v. Angrej Singh, (2009) 8 SCC 766** the Apex Court took a similar view that court does not loose its jurisdiction after grant of decree for specific performance nor it becomes *functus officio.* The relevant pragraph no. 22 is extracted hereasunder;

> "**22.** Sub-section (1) of Section 28 makes it clear that the court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes *functus officio*. On the other hand, Section 28 gives power to the court to grant an order of rescission of the agreement and it has the power to extend the time to pay the amount or perform the conditions of decree for specific performance despite the application for rescission of the agreement/decree. In deciding an application under Section 28(1) of

> the Act, the court has to see all the attending circumstances including the conduct of the parties."

21. In **Ramankutty Guptan v. Avara, (1994) 2 SCC 642,** the Apex Court found that application under Section 28 is maintainable in the court of first instance when the decree has been passed by the appellate court. The relevant pragraph no. 8 of the said judgment is extracted hereasunder;

> "**8.** Section 37 CPC enumerates that:
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> "37. *Definition of Court which passed a decree.*— The expression 'Court which passed a decree', or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,—
> (*a*) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and
> * * *"
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> Therefore, it is clear that the decree of the appellate court would be construed to be the decree passed by the court of first instance. It is settled law that an appeal is a continuation of the suit. Therefore, when a decree for specific performance has been dismissed by the trial court, but decreed by the appellate court, it should be construed to be in the same suit. When the decree specifies the time for performance of the conditions of the decree, on its failure to deposit the money, Section 28(1) itself gives power to the court to extend the time on such terms as the court may allow to pay the purchase money or other sum which the court has ordered him to pay. In *K. Kalpana Saraswathi* v. *P.S.S. Somasundaram Chettiar* [(1980) 1 SCC 630 : (1980) 2 SCR 293] this Court held that on an oral prayer made by the counsel for the plaintiff for permission to deposit the entire amount as directed by the trial court this Court directed the appellant to deposit the amount within six months from that date together with interest and other conditions mentioned therein. An application for extension of time for payment of balance consideration may be filed even in the court of first instance or in the appellate court in the same suit as the decree of the trial court stands merged with that of the appellate court which decree is under execution. It is to be seen that the procedure is the handmaid for justice and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve substantial justice. Therefore technicalities would not stand in the way to subserve substantive justice. Take a case where the decree is transferred for execution to a transferee executing court, then certainly the transferee court is not the original court and execution court is not the "same court" within the meaning of Section 28 of the Act. But when an application has been made in the court in which the original suit was filed and the execution is being proceeded with, then certainly an application under Section 28 is maintainable in the same court."

22. In case of **Ram Lal v. Jarnail Singh 2025 SCC Online SC 584**, the Apex Court held that appeal is a continuation of the original proceedings and the power of the Court to extend the time for depositing the amount can be exercised even at the appellate stage. The Apex Court further held that in case appellate court fails to specify any time period, then it is expected from the decree holder to deposit the sale consideration within a reasonable period of time. The Apex Court, thereafter, summarized the

law regarding exexcution of decree of specific performance. Relevant paragraph nos. 44 to 50 are extracted hereasunder;

> "44. The decree for specific performance is in the nature of a preliminary decree. Both the parties have reciprocal rights and obligations flowing out of the decree. The decree may fix the time limit for performance and in some cases may also provide for the consequences for performance within the time limit or the decree may even be silent on this aspect. non-
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> 45. The decree enforces specific performance of the contract. The contract between the parties is thus not extinguished by passing of a decree for specific performance and it subsists despite the decree. Section 28 (1) of the Act makes it clear that the court does not become functus officio after the grant of the decree for specific performance and it retains its power and jurisdiction to deal with the decree till the sale deed is executed.
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> 46. The court has been conferred with the power to extend the time to pay the amount and while taking into consideration the delay that is sought to be condoned by the plaintiff, the court does not adjudge the same like an application under section 5 of the Limitation Act, where each day's delay must be explained. The Court is given the discretion to extend the time, and the provision therefore seeks to provide complete relief to both the parties in terms of the decree for specific performance.
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> 47. The power and jurisdiction granted under Section 28 (1) of the Act, enables the court to extend the period for payment of the purchase money if it has not been paid within the period allowed by the decree. It also enables the judgment debtor to seek for rescinding the contract for non-compliance of the directions given in the decree and while considering this application, the court is given the discretion to rescind the contract or in an appropriate case to even extend the time for paying the purchase money.
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> 48. It should also be borne in mind that appeal is a continuation of the original proceedings and the power of the Court to extend the time for depositing the amount can be exercised even in the appellate stage by the Court.
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> 49. In the considered view of this court, the Appellate Court, after deciding the appeal on merits, could have called upon the plaintiff to deposit the balance sale consideration by fixing a time limit. This would have at least given an opportunity to the plaintiff to fulfill his obligation. The non-payment of the balance consideration within the time period fixed by the Trial Court does not amount to abandonment of the contract and consequent rescinding of the same. The real test must be to see if the conduct of the plaintiff will amount to a positive refusal to complete his part of the contract. There must be an element of willful negligence on the part of the plaintiff before a court proceeds to invoke Section 28 of the Act and rescind the contract.
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> 50. This litigation is an eye-opener for the appellate courts reminding that they owe a duty to comply with the provisions of Order XX Rule 12A of the CPC. Where an appeal is filed against the decree passed by the trial court and the appeal is disposed of, the appellate court should specify time to deposit the balance sale consideration. It is too much to say that since the Trial Court had granted 2 months' time to the decree holder to deposit the balance sale consideration the same time period would apply even to the decree that may be drawn by the appellate court. What is executable is the decree passed by the appellate court. The appellate court

owes a duty to specify the time period. If during the specified time period the decree holder is not in a position to deposit the balance sale consideration or, in other words, fails to deposit the balance sale consideration and later upon expiry of the specified time period seeks permission to deposit, then it would be within the discretion of the trial court to grant further time to deposit the balance sale consideration or decline. This discretion has to be exercised judiciously keeping in mind various factors like bona fide of the decree holder, the cause for failure to deposit the balance sale consideration in time, the length of delav and also the equities that might have been created during the interregnum period in favor of the judgment debtor. It is the cumulative effect and considerations of such factors that should weigh with the court concerned while permitting the decree holder to deposit the sale consideration beyond the time period that might have been prescribed by the trial court in its final decree."

23. In the instant case, it is not in dispute that the suit for specific performance was decreed by the appellate court on 22.11.2003. The plaintiff respondent waited for almost nine years and filed Execution Case No. 1 of 2012 on 6.8.2012. The argument raised from the plaintiff side that as second appeal was filed before this Court in the year 2004, the plaintiff did not get the decree executed and the period prescribed under the Limitation Act for getting the decree executed is 12 years and, as such, the execution proceeding was well within limitation period.

24. The said argument is totally misconceived as it is a case of specific performance where the suit was decreed by the first appellate court on 22.11.2003 granting one month time to plaintiff respondent to deposit the balance sale consideration. He did not make any effort to deposit the said amount nor made any application seeking extension of time. The records of second appeal reveals that it was filed in the year 2004 and on 8.7.2004 the Court directed for listing the appeal for admission. The order-sheet reveals that neither the appeal was admitted nor any substantial question of law was framed, nor any interim order was granted by the second appellate Court. The said second appeal was finally dismissed on 23.9.2019.

25. Plaintiff respondent never appeared before the second appellate Court nor contested the second appeal. He was only watching the proceedings from outside. In the execution proceedings initiated in the year 2012 plaintiff respondent had moved an application for extension of time wherein time was not extended by the executing court, and application kept pending. It is after the dismissal of second appeal on 23.9.2019, that for the first time defendant petitioner moved application 26-C in the light of Section 28 of the Act of 1963 for rescinding the decree of the appellate court. The plaintiff respondent thereafter waited for almost two years and on 17.11.2025 moved an application for extension of time alongwith delay condonation application, which was

allowed by the executing court and revision filed against the order passed by the executing court has been dismissed.

26. It is a case where the plaintiff respondent himself had not performed his part by depositing balance sale consideration before the court and waited for moving the execution proceedings after almost nine years and further not pressing the application for extension of time moved in the year 2012.

27. The second application moved for extension of time was in the year 2025, despite the fact that second appeal was dismissed by this Court on 23.9.2019. The action of plaintiff respondent clearly reveals that he was not interested in getting the decree executed for specific performance of contract nor was ready to complete his part by making deposit of balance sale consideration.

28. The argument, raised by Sri Lalit Kumar that as second appeal was pending, the plaintiff had not pressed his application for extension of time filed in execution proceedings of the year 2012 and waited for the decision of second appeal, does not hold any ground as plaintiff respondent never participated in the proceedings, which were pending before this Court in Second Appeal No. 235 of 2004. Moreover, the said second appeal was dismissed way back in the year 2019 and second application seeking extension of time for depositing the tender was made in the year 2025 i.e. after lapse of six years.

29. The judgment rendered by the Apex Court in case of **Ram Lal (Supra)** clearly oust the case of plaintiff respondent as there is a willful negligence on the part of plaintiff in his performance to deposit the balance sale consideration within the specified period of time and further waiting for almost more than 20 years in moving the second application for extension of time for depositing the balance sale consideration.

30. Length of delay and also the equities that have been created during the interregnum period is in favour of judgment debtor. In a suit for specific performance the court has to balance equity between the parties. Decreeing of suit is a preliminary decree as has been held by the Apex Court in the above noted judgments. The court which has passed the decree is vested with the jurisdiction to either rescind the contract/decree for non-payment/non deposit within the stipulated period or extend the period for making such payment/deposit. In the instant case, there is an unexplained delay on the part of the plaintiff respondent in completing his part of performance for depositing the balance sale consideration.

31. The Apex Court in case of **Anand Narayan Shukla (Supra)** while summarizing the guiding principle for exercising power under the Act of 1963 held as under;

“**33.** Upon consideration of the provisions of Section 28 of the 1963 Act as also the decisions noticed above, in our view, the legal principles, *inter alia*, guiding the exercise of power under Section 28 of the 1963 Act could be summarized as under:

(i) A decree for specific performance of a contract is in the nature of a preliminary decree and therefore, till the deed is executed pursuant to the decree, the Court that passed the decree is vested with the jurisdiction to either rescind the contract/the decree for non-payment/non-deposit within the stipulated period or extend the period for making such payment/deposit.

(ii) Neither there is an automatic rescission of the contract/decree for non-payment/non-deposit within the period stipulated by the decree, nor there is an automatic extension of time by making such deposit, if the stipulated period for payment/deposit has expired. However, where the decree stipulates that on failure to pay/deposit within the specified period, the decree shall stand rescinded or the suit shall stand dismissed, the decree is rendered inexecutable on failure to pay/deposit[16].

(iii) Prayer to extend the time for making deposit in compliance of the conditions stipulated in the decree may be made prior to, or even after, expiry of the period stipulated therefor[17].

(iv) There is no form prescribed for making the prayer to extend the time to make such payment or deposit. Therefore, the prayer seeking permission to deposit the defaulted amount may be treated as one for extension of time to deposit. Such prayer may be made even orally while the Court seeks to address an application for rescission of the contract/decree or when the decree is put for execution, provided the execution court is the one which passed the decree. However, if the decree is passed by the appellate court, such prayer/application may be made before the court of first instance having regard to the provisions of Section 37 of CPC. Further, what is important is that such an application must be treated as an application in the suit and numbered accordingly.

(v) As specific performance of a contract is an equitable relief, while considering the prayer for rescission of the contract/decree, or for extension of time to make deposit in compliance of the decree, the Court must be guided by principles of equity. Therefore, while considering the prayer for extension of time to make deposit, to balance the equities, the Court would have to consider the attending facts and circumstances of the case, the conduct of the parties and whether, by putting the decree holder to such additional terms and conditions, the judgment debtor could be adequately compensated for the delay.

(vi) Though each day's delay in deposit need not be explained as in an application under Section 5 of the Limitation Act, the test is whether from the conduct of the decree holder it could be logically inferred that he had no intention to complete his part of the contract. If it appears so, and there appears an element of willful negligence on the part of the decree holder in complying with the terms of the decree, the Court may invoke its power under Section 28 and rescind the contract.

(vii) Under Order XX Rule 12 A of CPC, when a decree for specific performance of a contract for the sale, or lease of immovable property, orders that the purchase-money or other sum is to be paid by the purchaser or lessee, the Court must specify the period within which the payment shall be made. Therefore, where the suit for specific performance is dismissed by the trial court but decreed by the appellate court, or where the appeal against the decree for specific performance is

> dismissed on merits, the Court must fix the time within which such payment is to be made. If no time limit is fixed, the compliance thereof would have to be within a reasonable period. As to what would be the reasonable period would depend on facts of the case."

32. In the said guidelines laid down by the Apex Court in paragraph no. 33 (V) the Apex Court has held that while considering prayer for extension of time to make deposit, to balance the equities, the Court would have to consider the attending facts and circumstances of the case, the conduct of the parties and whether, by putting the decree holder to such additional terms and conditions, the judgment debtor could be adequately compensated for the delay.

33. Reliance placed on the said judgment by plaintiff respondent does not help his case, as in the instant case in the guidelines laid down by the Apex Court in paragraph no. 33 (V) (VI) & (VII) the Apex Court has clearly held that prayer for extension of time to make deposit can only be considered in the light of the attending facts and circumstances of the case. Here, in the present case, plaintiff respondent has been careless in getting the decree executed for more than 20 years and application for extension of time was made in the year 2012 which was not pressed and, thereafter, in the year 2025, though the suit for specific performance stood decreed in the year 2003.

34. The facts of the judgment relied by plaintiff respondent in **Anand Narayan Shukla's** case are distinguishable to the facts of the present case. In that case, the suit was decreed on 3.3.2017, while the judgment debtor was put to notice on 1.4.2017 and first appeal was filed in the year 2017 itself and execution proceedings were also initiated in the year 2017, in which various dates were fixed and judgment debtor did not turn up and it was in the year 2020 that the time was extended and deposit was made.

35. Here, in the present case, the facts are totally different as the suit was decreed in the year 2003 and second appeal was preferred in the year 2004 in which no interim order was granted and plaintiff respondent never contested the second appeal instead filed the execution proceedings in the year 2012, while the deposit, as per decree, for balance sale consideration was one month from the date of judgment and decree.

36. An attempt was made by plaintiff respondent's counsel as to the applicability of doctrine of merger in the instant case. It is not in dispute that the decree of the year 2003 stood merged in the judgment of second appeal dated 23.9.2019. The law in regard to said doctrine of merger is clear. Relevant paragraph nos. 27 to 33 of the judgment rendered by the Apex Court in case of **Balbir Singh (Supra)** is extracted hereasunder;

"**27.** The doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point of time. The doctrine of merger applies irrespective of whether the appellate court has affirmed, modified or reversed the decree of the trial court. The doctrine has been discussed and explained succinctly by this Court in *Surinder Pal Soni* v. *Sohan Lal* [*Surinder Pal Soni* v. *Sohan Lal*, (2020) 15 SCC 771] .

**28.** In *Kunhayammed* v. *State of Kerala* [*Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359 : (2000) 245 ITR 360 : (2000) 119 STC 505] , while explaining the doctrine of merger, this Court held thus : (SCC p. 370, para 12)

"*12.* The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

**29.** Further, while explaining the position that emerges on the grant of special leave to appeal by this Court [*Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359 : (2000) 245 ITR 360 : (2000) 119 STC 505] , it was observed : (*Kunhayammed case* [*Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359 : (2000) 245 ITR 360 : (2000) 119 STC 505] , SCC p. 383, para 41)

"*41.* Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one."

**30.** This position of law has been affirmed and reiterated by a three-Judge Bench decision of this Court in *Khoday Distilleries Ltd.* v. *Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.* [*Khoday Distilleries Ltd.* v. *Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.*, (2019) 4 SCC 376]

**31.** The decision in *Kunhayammed* [*Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359 : (2000) 245 ITR 360 : (2000) 119 STC 505] was followed by a three-Judge Bench decision of this Court in *Chandi Prasad* v. *Jagdish Prasad* [*Chandi Prasad* v. *Jagdish Prasad*, (2004) 8 SCC 724] , which held thus : (*Chandi Prasad case* [*Chandi Prasad* v. *Jagdish Prasad*, (2004) 8 SCC 724] , SCC p. 731, paras 23-24)

"*23.* The doctrine of merger is based on the principles of propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine

> postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time.
>
> *24.* It is trite that when an appellate court passes a decree, the decree of the trial court merges with the decree of the appellate court and even if and subject to any modification that may be made in the appellate decree, the decree of the appellate court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the appellate court affirms, modifies or reverses the decree passed by the trial court."
>
> **32.** The decision in *Chandi Prasad* [*Chandi Prasad* v. *Jagdish Prasad*, (2004) 8 SCC 724] was followed by a two-Judge Bench of this Court in *Shanthi* v. *T.D. Vishwanathan* [*Shanthi* v. *T.D. Vishwanathan*, (2019) 11 SCC 419 : (2019) 4 SCC (Civ) 787] , rendered on 24-10-2018 in the following terms : (*Shanthi case* [*Shanthi* v. *T.D. Vishwanathan*, (2019) 11 SCC 419 : (2019) 4 SCC (Civ) 787] , SCC p. 421, para 7)
>
> "*7.* … When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intents and purposes, the suit continues. When a higher forum entertains an appeal and passes an order on merit, the doctrine of merger would apply. The doctrine of merger is based on the principles of the propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time."
>
> **33.** Thus, once the High Court allowed the second appeals in favour of the plaintiffs, there was evidently a merger of the judgment of the trial court with the decision of the High Court. Once the High Court as an appellate court in second appeal renders its judgment it is a decree of the second appellate court which becomes executable hence, the entitlement of the decree-holder to execute the decree of the second appellate court cannot be defeated."

37. Taken into consideration the argument raised from the plaintiff's side that the period for deposit of balance sale consideration would be considered from the judgment of High Court dated 23.9.2019 would also not help his case, because second application seeking extension of time was moved by the plaintiff respondent on 17.11.2025 and the first application moved by him was never pressed by plaintiff respondent. The explanation afforded would not help the case of plaintiff respondent in the light of decision of the Apex Court in cases of **Anand Narayan Shukla (Supra)** as well as **Ram Lal (Supra)**.

38. This is a case where plaintiff respondent had instituted a suit for specific performance in the year 1993. The said suit was dismissed in the year 1998, against which a civil appeal was filed and suit was decreed in the year 2003. There was no interim order operating in the second appeal filed by the judgment debtor. The execution proceedings were initiated in the year 2012, while the decree clearly provided for deposit of balance sale consideration within one month from the date of judgment and decree i.e. 23.11.2003. Moreover, plaintiff respondent never contested

the second appeal and instead filed execution proceedings on 6.8.2012 nearly after nine years of passing of decree. Application seeking extension of time was moved which was never allowed, nor was pressed by plaintiff respondent. He waited for the fate of second appeal which was dismissed on 23.9.2019 and the decree of first appellate court merged in the judgment of this Court dated 23.9.2019. Thereafter, plaintiff respondent again waited for more than six years in filing the application for extension of time in execution proceedings which were pending since the year 2012.

39. Both the courts below were not correct to allow the application seeking extension of time on a cost of Rs. 1000/- to be paid to the judgment debtor and his application under Section 28 of the Act of 1963 for recession of decree being rejected. Both the courts below failed to balance the equity in the instant case and had wrongly recorded that the plaintiff respondent was not at fault in getting the decree executed due to pendency of second appeal. Both the courts below have failed to consider that plaintiff respondent almost waited for more than six years in moving the application 31-C and 55-C seeking extension of time after dismissal of the second appeal by this Court.

40. Considering the facts and circumstances of the case, I find that the orders passed by both the courts below are patently illegal and liable to be set aside.

41. In view of above, the order impugned dated 6.4.2026 passed by the Additional District Judge/Special Judge (POCSO Act), Court No. 3, Budaun in Civil Revision No. 3 of 2026 and the order dated 23.12.2025 passed by the Additional Civil Judge (Junior Division), Court No. 3, Budaun in Execution Case No. 1 of 2012 (34/2021) (Nandram Vs. Duliram Maurya) are hereby set aside.

42. Writ petition stands allowed.

43. Defendant petitioner is directed to deposit the amount, received by him as advance to agreement to sale dated 3.7.1991, to the plaintiff respondent within a period of one month from today alongwith 6% interest from the date of receiving the advance.

**(Rohit Ranjan Agarwal,J.)**

**August 06, 2026**
Shekhar