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Supreme Court Reaffirms Equitable Powers Under Section 28 of the Specific Relief Act: No Automatic Rescission for Delay in Deposit

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Introduction

The Supreme Court in *Anand Narayan Shukla v. Jagat Dhari*[1] has delivered a significant judgment reaffirming the equitable foundations of **specific performance jurisprudence** under Indian law. In an important ruling on the scope of Section 28 of the Specific Relief Act, 1963, the Court clarified that a decree for specific performance does not automatically become inexecutable merely because the purchaser fails to deposit the balance sale consideration within the time stipulated in the decree.

The judgment highlights that courts retain continuing supervisory jurisdiction over such decrees and are obligated to adopt a justice-oriented and equitable approach while considering rescission of contracts or extension of time for compliance.

The decision assumes considerable importance in the context of **execution proceedings** arising from decrees for specific performance, particularly where delays occur due to procedural complexities, pending appeals, or conduct of parties. Emphasising that specific performance remains an equitable relief, the Supreme Court cautioned against hyper-technical application of procedural timelines and reiterated that rescission under Section 28 is discretionary rather than automatic.

The ruling therefore provides crucial guidance on balancing contractual enforcement with equitable considerations while preserving substantive justice.

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Background of the Dispute

The dispute in *Anand Narayan Shukla v. Jagat Dhari* arose out of an **agreement for sale** dated 14 November 2011 executed between the appellant and the respondent in respect of approximately 3.75 acres of land situated in Madhya Pradesh. Under the agreement, the respondent agreed to sell the land at the rate of Rs.16,00,000 per acre, against which an advance amount of Rs.2,50,000 was paid by the appellant at the time of execution of the agreement.

Subsequently, disputes arose between the parties, leading the appellant to institute a suit seeking specific performance of the agreement for sale. The Trial Court, by judgment and decree dated 03 March 2017, decreed the suit in favour of the appellant and directed him to pay the **balance sale consideration** within one month or deposit the same before the Court. Upon such payment or deposit, the respondent was directed to execute and register the sale deed in favour of the appellant.

Pursuant to the decree, the appellant issued a legal notice dated 01 April 2017 calling upon the respondent to accept the balance consideration amounting to Rs.57,50,000 and execute the sale deed. However, the respondent neither accepted the amount nor complied with the decree.

Thereafter, the respondent preferred a **first appeal** challenging the Trial Court decree, though no interim stay against execution of the decree was granted.

In view of the absence of any stay, the appellant initiated execution proceedings in July 2017 and expressed readiness to deposit the balance consideration before the Execution Court. During the pendency of the execution proceedings, the matter was repeatedly adjourned and varying directions were passed by the Court regarding payment and deposit of the balance

consideration.

While at certain stages the Court directed payment directly to the judgment-debtor, on other occasions it contemplated deposit before the Court itself.

Eventually, on 26 November 2020, the Execution Court directed the appellant to deposit the balance consideration to establish his bona fides and willingness to comply with the decree. Pursuant to the said direction, the appellant deposited **Rs.57,50,000** before the Court on the very same day.

Thereafter, the respondent appeared in the execution proceedings and filed an application under **Section 28 of the Specific Relief Act, 1963** seeking rescission of the contract on the ground that the appellant had failed to deposit the balance consideration within the one-month period stipulated in the decree.

Accepting this contention, the Execution Court dismissed the execution proceedings and held that the decree had become inexecutable due to non-compliance with the condition regarding timely deposit. The High Court subsequently affirmed the said view, which led to the filing of the present appeal before the Supreme Court.

Issues Before the Supreme Court

The Supreme Court framed three **principal issues** for consideration:

1. Whether the decree passed by the Trial Court merged with the appellate order despite dismissal of the appeal for non-prosecution;
2. Whether an application for rescission under Section 28 remained maintainable after the Court permitted deposit of the balance consideration;
3. Whether the courts below adopted an unduly technical approach while rescinding the contract and dismissing the execution proceedings.

Legal Framework Examined

The Supreme Court undertook an extensive examination of **Section 28 of the Specific Relief Act, 1963**, which governs rescission of contracts in cases where a decree for specific performance has already been passed. The provision confers continuing supervisory jurisdiction upon the court that passed the decree and empowers it to either rescind the contract for non-compliance or extend the time for performance, depending upon the facts and equities of the case.

The Court emphasised that a decree for specific performance is not a final and self-executing decree in the strict sense, but is in the nature of a **preliminary decree**. Consequently, the court does not become *functus officio* upon passing such decree and retains jurisdiction over the matter until execution of the conveyance deed.

The judgment reiterates that Section 28 embodies equitable principles and vests **discretionary powers** in the court to ensure that justice is ultimately served between the parties.

Interpreting the language of Section 28, the Court noted that the expressions “may, by order, rescind” and “such further period as the court may allow” clearly demonstrate that rescission is not automatic merely because the purchaser fails to deposit the consideration within the time stipulated in the decree. Instead, the court must evaluate the surrounding circumstances, conduct of parties, bona fides of the decree-holder, and the possibility of balancing equities through compensatory conditions.

Precedents Relied Upon

In arriving at its conclusions, the Supreme Court relied upon and analysed several precedents governing the scope of Section 28 and execution of decrees for specific performance.

The Court referred to *Sardar Mohar Singh v. Mangilal*[2], wherein it was held that courts retain jurisdiction even after passing a decree for specific performance and possess the power to **enlarge the time for compliance** despite the filing of an application for rescission. The decision clarified that applications seeking extension of time are not to be examined with the same rigidity applicable to condonation of delay under Section 5 of the Limitation Act.

Reliance was also placed upon *K. Kalpana Saraswathi v. P.S.S. Somasundaram Chettiar*[3], where the Supreme Court recognised that specific performance is fundamentally an **equitable remedy** and courts are empowered to mould reliefs and impose conditions to ensure fairness between parties. The Court in that case observed that procedural requirements should not defeat substantive justice.

Drawing from these, the Supreme Court crystallised the governing principles under Section 28 and reaffirmed that courts exercising jurisdiction under the provision must adopt a **justice-oriented and equitable approach** rather than a rigid procedural one. The judgment reinforces that rescission of a decree for specific performance remains a discretionary remedy to be exercised judiciously after considering all attending facts, equities, and conduct of the parties.

Findings of the Supreme Court

No Merger Where Appeal Is Dismissed for Non-Prosecution

On the first issue, the Court held that **dismissal of an appeal for non-prosecution** does not result in merger of the Trial Court decree with the appellate order. The doctrine of merger applies only where the appellate court adjudicates the matter on merits. Accordingly, the original decree of the Trial Court continued to operate.

Deposit Pursuant to Court Orders Does Not Extinguish Right to Seek Rescission

The Court further held that merely because the Execution Court permitted deposit of the balance consideration, the respondent's **right to seek rescission** under Section 28 did not automatically stand extinguished. The permission to deposit was granted primarily to test the bona fides of the decree-holder and did not amount to a final adjudication on extension of time.

Courts Below Adopted an Overly Technical Approach

The Supreme Court strongly criticised the approach adopted by both the Execution Court and the High Court. It observed that the courts below failed to appreciate the following:

- The decree did not contain any **automatic rescission clause**;
- The decree-holder had repeatedly expressed willingness to perform the decree;
- Inconsistent directions were passed by the Execution Court itself regarding deposit;
- The judgment-debtor had challenged the decree in appeal; and
- The **Covid-19 pandemic** also intervened during the pendency of execution proceedings.

The Court held that these circumstances required a **holistic and equitable evaluation** rather than a rigid and hyper-technical application of procedural timelines.

Key Principles Laid Down

The Supreme Court reaffirmed that a decree for specific performance is in the nature of a **preliminary decree** and the court retains continuing jurisdiction over the matter until execution of the sale deed. Consequently, courts retain the power under Section 28 of the Specific Relief Act, 1963 to either rescind the contract for non-compliance or extend the time for payment or deposit of the balance consideration.

The Court clarified that failure to deposit the balance consideration within the time stipulated in the decree does not **automatically result in rescission** of the contract unless the decree specifically provides for such consequence. Similarly, delayed deposit by itself does not amount to automatic extension of time, and the issue must be determined judicially based on facts and equities of the case.

The judgment further holds that applications seeking **extension of time** may be made even after expiry of the prescribed period and need not conform to any rigid format. Since specific performance is an equitable relief, courts must examine the conduct of parties, bona fides of the decree-holder, surrounding circumstances, and the possibility of compensating the judgment-debtor while balancing equities.

Importantly, the Supreme Court observed that proceedings under Section 28 are not to be approached with the strictness applicable under limitation law. The real consideration is whether the decree-holder's conduct reflects **wilful negligence or abandonment** of contractual obligations. In absence of such conduct, courts should adopt a justice-oriented and equitable approach rather than a hyper-technical one.

Decision of the Court

Allowing the appeal, the Supreme Court **set aside the orders** of both the High Court and the Execution Court. The execution proceedings and connected applications were restored to the file of the Court of first instance for fresh adjudication in

accordance with the principles laid down in the judgment.

The Court directed that the applications relating to rescission and extension of time be treated as applications in the **original suit** itself.

Conclusion

The Supreme Court's ruling in *Anand Narayan Shukla v. Jagat Dhari* is a significant reaffirmation of the **equitable foundations** underlying decrees for specific performance and the exercise of powers under Section 28 of the Specific Relief Act, 1963. The judgment makes it abundantly clear that procedural delays in depositing balance sale consideration cannot, by themselves, result in automatic rescission of contracts or render decrees inexecutable, particularly where the decree-holder continues to demonstrate readiness and willingness to perform contractual obligations.

By emphasising **substantive justice over procedural rigidity**, the Supreme Court has reiterated that courts dealing with execution of specific performance decrees must adopt a balanced and equitable approach, taking into account the conduct of parties, surrounding circumstances, and the possibility of compensating any prejudice caused by delay.

The decision therefore is an important precedent safeguarding equitable reliefs from being defeated by hyper-technical interpretations and reinforces the **continuing supervisory jurisdiction** of courts in specific performance matters.

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