

MD. ALIMUDDIN  
v.  
WAIZUDDIN AND ANR.

FEBRUARY 19, 1997

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

*Specific Relief Act, 1963 :*

*S. 28(1)—Application to rescind the contract—Decree for specific performance granted and became final—Application of plaintiffs for extension of time to comply with the decree, ordered—Application of defendant to rescind the contract dismissed—Held, though the trial court while extending the time mentioned that it is at the risk of the plaintiff, but having exercised the discretion and allowed the plaintiff to deposit the balance consideration, it amounts to that the court has extended the time—Plaintiffs have complied with the directions contained in the decree—Courts below rightly exercised the discretion in extending the time.*

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)  
No. 3177 of 1997.

From the Judgment and Order dated 21.11.96 of the Patna High Court in C.R. No. 417 of 1992.

S.K. Sinha for the Petitioner.

The following Order of the Court was delivered :

The petitioner is the judgment-debtor. A decree for specific performance was granted by the Trial Court way back in June 15, 1982 in Title Suit No. 46/1976 which was reversed by the Appellate Court but restored by the High Court. Special Leave Petition was dismissed by this Court. Consequently, the decree for specific performance has become final. It would appear that Trial Court directed the respondents to deposit the balance consideration of Rs. 500 and draft sale deed on or before June 7, 1982. An application for extension with the challen came to be filed and the same was ordered by the Court on August 20, 1982. The petitioner filed an application under Sec. 28(1) of the Specific Relief Act to rescind the contract. The Trial Court dismissed the petition. On appeal it was con-

A   firmed. In the revision also, the High Court confirmed the same. Thus, this Special Leave Petition.

B   It is true that, as pointed out by Shri Sinha, the learned counsel for the petitioner that the Trial Court while extending the time mentioned that it is at the risk of the plaintiff but having exercised the discretion and allowed the respondents to deposit the balance consideration of Rs. 500 it amounts to that the Court has extended the time. The respondents have complied with the original direction contained in the decree of July 7, 1982. The Courts below, therefore, have rightly exercised the discretion in extending the time for compliance. We do not find any illegality in the exercise of the power. The SLP is accordingly dismissed.

C

R.P.

Petition dismissed.