



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-3336-2015 (O&M)

Reserved on: January 22, 2026

Date of Pronouncement: February 24, 2026

Uploaded on: February 24, 2026

Paramjit Singh

...Petitioner

VERSUS

Satish Kumar

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Yashdeep Nain, Advocate
for the petitioner.

Mr.Sanjiv Kumar Aggarwal and Mr.Ojas Bansal, Advocates
for the respondent.

ARCHANA PURI, J.

Challenge in the revision petition is to the order dated 19.11.2014 passed by learned Executing Court, whereby, the objections filed by the respondent-judgment debtor, in the execution petition, were allowed and the execution petition was dismissed.

In pursuance of the notice issued, the respondent- judgment debtor made appearance through counsel.

The background facts, to be noticed, are as follows:-

That, the petitioner, is the original plaintiff-decree holder (hereinafter referred as petitioner only). He instituted a suit for specific performance of

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the agreement to sell dated **11.01.2002** against the respondent-original defendant- judgment debtor (hereinafter referred as respondent only). The suit was instituted on **14.06.2005** and it came to be decreed on **12.12.2009**. In the said decree, the petitioner was directed to pay balance sale consideration to the respondent or to deposit the same in the Court, within a period of two months, from the date of decree, failing which, his suit shall stand dismissed automatically. The respondent had filed an appeal against the said judgment and decree on **20.01.2010** and the same was dismissed vide judgment dated **13.08.2012**.

On **30.08.2012**, an application was filed, at the instance of the petitioner before the concerned District Judge, to deposit the balance sale consideration. In view of the order passed by the concerned District Judge, the balance sale consideration amount was deposited by the petitioner before the Court on **31.08.2012**. Execution petition was filed by the petitioner on **03.11.2012** and on **05.11.2012**, the Regular Second Appeal, came to be dismissed. On **31.05.2013**, the review application was dismissed. On **19.11.2014**, the impugned order was passed, whereby, the objection petition was allowed and the execution petition was dismissed.

Being aggrieved by the impugned order, the petitioner filed the revision petition in hand.

Counsel for the parties heard.

At the very outset, learned counsel for the petitioner has submitted that even though, two months' period was granted by the trial Court to deposit the balance sale consideration, but however, the appeal was filed to challenge the decree and therefore, it being continuation of the



litigation, the same came to be dismissed and therein, the time was not mandated to deposit the balance sale consideration, which fact, as such, has not been considered by the Executing Court. It is further submitted that soon after the dismissal of the appeal, the requisite amount was deposited. The decree of the Appellate Court would be considered to be a decree passed by the Court of first instance. Thus, it is contended that by the doctrine of merger, when the Appellate Court had not specified the time limit for the deposit of the balance sale consideration, considering the deposit made, soon after the dismissal of the appeal, the executing Court, could not have allowed the objections and dismiss the execution petition.

Learned counsel for the petitioner has referred to *Ramakutty Gupta vs. Avara, 1994 AIR (SC) 1699*, wherein, while considering the case, where the judgment debtor had filed the petition in the executing Court to rescind the contract, on the plea that the respondent-plaintiff had committed default in depositing the sale consideration, within the prescribed period by the appellate decree. The judgment debtor had carried the matter in second appeal to the High Court and the respondent-decree holder, deposited the amount, after the time fixed by the Appellate Court, but before the second appeal was dismissed.

In the aforesaid case, the Court relied upon the judgment passed by the Hon'ble Supreme Court in *K. Kalpana Saraswathi vs. P.S.S. Somasudaram Chettiar, 1980(2) SCR 293*, wherein, it was held that the decree of the Appellate Court would be construed to be the decree passed by the Court of first instance. It is a settled law that the appeal is a continuation of the suit. Therefore, when a decree of specific performance was 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) of the Specific Relief Act, gives power to the Court to extend the time, on such terms, as the Court may allow to pay purchase money or any other sum, which the Court had ordered him to pay. In the said case, also it was held that on the oral prayer made by the counsel, the Court directed the appellant to deposit the amount. Also therein, it was held that application for extension of time for payment, 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 in execution. While the second appeal was pending, the balance consideration was deposited. In the case in hand, no steps have been taken to bring it to the notice of the High Court that respondent had committed default in compliance of the appellate decree of depositing the balance consideration, within the given time.

Furthermore, counsel for the petitioner relied upon *Joseph George vs. Chacko Thomas, 1992(1) KTL 6*, to support the contention that as long as the decree is not decided under Section 28 of the Specific Relief Act, the Court has the power to extend the time and this can be done, even without a written application, in this behalf.

Also, counsel for the petitioner emphatically relied upon *Ram Lal vs. Jarnail Singh (now deceased) and others, 2025 INSC 301*, to pin point that the facts of the case under consideration, in the aforesaid case, are similar to the factual position of the present case, wherein, doctrine of



merger was discussed and also the Hon'ble Supreme Court had emphasized upon the duty of the Appellate Courts to comply with the provisions of Order XX Rule 12A of the CPC and observed that if the Appellate Court had failed to stipulate any particular time period, then it is expected of the decree holder to deposit the same, within a reasonable period of time.

Thus, summing up his arguments, counsel for the petitioner submitted that when the appeal, as such, was dismissed by the Appellate Court and the amount was deposited thereafter, during the pendency of the RSA, the same, as such, could not be said to be a late deposit, as per the time given by the trial Court, at the first instance, as the decree so passed, stood merged with the appellate decree, who never specified the time limit for the deposit of the balance sale consideration.

On the other hand, learned counsel for the respondent would contend that when specified time period was given by the trial Court, to pay the balance sale consideration to the respondent or to deposit the same with the Court, within two months, from the date of decree and further observed that failing which, this suit shall stand dismissed automatically, therefore, it was incumbent upon the petitioner to have done the needful, within the requisite period. However, it was not so done. Rather, the petitioner took about 2½ years to deposit the requisite balance sale consideration. Thus, on account of non-compliance, within the given time frame, the suit stood dismissed on 12.02.2010, as per the judgment and decree in question. No stay, as such, was granted by the Appellate Court, which fact, it is pointed out, stands amply evident from the zimini orders passed by the Appellate Court, from time to time, which have been placed on record.



However, it is submitted that such being the position, the petitioner in an application for permission to deposit the balance sale consideration, copy whereof is Annexure R-1, has wrongly projected about operation of the decree being stayed, which is factually incorrect. Not only this, also counsel for the respondent pointed out that this wrongful projection of the factual position, also crept in the execution petition, copy whereof is Annexure P-6.

To substantiate his submissions, learned counsel for the respondent placed reliance upon *P.R. Yelumalai vs. N.M. Ravi, 2015(2) RCR (Civil) 585*, wherein, it was held that where there was delay of only one day in the requisite deposit of the balance sale consideration, within a given time period and there was no application for extension of time, the suit would stand dismissed.

Also, learned counsel cited *Mangal Singh vs. Amrik Singh, 2018 (4) RCR (Civil) 98*, wherein, the plaintiff-decree holder was held to be required to deposit balance sale consideration, within a period two months and non-deposit of balance sale consideration, was considered to be one of the ingredients of readiness and willingness and where no explanation was given by the plaintiff, for not moving an application for deposit within time, the judgment and decree was held to be rendered un-executable.

Learned counsel also cited *Prem Jeevan vs. K.S. Venkata Raman, 2017(2) Civ. CC 1*, wherein, it was held that merely because rescission of contract is not sought by judgment debtor, the same does not automatically result in extension of time.

Thus, summing up his arguments, learned counsel submits that the objections have been rightly allowed by the Executing Court and on the



basis thereof, the execution petition has been correctly dismissed by the Executing Court, which calls for no further intervention, while exercising the revisional powers by this Court.

The factual position, as narrated in the earlier portion of the judgment, as such is not disputed. That being so, it is important to make reference to Rule 12A of Order XX CPC, **which enacts that a decree for specific performance of contract for sale or lease of immoveable property, should specify the period, within which purchase money or other sum, should be paid by the purchaser or lessee, as the case may be.** Thus, Rule 12A makes it obligatory for the Court to specify in the decree for specific performance of contract for sale or lease of immoveable property, the date by which, the purchase money or other sum should be paid by the vendee or lessee. The trial Court has jurisdiction to fix time limit for the deposit of the money by the decree holder under Section 28 of the Specific Relief Act.

Considering the aforesaid, in *Ram Lal's case (supra)*, it was observed that the decree is preliminary in nature and the Court retains control over it. In the case under consideration, while thrashing the factual position, it was observed that the trial Court, while allowing the suit and granting the relief of specific performance, specifically stipulated two months' time period, for the plaintiff to deposit balance sale consideration and get the sale deed executed in his favour. However, the judgment and decree passed by the trial Court, came to be challenged before the Appellate Court. In this context, it was observed by the Hon'ble Supreme Court that **once the judgment passed by the trial Court is challenged before the**



Appellate Court, the judgment and order passed by the trial Court, would get merged with the judgment of the Appellate Court, irrespective of the fact, whether the appeal is allowed or dismissed and observed that in the case on hand, the appeal stood dismissed.

Such being the factual position, the Hon'ble Supreme Court observed, as herein given:-

“37. The law in the aforesaid context is well settled. 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.

*38. In **Kunhayammed v. State of Kerala reported in (2000) 6 SCC 359**, while explaining the doctrine of merger, this Court held thus:-*

“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.”

*39. Further, while explaining the position that emerges on the grant of special leave to appeal by this Court, it was observed in **Kunhayammed (supra)** that:-*



“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.”

*40. The position of law as aforesaid 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. reported in (2019) 4 SCC 376.***

*41. The decision in **Kunhayammed (supra)** was followed by a three Judge Bench decision of this Court in **Chandi Prasad v. Jagdish Prasad, reported in (2004) 8 SCC 724**, which held thus:-*

“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.”

*42. The decision in **Chandi Prasad (supra)** was followed by a two-Judge Bench of this Court in **Shanthi v. T.D. Vishwanathan reported in (2019) 11 SCC 419** rendered on 24-10-2018 in the following terms:-*

“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.”

(Emphasis supplied)”

Taking into consideration the case law aforesaid, it was further observed in the aforesaid case, as herein given:-

43. The doctrine of merger operates as a principle upon a judgment being rendered by the appellate court. In the present case, once the appellate court affirmed the judgment and decree of the trial court, there was evidently a merger of the judgment of the trial court with the decision of the appellate court. Once the appellate court renders its judgment, it is the decree of the appellate court which becomes executable.

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 consequence for non-performance within the time limit or the decree may even be silent on this aspect.

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 a 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.

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.

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.

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.

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 fulfil his obligation. The non-payment of the balance sale 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 wilful negligence on the part of the plaintiff before a Court proceeds to invoke Section 28 of the Act and rescind the contract. (See: **Krishnamoorthy v. Shanmugasundaram & Anr., 2022 SCC OnLine Mad 963**).*

The Hon'ble Supreme Court in **Ram Lal's case (supra)**, further made the observations to sensitize the Appellate Courts, with regard to the duties imposed upon the them, for the necessary compliance of provisions of Order XX Rule 12A CPC and observed, as herein given:-

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 two 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 delay and also the equities that might have been created during the interregnum period in favour 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 balance sale consideration beyond the time period that might have been prescribed by the trial court in its final decree.

Furthermore, the Court observed that no doubt, there was delay, on the part of decree holder in filing the execution petition and thereby, seeking the permission to deposit the balance sale consideration and held that even though, there was time period of 12 years, for seeking execution of the decree that does not mean that the decree holder, deposits the balance sale consideration, at his own sweet will.

In the light of the same, it also observed that if the Appellate Court had failed to stipulate any particular time period, then it is expected of the decree holder to deposit the same, within a reasonable period of time.

Considering all the facts, as spelt out, in the case under consideration in ***Ram Lal's case (supra)***, on account of delay in filing the execution and also considering the delay of four years in deposit of the balance sale consideration, the Court had also held that judgment debtor entitled to simple interest, at the rate of 9% per annum, from the date of judgment and order passed by the Appellate Court, till the date balance consideration was deposited and further gave a period for the deposit of the amount, within a period two weeks from today i.e. from the date of the judgment.

In this backdrop, adverting to the case in hand, indisputably, an appeal was filed to assail the trial Court decree dated 12.12.2009. Stay application was also filed therein along with the appeal, which was not



decided, as evident from the copies of the zimini orders passed by the Appellate Court, placed on record. It being so, ultimately, the appeal was dismissed vide judgment dated 13.08.2012.

Such being the position, be it noted that in the application filed before the District Judge, thereby seeking permission to deposit the amount, copy whereof is Annexure R-1, it was so mentioned about the operation to be stayed, which further crept in the execution petition, copy whereof is Annexure P-6. This was palpably wrong assertion, upon which, much emphasis has been laid by counsel for the respondent.

May it be so. However, the decree, as such, on the basis thereof, does not stand nullified, more particularly, considering no time limit having fixed by the Appellate Court. Yes, of course, things would have worked differently, if the appeal had not been decided, when an application for the deposit of the balance sale consideration, as such was filed. However, as evident from the factual position, as narrated in the earlier portion of the judgment, an application for seeking deposit of the balance sale consideration was filed, after the decision of the appeal and that too, soon thereafter and by application of doctrine of merger, the appellate decree is to be given effect to, as the time limit is no longer an essence, for the execution of the decree, as such, earlier passed by the trial Court.

Such being the position, taking into consideration the merger of the decree of the trial Court with the appellate Court decision and more particularly, no time limit having affixed by the Court, it was only required to be seen that the deposit was made, within reasonable time. In the case in hand, the appeal was dismissed was on 13.08.2012 and the application for



deposit of the balance sale consideration was filed on 30.08.2012 and the requisite deposit was made on 31.08.2012. This has to be taken into consideration.

In the light of the same, the objection, with regard to the delay in deposit of the balance sale consideration, in consonance with the trial Court decree, as such, cannot be held to be there. Even though, there was wrongful projection of the operation of stay by the Appellate Court, in the application, the same, as observed aforesaid, does not nullify the decree in question, in the manner, as now projected. However, the conduct of the petitioner, about the manner in which, the application was filed, shall appropriately be considered and appraised by the Executing Court.

Considering the same, the impugned order brooks interference. Hence, the revision petition is hereby allowed and the objections filed by the respondent, as such, are hereby dismissed. Consequently, the execution petition is restored to its original number. Learned Executing Court shall proceed further with the execution petition and pass appropriate orders, vis-a-vis, the execution of the decree, in the fitness of the circumstances.

February 24, 2026
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No