

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

R.A. No.83/2024

Dated this the 02nd day of June, 2026

*Appellant/s : Yallappa S/o Laxmappa
Savakkaavar
Since deceased Lrs. and others.*

.Vs.

*Respondent/s : Smt. Pushpa W/o Gopalrao Desai
and others.*

PARTIES TO I.A. No.IV

Applicant : *Rajappa S/o Dharmappa More.*

.Vs.

Opponents : *Yallappa S/o Laxmappa
Savakkaavar
Since deceased Lrs. and others.*

- i. Provision under : Under Order 96 and Order 41
which application is R/w Sec.151 of CPC
filed*
- ii. Relief sought for : Seeking to dismiss the appeal
as not maintainable.*
- iii. The date on which : 20.08.2025
application is filed*

- iv. Number of the : IV application
- v. The date on which : 03.09.2025 (by Appellants) objections are filed by different opponents
- vi. The date on which : 02.06.2026 orders were passed on the said application

COMMON ORDERS ON I.A.No.IV

The Respondent No.6 has filed I.A. No.IV under Sec.96 and Order 41 R/w Sec.151 of C.P.C., seeking to dismiss the appeal as not maintainable.

2. The Appellants have filed objections.

3. Heard arguments. During the course of the arguments both counsels relied upon their decisions separately.

4. The points for consideration are;

- 1. Whether the respondent No.6 has made out grounds enunciated under Sec.96 and Order 41 R/w Sec.151 of CPC to reject the appeal filed by the present appellants ?

2. What order ?

5. The above point No.1 is answered in the Negative and point No.2 is as per final order, for the following;

REASONS

6. **Point No.1:** *The brief facts of the application and affidavit filed by the respondent is that, the present appeal is filed against an interim order passed in O.S. No.519/2014 on I.A. No.11 dated:05.11.2024. However, no appeal is maintainable against an interim order and the present appeal is liable to be dismissed as not maintainable. The orders passed under Sec.28 of Specific Relief Act 1963, are not considered as decrees and thus they shall not be appeal able under Sec.96 of CPC. Since, there is no specific provision making such orders appealable. As such the present appeal is not maintainable and this Court cannot entertain the present appeal without provided by the specific provisions either under procedural law or substantive law. On the face of the record the I Addl. Civil Judge and JMFC., Hubballi, has passed an interim order dated:05.11.2024 on I.A. No.11 under section 28(1) of Specific Relief Act, 1963. Whereas, the Sec.96 of C.P.C., is in clear terms states that an appeal lies under this section only from original decrees. Perhaps, the present appeal is against an interim order and not against the decree, as such there is no scope for an appeal and this Court is not having jurisdiction to entertain the present appeal and is not maintainable. Even, the Order 41 of C.P.C., is in clear terms states that an appeal lies only*

from original decrees and order 41 rule 1 states that the memorandum of appeal shall be accompanied by the copy of the judgment and this is mandatory provision, there should not be any lapse. Whereas, in this case there is no judgment accompanying the memorandum of appeal.

7. It is further submitted that the application under Sec.28 of Specific Relief Act is to be filed in the same suit and the said application is an interim application in the said suit. As such any order passed on an interim application is not a decree. On the application under Sec.28(1) of Specific Relief Act, no new rights had been be decided by the I Addl. Civil Judge and JMFC., Hubballi, between the parties. Rather, it has exercised it's equitable discretionary power by passing an order on interim application. As such, the said order does not comply the definition of decree enumerated by section 2(2) of C.P.C. As per Sec.28 of Specific Relief Act, it speaks about rescission of contract on the default of plaintiff and any equitable discretionary order passed by the I Addl. Civil Judge and JMFC., Hubballi, under this section only on the default of plaintiffs, is not a conclusive determination of rights of the parties in the suit and no fresh decree is passed following the order on Sec.28 of Specific Relief Act. Rather, it is a consequential order on the default of the plaintiffs by

exercising it's equitable discretionary power. Until and unless there is specific provision which treats the order passed under 28 (1) of Specific Relief Act as decree, no appeal shall lie under section 96 of C.P.C. If at all the plaintiffs/appellants are aggrieved by the order of the trial court, the revision petition lies under section 115 of C.P.C. and an appeal under section 96 read with order 41 of C.P.C. Hence, prayed to allow the I.A.

8. The objections of the appellants is that the application filed by the respondent No.6 is false, frivolous, vexatious, it is neither tenable in law nor on facts and as such, it is liable to be dismissed. The present appeal is preferred by the appellant, challenging the order passed by the Trial Court under Sec.28 of Specific Relief Act. Hence, the said order is nothing but a decree, because the Trial Court earlier decreed the suit and directed the parties to deposit the balance sale consideration and execute the registered sale deed by imposing the time limit. Thereafter, the defendant moved an application under Sec.28 of Specific Relief Act for recession of contract. The said order is nothing but the judgment and decree. So on that order, the regular appeal will lie not any other petition. The present application filed by the respondents only to protract the proceedings and cause delay, since this Court has stayed the judgment and decree passed by the Trial

Court by imposing the time limit. Hence, prayed to dismiss the I.A. with costs.

9. On perusal of the entire materials available on record The respondent has raised a preliminary objection contending that the present Regular Appeal filed under Section 96 of CPC is not maintainable, against the impugned order passed under Section 28 (1) of the Specific Relief Act.

10. According to the respondent, the impugned order does not amount to a decree within the meaning of Section 2 (2) of CPC. Therefore, only a revision petition would lie. In support of their contention, the learned counsel for respondent relied upon the following decisions:

1) The learned counsel for the respondent No.6 has relied upon the decision reported in (2003) 9 Supreme Court Cases 606 in between Banarsi and others Vs. Ram Phal, wherein it is held that:

8. Sec.96 and 100 CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal. (See Phoolchand v. Gopal Lal, Jatan Kumar Golcha v. Golcha Properties (P) Ltd. And Ganga Bai V. Vijay Kumar.) No appeal lies against a mere fining. It is significant to note that both

Sections 96 and 100 CPC provide for an appeal against decree and not against judgment.

2) Further, relied upon the decision reported in (2009) 2 Supreme Court Cases 562 in between S. Satnam Singh and others Vs. Surender Kaur and another, wherein it is held that:

15. A "decree" is defined in Section 2(2) of the Code of Civil Procedure to mean:

2. (2) the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and it may be either preliminary or final."

It may partly be preliminary and partly be final. The court with a view to determine whether an order passed by it is a decree or not must take into consideration the pleadings of the parties and the proceedings leading up to the passing of an order. The circumstances under which an order had been made would also be relevant.

16. For determining the question as to whether an order passed by a court is a decree or not, it must satisfy the following tests:

- "(i) There must be an adjudication;*
- (ii) Such adjudication must have been given in a suit;*
- (iii) It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit;*
- (iv) Such determination must be of a conclusive nature; and*
- (v) There must be a formal expression of such adjudication."*

3) Further, relied upon the decision reported in 2023 SCC Online SC 184 in between P. Shyamala Vs. Gundlur Masthan, wherein it is held that:

Feeling aggrieved and dissatisfied with the impugned common judgment and order dated:17.01.2022 passed by the High Court of the State of Telangana at Hyderabad in CRP No.2374/2019 and 2304/2019, by which the High Court has dismissed the said revision petitions preferred by the appellant herein, the original revisionist has preferred the present appeals.

7. Feeling aggrieved and dissatisfied with the common order dated:29.06.2019 passed by the trial Court in I.A. No.732/2016 & I.A. No.914/2017, the appellant herein filed the present revision applications before the High Court. By the impugned common judgment and order the High Court has dismissed the said revision applications. Hence, the present appeals.

23. Therefore, as observed by this Court, the power under Section 28 of the Specific Relief Act is discretionary and the Court has to pass an order as the justice may require.

24. As observed hereinabove, Section 28 of the Specific Relief Act seeks to provide complete relief to both the parties in terms of a decree of specific performance. Therefore, the trial Court failed to exercise the discretion judiciously in favour of the defendant and erred in exercising the discretionary power in favour of the plaintiff, that too with a delay of 853 days.

4) Further, relied upon the decision reported in ILR 2014 KAR 4035 in between T.L. Rajagopal Vs. S.N. Shivakumar, wherein it is held that:

18. Specific Performance being a discretionary relief, the Court has ample power to do justice

between the parties, if anyone of them were to not act in terms of the decree. As such the contention that an application under Section 28 of the Act ought to be filed in the suit and not in execution proceedings cannot be accepted. I.A. 7 filed under Section 28 of the Act by the defendant/ judgment debtor in the execution proceedings seeking rescission of contract therefore is perfectly maintainable and it is to be treated as an interlocutory application filed in the suit for specific performance itself.

5) Further, relied upon the decision reported in (2009) 8 Supreme Court Cases 766 in between Bhupinder Kumar Vs. Angrej Singh, wherein it is held that:

7. By an order dated:07.05.2002, the Additional Civil Judge (Senior Division), Pehowa, dismissed the application for extension of time to deposit the balance of the sale price and held that the sale agreement sttod rescinded as contemplated under Section 28 of the Specific Relief Act, 1963 and consequently dismissed the execution petition. Aggrieved by the said order, the appellant filed Civil Appeal No.49 of 2002 in the Court of the District Judge, Kurukshetra. By judgment and order dated:06.05.2003, the District Judge, Kurukshetra dismissed the appeal as not maintainable. Feeling aggrieved, the appellant filed Civil Revision No.2972 of 2003 in the High Court of Punjab and Haryana at Chandigarh. The High Court by judgment and order dated:23.03.2007, dismissed the revisions upholding the order passed by the executing Court. Questioning the said order of the High Court, the appellant filed the present appeal by way fo special leave petition.

6) Further, relied upon the decision reported in AIR Online 2020 Kar 2149 in between Mallikarjun and others Vs. Sunanda and others, wherein it is held that:

. ... However, the trial Court after hearing both side, by its order dated:21.10.2009, allowed I.A. No.III filed by the applicants and ordered that the Agreement to Sell dated:24.04.1981 has stood rescinded due to the fault of the plaintiff and thereby the judgment and decree dated:20.02.1998 has stood annulled. It also directed the judgment debtors 1 and 2 to return the earnest money of 5,000/- with interest at the rate of 6% per annum from the date of the suit till the date of decree. The defendant 1 and 2 were directed to deposit the said amount in the Court within one month from the date of the order. It is challenging the said order of the trial Court allowing I.A. No.III, which was filed by present respondents 1 and 2, the decree holder/ plaintiff has preferred this Revision Petition.

7) Further, relied upon the decision reported in Hon'ble High Court of Karnataka in between K. Suryanaryana S/o Late. K. Nagappa Vs. Muniyappa S/o Late. Venkataramappa, wherein it is held that:

This Civil Revision Petition is filed under Section 115 of CPC, against the order dated:27.11.20174 passed on I.A. No.XIII in O.S. No.3/2013 on the file of the Senior Civil Judge and Prl. MJFC, K.G.F., allowing the I.A. No.XIII filed under Section 28 of Specific Relief Act R/w Section 151 of CPC.

8) Further, relied upon the decision reported in AIROnline 2022 MAD 947 in between P. Rajasekaran Vs. C. Kumar, wherein it is held that:

Order: This Civil Revision Petition is filed as

against the fair and decreetal order passed in I.A. No.789 of 2015 in O.S. No.490 of 2009 dated:09.01.2018 by the learned Principal Sub Judge, Madurai.

9) Further, relied upon the decision reported in AIROnline 2023 BOM 394 in between Bhagwat Daduji Harinkhede Vs. Amit Dyaneshwar Zha and another, wherein it is held that:

2. The present revision application is filed challenging the order dated:16.01.2018 passed below Exhibit 23, rejecting the application for rescission of contract filed by the applicant under Section 28 of the Specific Relief Act in Execution Proceedings No.37/2014 pending before the learned Joint Civil Judge Junior Devision, Gondia.

10) Further, relied upon the decision reported in Hon'ble High Court of Karnataka in between K. Sagunthala Vs. P. Poongothai, wherein it is held that:

Prayer : Civil Revision petition is filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated:30.04.2019 in I.A. No.1306 of 2017 in O.S. No.47 of 2003 on the file of the III Additional District and Sessions Court, Coimbatore.

11. Per contra, the appellant relied upon Section 28 of the Specific Relief Act and the decision reported in AIR 2010 Madras 294, wherein it is held that:

(B) Vivil P.C. (5 of 1908), Ss. 96, 2(2); O.41, R.1 – Specific Relief Act (47 of 1963), S.28 – Appealable order – Rescission of contract – Order passed u/S.28 by rescinding agreement – Would amount to 'decree' – Against which appeal would lie and not revision.

12. A mere running of the eye over it would display and demonstrate, evince and evidence that a significant right is expected to be decided under Section 28 of the Act. It also presupposes the dictum as found enunciated in catena of decisions that the judgment passed in a specific performance suit is only in the nature of a preliminary decree and by passing the decree the Court does not lose its jurisdiction over the matter nor it does become functus officio on passing such decree. If there is default on the part of the plain-tiff, the defendant is given the right to approach the Court under Section 28 of the Act for getting not only the preliminary decree erased but also the very root of the preliminary decree, namely the very agreement to sell. Such right relating to cause of action itself once decided under Section 28 of the Act by rescinding the, very agreement, undoubtedly it would amount to a decree of the Court over which the appeal would lie. As such, I am of the considered opinion that the revision filed as against the order passed under Section 28 of the Act is an appealable d one as it is a decree and only the appellate 2 Court. In this case, which happens to be the Additional City Civil Court shall deal with the matter. Then the question might arise as to what would happen to their application seeking permission to deposit the amount. While deciding the appeal relating to Sec-tion 28 of the Act, necessarily the right of the plaintiff to get extended the time which was prayed and rejected by the lower Court also would arise and in my opinion they be-come two sides of a coin, so far as this case is concerned in view of its peculiar circumstances Wherefore, the appellate Court has to decide the matter relating to extension of time also while deciding the matter which has arisen out of invocation of Section 28 of the Specific Relief Act. In the interest of justitia pie ponderous and to avoid multiplicity of proceedings, I would like to return the CRP Nos. 1274 and 1275 of 2006 to the revision petitioner who shall represent the same be-fore the appellate forum concerned on or before

10th August, 2010, whereupon, the appellate Court shall treat C. R. P. No. 1274 of 2006 as appeal before it and the CRP No. 1275 of 2006 as I. A. in that appeal and accordingly, both the matters shall be heard together and disposed of within a period of two months from the date of receipt of a copy of this order.

12. On careful perusal of the entire materials available on record and authorities relied upon. It is not in dispute that the trial Court had earlier decreed the suit for specific performance, directing the plaintiff to deposit the balance sale consideration within the stipulated period and directing execution of the registered sale deed, subsequently alleging non-compliance of the Decree conditions by the plaintiff. The defendant filed an application under Section 28 (1) of the Specific Relief Act seeking rescission of the contract. The trial Court allowed the said application and rescinded the contract.

13. The principal question that arises for consideration is whether such an order amounts to a decree and whether a regular appeal under Section 96 CPC is maintainable. In this regard Section 28 of the Specific Relief Act confers continuing jurisdiction upon the court which passed the decree for specific performance. The proceedings initiated thereunder are in continuation of the original suit proceedings. Once the contract is rescinded under Section 28(1), the rights

accrued in favour of the decree holder under the decree for specific performance stands extinguished. Thus, the order conclusively determines the substantive rights of the parties arising out of the suit decree itself.

14. Further, the decisions relied upon by the respondent mainly relates to the scope of appeals, cross-objections, excitability of decrees, and general principles governing appellate jurisdiction. The principles laid down therein are not directly applicable to the peculiar nature of proceedings under Section 28 of the Specific Relief Act. Wherein the court Exercises substantive power, affecting enforceability of the original decree itself.

15. On the other hand, the decision relied upon by the appellant and the scheme of Section 28 of the Specific Relief Act clearly indicate that an order rescinding the contract is not merely procedural in nature, but substantially affects and finally determines the rights of parties flowing from the decree for specific performance.

16. Therefore, this Court is of the considered opinion that the impugned order passed under Section 28 (1) of the specific relief Act bears the characteristics of a decree within the meaning of Section 2 (2) of CPC and consequently an appeal under Section 96 of CPC is maintainable. Accordingly, the preliminary objection

*raised by the respondent by filing the application regarding maintainability of the appeal is deserves to be rejected. This Court is of the opinion that the appeal is held to be maintainable. Hence, the **point No.1 is answered in the Negative.***

*17. **Point No.2:** In view of finding on point No.1, this court proceeds to pass the following;*

ORDER

I.A. No.IV filed by the respondent No.6 under Section 96 and Order 41 R/w Sec.151 of CPC is hereby dismissed with costs of Rs.500/-.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **02nd day of June, 2026**)*

*sd/-
(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge & J.M.F.C.
Hubballi.*