

**ORDER BELOW EXH. 86**

1. Judgment-Debtor filed this application under Section 28 of Specific Relief Act, 1963. In this application judgment -debtor has submitted that in the instant case vide ex-parte judgment and decree dt. 12.11.2010 in R.C.S. No. 71/2004, the decree-holder was directed to deposit the balance sale consideration within a period of 2 weeks but, the decree-holder has not deposited the balance sale consideration of Rs. 1,90,000/- within the aforesaid period.

2. In the circumstances for the default of the decree holder of not depositing the balance amount within 2 weeks, the alleged Agreement of sale dt. 28.12.2001 deserves to be rescinded. Hence, judgment debtor prayed for order of rescission of alleged Agreement of Sale dt. 28.12.2001 with such suitable consequential order as felt appropriate and defer issue of warrant of possession of the suit property against the judgment debtor.

3. The decree holder has filed his say below Exh. 87 and submitted that this application is not maintainable and tenable in the eyes of law. Because the Hon'ble Court was granted the permission for depositing balance of consideration amount and thereafter sale deed were executed. The permission granted as per section 148 and 151 of CPC to deposit balance consideration amount and relevant provision of law. Therefore, section 28 of specific relief act dose not applied. The Jdr has not got stay in the SLP and no any stay order by the Hon'ble Supreme Court. Therefore, this application should be rejected with heavy cost of Rs. 10,000/-.

4. Heard, learned advocates of both parties.

5. The Judgment Debtor filed his written submission vide Exh. 88 and relay on the following Judgments of the Hon'ble Apex Court in support of Exh. 86. I have gone through the judgment in the case of ***Ravi Setia Vs. Madanlal & Others as reported in (2019) 9 SCC 381, Page 381.*** In this judgment The Hon'ble Supreme Court has mentioned that "*undoubtedly, the time for deposit could be extended under section 28 of the act. But mere extended of time for deposit does not absolve the plaintiff of his obligation to demonstrate readiness and willingness coupled with special circumstances beyond his control to seek such extension.*" But facts and circumstances are different in this matter. Therefore, this citation is not applicable to this matter. The judgment -debtor has relied another judgment of The Hon'ble Supreme Court of India in the case of ***Rajinder Kumar Vs. Kuldeep Singh & others as reported in (2014) 15 SCC, Page – 529.*** In this judgment Hon'ble The Supreme Court has mentioned that "*under section 28 of specific relief act 1963, vendor is free to apply to the court which made decree to have the contract rescinded in case the purchaser has not paid the purchase money or other some which court has order him to pay within the period allowed by the decree or such other period as the court may allowed.*" In this matter the decree-holder has already deposited the purchase amount, therefore this citation is not applicable to this matter.

6. The judgment -debtor has relied another judgment of The Hon'ble Supreme Court of India in the case of ***Bhupinder Kumar Vs. Angraj Singh as reported in (2009) 8 SCC 766, Page 766,*** In this judgment The Hon'ble Supreme Court has mentioned "*that section 28 gives power to the court to grant an order of rescission of the agreement and it has power to*

*extend the time to pay the amount or perform the condition of decree for specific performance despite the application for rescission of the agreement/ decree.”* In this matter decree-holder has deposited the consideration amount. Therefore, there is no need to extend time to pay the amount. Therefore, this citation is not applicable to this matter.

7. The judgment-debtor has relied in the case ***V.S. Palanichamy Chettiar Firm Vs. C. Alagappan & another as reported in (1999) 4 SCC, page 702,*** In this judgment The Hon'ble Supreme Court has mentioned that “*when the trial court and the executing court are the same, the executing court can entertain the application for extension of time though the application is to be treated as one filed in the main suit. on the same analogy, the vendor judgment debtor can also seek recession of the contract of sale or take up this plea in defence to bar the execution of the decree.*” But in this matter consideration amount has been deposited before this execution matter. Therefore, extension application not came in this darkshat. Therefore, this citation is not applicable.

8. I have gone through the record it appears, that decree has passed in the RCS 71/2004, Narendra Vs Daulatrao on 12-11-2010, in the favor of the decree-holder Narendra Haribhau Dehankar. As per the serial no. 3 of the operative order of the court was given two week time to deposit consideration amount to the plaintiff. But as per the record decree-holder deposited that amount and filed this execution. Whether he took permission of court or not . It is not on record, but he deposited amount. Thereafter, decree-holder filed application for execution of sale deed and sale deed executed by the court to appoint court commissioner. Thereafter, decree-holder has filed application to issue possession warrant below Exh. 82. But Jdr has sought time to

file writ petition in the Hon'ble Bombay High Court, Nagpur Bench, Nagpur. But Jdr has failed to get relief from The Hon'ble Bombay High Court. Thereafter, Jdr has filed SLP No. 021012/2025 in the Hon'ble Supreme Court of India. But it was not admitted and disposed on 08.08.2025. As per the record Jdr has approached till the Hon'ble Supreme Court of India. But it has not got any relief. Application filed by the decree-holder below Exh. 82 to issue possession warrant is pending till today. This matter is old more than 10 years. Consideration amount has deposited, therefore this application is not tenable at this stage. Therefore, this application deserve to be rejected. Hence, I pass following order :

### **ORDER**

The application is rejected.

Place: Kalmeshwar.  
Date : 25.11.2025

( R.L. Rathod)  
Civil Judge Junior Division,  
Kalmeshwar