

(1996) 08 P&H CK 0207

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 1109 of 1996

Mohinder Singh

APPELLANT

Vs

Gurdial Singh

RESPONDENT

Date of Decision: Aug. 29, 1996**Citation:** (1997) 3 CCC 311 : (1997) Supp CivCC 311 : (1997) 2 PLJ 247 : (1997) 1 PLR 73 :
(1996) 3 RCR(Civil) 679**Hon'ble Judges:** Swatanter Kumar, J**Advocate:** Mr. S.P. Soi, Advocate, J.S. Shekhupuri, Advocate., Advocates for appearing Parties

Judgement

Swatanter Kumar, J.

The suit for specific performance of the agreement dated 5.12.1985 and for possession in respect of the land measuring 8 kanals in Village Marajwala, Tehsil Nakodar, District Jalandhar was filed by Gurdial Singh. As per terms of the agreement, the land was to be sold to the plaintiff at the rate of Rs. 20,000/ per acre by Mohinder Singh and others. A sum of Rs. 13,000/ was paid towards sale consideration at the time of execution of the agreement. The remaining sale consideration was payable on execution and registration of the saledeed. The saledeed was to be executed by 30.5.1986. This suit of the plaintiff was decreed by the trial Court on 19.1.1991. The Court had directed the decreeholder plaintiff to pay the balance sale consideration of Rs. 47,000/ within a period of two months from the date of the decree. The period expired on 20.3.1991.

2. The plaintiff had deposited the balance sale consideration in Court and filed an application dated 12.4.1991 praying for condonation of delay and consequential extension time for deposit of the amount directed under the decree of the Court. This application was allowed vide order dated 20.4.1991.

3. As the judgmentdebtordefendant failed to execute the saledeed, the decreeholder was compelled to execute the decree by filing Execution No. 4 of 1993 dated 18.3.1993. It is in this execution that the judgmentdebtor filed objections

raising the plea that the Court could not have granted extension of time to the decreeholder vide its order dated 20.4.1991. According to these objections, the decreeholder had failed to deposit the balance amount within the stipulated period, as such, the decree had become unexecutable. The objections of the judgmentdebtor were dismissed by Civil Court (Junior Division), Nakodar vide order dated 6.1.1996, which is impugned in this revision petition.

4. The basic question that arises for consideration in this revision, therefore, is, whether the Court which had passed the decree for specific performance has any power to extend the period for payment of balance sale consideration as indicated in the decree, or not. These cases may be classified in two following classes :

(i) Where the Court passing the decree imposes a condition for payment of balance sale consideration within the prescribed period, but declines to impose any condition in the event of default.

(ii) Where the Court passing the decree imposes a condition that in the event of default of payment of balance sale consideration, the suit shall stand dismissed automatically.

Which out of two above classes, the case falls, would primarily be determining factor, whether the Court should or should not extend time. If the case falls in the first category, then undoubtedly the Court would have power to extend time while in other class of cases, it may not be possible for the Court to grant extension of time, for depositing the balance sale consideration in terms of the decree in the face of peremptory condition in the decree.

5. If the Court while decreeing the suit does not impose the condition that on happening of an event or default of terms of the decree by the plaintiff, the suit of the plaintiff would stand dismissed automatically, then the power of the court to enlarge the time itself is indicated in the provisions of the Code of Civil Procedure and Specific Relief Act, 1963. The Court in its discretion if stipulates the time for payment of balance sale consideration without imposing any peremptory condition which shall follow in the event of default, then it is an order of the Court to do an act within the scope of the provisions of the Code of Civil Procedure, as such, the Court would have the power to extend the period under Section 148 of the Code of Civil Procedure. Section 148 of CPC reads as under:

"Where any period is fixed or granted by the Court for doing of any act prescribed or allowed under this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

The bare reading of this provision indicates that where the time has been granted by the Court to do an act prescribed or allowed by the Court, the Court has discretion to enlarge such period in spite of the fact that the period granted has already expired. In contrast to the provisions of the Rule 14 of Order 21 of the Code,

Rule 12A of Order 21 which are the provisions dealing with the passing of the decree for specific performance of the contract relating to transfer of the immovable property, does not postulate that the Court must pass peremptory order or impose such conditions in the decree. The provisions of Rule 14 of Order 21 of the Code, itself provide the consequences which shall follow from noncompliance of the conditions stipulated in the decree passed in a preemption suit. While in the provisions governing passing of a decree for specific performance, no such mandate has been provided, the passing of such peremptory order in such decree is not absolutely essential. This aspect has been left to the discretion of the Court that the Court may or may not impose such conditions the default of which would result, in dismissal of the suit, restoration of property, or grant of possession of subject matter of the suit.

6. At this stage it also becomes relevant to refer to the provisions of Section 28 of Specific Relief Act, 1963. Section 28 reads as under :

"Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed (1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the Court has ordered him to pay, the vendor or lessor may apply in the suit in which the decree is made, to have the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under subsection (1), the Court

(a) shall direct the purchaser or lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in subsection (1), the Court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchase, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the Court.

The bare reading of this provision indicates the intention of the legislature that if the purchaser or lessee does not deposit the amount within the specific period granted by the Court, the Court has discretion to grant further time for such payment or to pass any further orders as provided under subrule 2 and subrule 3 of the said section of the Specific Relief Act, 1963. It is the Court which passed the decree for specific performance that has to deal with an application by either party under rule 1 of Section 28 of the said Act.

7. In addition to these specific provisions, the provisions of Section 151 of the Code of Civil Procedure can always be invoked in cases belonging to earlier class mentioned above. The provision of Section 151 of the Code neither restricts nor otherwise effects the powers of the Court to do justice between the parties, on the contrary empowers the Court to pass such orders as it may deem necessary keeping in view the facts of the case and to meet ends of justice or to prevent abuse of process of Court. The provisions of Section 151 of the Code are in aid to the specific provisions and are no way derogatory to such power. It would be unfair to a party which had paid substantial consideration and have waited for years to succeed and the Court had not imposed any condition, the default of which would be fatal to the decree passed. There is few days" delay in depositing the balance sale consideration by the decreeholder. In this case the decreeholder first had deposited the balance sale consideration then had moved the Court for extension of time, which was allowed vide order dated 20.4.1991. This order was not assailed by the judgmentdebtor for all this period. In fact, this order has not even been assailed in this revision petition and even now. The judgmentdebtor had filed an appeal against the decree on 22.2.1991 which was dismissed on 14.4.1993, upholding the judgment and decree for specific performance passed by the trial Court. The decree between the parties has become final. The order granting extension of time to deposit balance of money was not assailed in any proceedings till today and the fact that judgmentdebtor enjoyed the part of the sale consideration for all these years. All this brings the case of the decreeholder within the ambit and scope of the class of cases where grant of such extension would only be not fair but would be the proper course to adopt even in law.

8. An application under order 22 rule 4 of CPC was filed before this Court for bringing on record the legal representative of deceaseddefendant Mohinder Singh. It was stated in that application that Mohinder Singh died unmarried and intestate. This application was allowed by the Court vide its order dated 19.8.1996 and arguments were concluded on the same day. Consequently, Mr. Baljit Singh was brought on record without prejudice to the rights of the parties.

9. Learned counsel appearing for legal representative of deceased defendant petitioner argued that upon passing of the decree dated 19.1.1991, the trial Court had become functus officio and as such, was not entitled to grant any extension of time. This argument advanced by the learned counsel for the petitioner is not well founded in view of the above provisions and settled position of law as would be clear from the judgments referred hereinafter. In this class of cases, the Court does not become functus officio, rather the Court continues to have specific and as well as inherent jurisdiction to deal with the matter of present kind. One of the basic distinction between these two classes is that in case where conditional decree is passed which is peremptory in nature, default or nonfulfilment of such condition results in automatic dismissal of the suit and consequently gives a valuable right to the other party. Accruing of such rights becomes an impediment in the ways of defaulting party to apply to the same Court. The suit stands automatically dismissed and the decree already stands drawn up in terms thereof. Obvious result of above is that the proceedings would deem to have culminated in instant finality to the determined rights of the party resulting in loss of jurisdiction to the trial Court. In these cases after expiry of stipulated period, the suit stands dismissed automatically and no lis remains pending before the trial Court. If an appeal is pending, it is for the Appellate Court alone to adjudicate upon such questions but the trial Courts itself becomes functus officio in regard to the lis between the parties. However, in the case of preemption suit, the Court would not have such power to enlarge the time for deposit of purchase money. Hon'ble Justice Dr. A.S. Anand (as his Lordship then was) speaking for himself and Shah, J. held as under:

"However, power under Section 151 C.P.C. can be exercised in such cases where the provisions of Section 148 C.P.C. are not attracted. Those would, for example be the cases where the time is fixed by the Court, not under any statute, but with a view to avoid dilatory tactics of a litigant. Therefore, in cases where the Court, during the pending proceedings, passes a peremptory order, it would not completely estop the Court from taking note of such events and circumstances which happened within the time fixed by the Court and prevented by the party from complying with the directions of the Court within the specified time. In such cases, as held by their Lordships of the Supreme Court in AIR 1961 SC 882, the Court is not powerless to enlarge the time with a view to do complete justice to the parties provided the party seeking extension of time is able to show sufficient cause for grant of such extension after the original period has expired. AIR 1977 J & K 36, was a case dealing with such a situation and extension was granted after the period fixed by the peremptory order with the aid of Section 151 C.P.C. The peremptory order in that case, facts whereof have been given by brother Bhat, J. was not passed under any statute, but under the general powers of the Court. The Court was satisfied about the cause for delay in complying with its order and extended the period to comply with its earlier order."

The Bench of this Court in the case of Harbans Singh Grewal v. Puran Singh, 1991(1) RRR 332(P&H) reported as Vol.

XCVIII(19902) P.L.R 267 held as under :

"At no stage, the judgmentdebtor moved the Court under Section 28 of the Specific Relief Act for rescinding the contract for sale on account of nonpayment of the sale consideration or the sale expenses. The Court having granted time for deposit of balance of the sale consideration and expenses for the sale deed within a specific period, could order to extend the period while exercising power under Section 148 of the Code of Civil Procedure. Furthermore, there was no direction in the decree that on failure to deposit the balance of the sale consideration of Rs. 36,000/ or a sum of Rs. 10,000/ towards expenses, the suit of the plaintiff was to be dismissed. In the absence of any such directions time granted in the decree could be extended having resort to the provisions of Section 148 of the Code of Civil Procedure. In a such like matter Division Bench of the Patna High Court in Surai Singh v. Rajnarain Lal and another, held that power of Court under Section 148 of the Code of Civil Procedure would be there to extend the time granted in the decree when there was nothing in the decree that nonpayment of the amount within time allowed would result in dismissal of the suit. As a matter of facts no time was fixed for deposit of expenses in the decree."

Learned counsel for the petitioner has relied upon the case of Resham Singh and others v. Manmohan Singh Kent and other, reported as AIR 1985 Punjab and Haryana 1983 to argue that no extension of time could be granted by the Court below in this case. In that case there was peremptory order that if the amount was not deposited within the time allowed as per terms of the decree, the suit would stand dismissed automatically and that period had admittedly expired. And learned Counsel relied upon the following observations made in Resham Singh's case (supra):

"That the executing Court would not execute the decree as the amount was not deposited within the time allowed according to the terms of the decree, the suit stood dismissed automatically. The extension of the time for depositing the sale price would be varying the decree of the trial Court which could not be done as the Court has become functus officio after passing the said decree. Thus the High Court declined to interfere with the order of lower Court, in its revisional jurisdiction."

This case is of no help to the petitioner because admittedly, no peremptory order has been passed by the trial Court in the present case. Similar is the position with regard to the other case relied upon by the learned counsel titled as Smt. Parmeshri v. Naurata, AIR 1984 Punjab and Haryana 342. In this case also, the suit of the plaintiff was decreed subject to payment of the amount agreed to be paid by the defendant, as such, it was conditional decree in which consequences of default were duly provided for the in the decree itself.

10. The Legislature had provided powers to the Court under Section 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 in 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 under Section 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 under Sections 148 and 151 of the Code read with order 21 rule 12A 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 on the other hand another class of cases is indicated under the provisions of order 20 rule 14 of the Code where the Court may not have the power to enlarge the time. Under these provisions the Court is expected to apply its mind upon application 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 views expressed by different Courts in their pronouncements and well defined wide scope of these provisions, leads to one basic and inevitable conclusion that where a decree does not contain peremptory terms, which in the event of the default provides for automatic dismissal of the suit, the Court does not lose its jurisdiction to entertain an application for extension of time, though it has already passed the decree. The Court in that case does not become functus officio in that sense of term, debarring entertainment of an application for extension of time by the Court which passed the decree.

11. In the recent development of law, the class of cases indicated in latter category (supra), the Court has even gone to the extent of holding that in some cases where there is an error of the Court and in rare of rarest and exceptional cases, the Court may even grant extension of time in such cases where decree or order is peremptory one. In *Johri Singh v. Sukh Pal Singh and others*, reported as AIR 1989 Supreme Court 2073 : 1989(2) RRR 333, the Supreme Court held as under:

"From the above provisions there is no doubt that where the entire purchase money payable has not been paid and there is no order from any Court to justify or excuse nonpayment, the suit shall be dismissed with costs. This shall be done by virtue of the above provisions. But when the decree holder deposits into Court what he believes to be the entire purchase money but due to inadvertent mistake what is deposited falls short of the decretal amount by a small fraction thereof and the party within such time after the mistake is pointed out or realised, as would not prove wilful default or negligence on his part, pays the definite amount into the

court with its permission, should the same result follow ?"

Thus, in accordance with the law laid down by the Highest Court of the Land in cases of above kinds, the trial Court would be well within its jurisdiction to exercise discretion on well settled principles and grant extension of time even where a peremptory decree has been passed by that Court. Such exercise of powers by the trial Court if exercised within above limited scope could hardly be interfered with in revisional jurisdiction by this Court. In the case of Johri Singh (supra) while reversing the view of Punjab and Haryana High Court, the Supreme Court further held as under :

"The trial Court had jurisdiction to extend the time under Section 148 C.P.C. on sufficient cause being made out. The first condition precedent to enable the High Court to exercise its revisional jurisdiction under Section 115, C.P.C. was, therefore, lacking. Likewise, there was nothing that has been brought on the record on the basis of which it could be said that the discretion exercised by the trial Court was in breach of any provisions of law or that the trial Court committed any error of procedure which was material and may have affected the ultimate decision. That being so, the High Court has no power to interfere with the order of the trial Court, however profoundly it may have differed from the conclusions of that Judge on questions of fact or law."

12. Reverting back to the facts of the present, the trial Court had exercised its discretion and extended the period for deposit of money. The discretion exercised by the learned trial Court is on wellfounded principles and in no way the trial Court has exceeded its jurisdiction while granting such relief. Admittedly, there was no peremptory condition or term in the decree, which would have the effect of ousting the jurisdiction of the trial Court in this case. However, the order allowing the application of the decreeholder has become final much before the filing of this revision petition. The appeal preferred by the judgmentdebtor against the decree has already been dismissed and the judgmentdebtor did not pursue the matter any further. The judgment of the Appellate Court confirming the decree has also become final. The objections filed by the judgmentdebtor after a considerable delay and long after deposit of entire purchase money were found to be without any merit and have rightly been dismissed by the trial Court.

I find no jurisdictional or any other error apparent on the face of record, which calls for any interference by this Court in its revisional jurisdiction. Consequently this petition is dismissed. However, in the facts of the case, there shall be no order as to costs.