

(2010) 01 P&H CK 0045

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Mohinder Singh and
Another

APPELLANT

Vs

Satpal Singh and
Others

RESPONDENT

Date of Decision: Jan. 12, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 131, 148, 151
- Limitation Act, 1963 - Section 5
- Specific Relief Act, 1963 - Section 28

Citation: (2010) 4 CivCC 547 : (2010) 159 PLR 185

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Judgement

A.N. Jindal, J.

This petition is directed against the order dated 22.11.2008, passed by Civil Judge (Senior Division) Faridkot, dismissing an application for extension of time filed by the petitioners-decree holders (herein referred as "the petitioners") to deposit the balance sale consideration.

2. Before proceeding to determine as to "whether the Court after passing of the judgment and decree had become functus officio and could recall the judgment and decree and dismiss the suit.

3. The factual background of the case is that the petitioners filed a suit No. 989 of 16.12.2002 against the respondents for specific performance of the decree. The operative part of the decree is as under:

It is ordered that the suit of the plaintiffs succeeds and is decreed ex-parte with costs in favour of the plaintiffs and against the defendants for possession of the suit land by way

of specific performance of agreement to sell dated 24.10.1997/ 15.12.1998 on payment of balance sale consideration by the plaintiffs in this Court sale deed executed and registered in favour of the plaintiffs within one month.

4. Decree was passed on 19.03.2008 and the amount of the remaining sale price was to be deposited by 19.04.2008. The amount could not be deposited within time, therefore, application for extension of time was filed by the petitioners on 14.6.2008 upon which the trial Court vide order dated 22.11.2008 while declining the application observed as under:

From this plea of the applicants/plaintiffs, it is evident that they were not ready and willing to perform their part of contract. They were not having the balance sale consideration in the Court within period prescribed as per judgment and decree dated 19.03.2003 (sic. 19.03.2008). So by implication, the suit is deemed to have been dismissed.

5. Now, the question rises as to when once it has been decided on the appreciation of evidence by the trial Court that the plaintiff has always been ready and willing to perform its part of the contract then again while sitting over the application for extension of time, whether the Court could again sit to hold that the applicants were not ready and willing to perform their part of the contract? Certainly not. Such a senior officer could not be expected to make such observations and nullify the decree.

6. As regards the extension of time, it has been invariably held that Court should be liberal and not rigid in extending the time. The delay in deposit of the balance amount was not so grave as it could not be condoned. At the same time, the Court had power to extend the time while exercising the power u/s 148 and 131 of the Code. This issue directly came in debate before this Court in [Mohinder Singh Vs. Gurdial Singh and Another](#), wherein it was observed as under:

The legislature has provided powers to the Court under Sections 148 and 151 of the Code to enable the Court to do complete justice between the parties. The powers of the Court under these provisions are not merely declaratory or regulatory, but in fact are substantive powers which have been vested in the Court by the Legislature with definite intention of mind. These provisions have been worded widely by the Legislature to enlarge the scope of powers vested in the Court under other specific provisions. The purpose of giving overriding effect to the powers vested in the Court u/s 151 of the Code over specific provisions of the statute is sufficient indication that keeping in view the facts and circumstances of the case and in consonance with the settled principles of law, the Court can pass such orders or directions which would be necessary for achieving the ends of justice or to prevent the abuse of process of Court. The powers of the Court u/s 148 and 151 of the Code read with Order 21, Rule 12-A of the Code and Section 28 of the Specific Relief Act constitute the class of cases where the Court would have the power to enlarge the time for depositing the decretal amount in terms of the decree. While the other clause of case is indicated under the provisions of Order 21 Rule 14 of the Code where the Court may not have the power to enlarge the time. The underlying intent of

these provisions is that Court should apply its mind upon application moved by a party and pass such orders as may be called for, keeping in view the parameters prescribed within the scope of above provisions. The view expressed by different courts in their pronouncements and well defined wide scope of these provisions, leads to form one basic and inevitable conclusion that where decree does not contain peremptory terms of automatic dismissal of the suit - On non-fulfillment of certain conditions, the Court does not lose its jurisdiction to entertain an application for extension of time, for fulfillment of such conditions, though it has already passed the decree. The Court in this case does not become functus officio in that sense of term, debarring entertainment of an application for extension of time by the Court when passed the decree.

7. Similar observations were made in cases Jagan Nath and Anr. v. Lekh Ram 2000 (1) CLJ 418. Again in case [Karnail Singh and Another Vs. Harinderpal Singh Khosa and Others](#), the Court observed that the trial Court need not have been rigid in granting extension of time to the petitioner to deposit by invoking the powers u/s 28 of the Specific Relief Act but in the instant case this aspect of the case has not been examined by the trial Court. The Apex Court also observed in case Sardar Mohar Singh through Power of Attorney Holder Manjit Singh v. Mangilal @ Mangtya 1997 (2) R.C.R. 296 as under:

From the language of Sub-section (1) of Section 28, it could be seen that the Court does not lose its jurisdiction after the grant of the decree for specific Performance nor it becomes functus officio. The very fact that Section 28 itself gives power to grant order of rescission of the decree would indicate that till the sale deed is executed in execution of the decree, the trial Court retains its power and jurisdiction to deal with the decree of specific performance. It would also be clear that the Court has power to enlarge the time in favour of the judgment debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, inspite of an application for rescission of the decree having been filed by the judgment debtor and rejected. In other words, the Court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance. It is true that the respondent has not given satisfactory explanation of every day's delay. It is not, unlike Section 5 of the limitation Act, an application for condonation of delay. It is one for extension of time. Under these circumstances, the executing Court as well as the High Court had exercised discretion and extended the time to comply with the conditional decree.

8. Having gone through the impugned order, the Court appears to have exceeded its powers while sitting over the judgment again and dismissing the suit. The Court, at this stage in the application under Sections 148 and 151 CPC could not sit to observe whether the plaintiffs were ready and willing to perform their part of the contract or they had no balance sale consideration with them particularly when both these issues stood already decided through the judgment.

9. In these circumstances, the impugned order appears to be suffering from grave illegality causing serious prejudice to the petitioners inviting interference.

10. As such, this petition is accepted, impugned order dated 22.11.2008 is set aside and three months time is granted to the petitioners, from the date of passing of this order, to deposit the money i.e. balance sale consideration. No order as to costs.