

Vijay Kumar Vs Anand Parkash Goel and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 3, 2006

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 148, 151

Citation: (2007) 1 CivCC 416 : (2007) 2 RCR(Civil) 71 : (2007) 1 RCR(Rent) 242

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Advocate: Rajinder Goyal, for the Appellant;

Final Decision: Allowed

Judgement

Hemant Gupta, J.

The challenge in the present petition is to the order passed by the learned Trial Court, whereby an application filed by

the Judgment Debtor u/s 148 and 151 C.P.C. dated 13.9.1999, was allowed and the objection in respect of execution of the decree, were

accepted.

2. The petitioner along with other co-owners filed a suit for possession of the tenanted premises. The said suit was decided on the basis of

compromise dated 9.11.1993 when the tenant agreed to pay a sum of Rs.32,300/- on or before 30.11.1993. Thereafter, the tenant was to pay

monthly rent @ Rs. 1100/- apart from house tax. It is admitted that the tenant deposited a sum of Rs.32,000/- within the time prescribed. The

petitioner moved -an application for execution of the ejectment order as the agreed amount of Rs.32,300/- was not deposited within the time

prescribed in the said execution. The tenant filed objections and also sought extension of the time for deposit of meager amount of Rs.300/- within

the time prescribed as it was stated that such payment could not be made on account of inadvertent bona fide mistake.

3. The learned trial Court accepted the application relying upon the judgment of this Court in Mehru Vs. Mohan Lal and Others, , Johri Singh Vs.

Sukh Pal Singh and Others, , and Mam Chand Pal v. Smt.Shanti Aggarwal 2002(1) ACJ 419 (S.C.): 2002 HRR 210.

4. Learned counsel for the petitioner has vehemently argued that the Court has no power to extend the time fixed under the consent decree and

therefore, the learned trial Court has gravely erred in extending the time. Reliance is placed upon the judgment of the Hon"ble Supreme Court in

Hukamchand Vs. Bansilal and Others, and another judgment of the single Bench Judgment of this court in Parmeshri Vs. Naurata, . However, I do

not find any merit in the said argument raised by the learned counsel for the petitioner.

5. Though the parties have entered into compromise but on the basis of such compromise, the Court has passed an executable decree. The

Hon'ble Supreme Court in Pushpa Devi Bhagat (D) th. LR. Smt. Sadhna Rai Vs. Rajinder Singh and Others, . 566, drawn distinction between a

decree which is based upon adjustment or satisfaction in which, there is no executable, decree passed and the cases where on the basis of

compromise an executable decree is passed. The following observations are relevant for the present case:-

In a suit against the tenant for possession, if the settlement is that the tenant will vacate the premises within a specified time, it means that the

possession could be recovered in execution of such decree in the event of the defendant failing to vacate the premises within the time agreed.

Therefore, such settlement would fall under the first part. On the other hand, if both parties or the plaintiff submit to the court that the tenant has

already vacated the premises and thus the claim for possession has been satisfied or if the plaintiff submits that he will not press the prayer for

delivery of possession, the suit will be disposed of recording the same, under the second part. In such an event, there will be disposal of the suit,

but no ""executable"" decree.

6. Since in the present case on default of a sum of Rs.32,300/- an executable decree has been ordered to be passed,therefore, the Court will have

the jurisdiction to enlarge such period. u/s 148 of the Code it has been provided that where any period is fixed or granted by the Court for the

doing of any act prescribed or allowed, the Court may in its discretion, from time to time, enlarge such period. Since in the present case, the period

is fixed in the compromise and on the basis of such period fixed the court has passed a decree, the application for extension of time, would be

maintainable u/s 148 C.P.C. Apart from the said fact, the judgment of the Hon'ble Supreme Court in Hukam Chand's case (supra) has been

considered by this Court in Mehru's case (supra), wherein relying upon the Division Bench Judgment of Calcutta High Court reported as

Jadabendra Nath Mishra Vs. Smt. Manorama Debya, and that of Bombay High Court reported a Marketing and Advertising Associates Pvt. Ltd.

Vs. Telerad Private Ltd., , it was held that where clause in the compromise is penal, the judgment debtor can be relieved of its rigours by extending

the time of deposit of the amount settled. It was held to the following effect:-

I prefer to follow the same and hold that the Court is empowered to relieve the judgment debtor of the rigours of penal clause which provides the

forfeiture of the property and other valuable rights in case of default of payment according to the time stipulated in the consent decree. In the

present case the amount of the 3rd and 4th installment was deposited within fifteen days after the stipulated time. The time for the said installments

is accordingly extended and the deposit made shall be deemed to have been made within the stipulated time.

7. Same view has been taken by this Court in Bhim Singh v. Smt. Mamo and others 2001(2) P.L.J. 446, relying upon the judgment of the Hon"ble

Supreme Court in Johri Singh's case (supra).

8. It may be noticed that the judgment of the Hon"ble Supreme Court in Hukum Chand's case (supra), was arising out of an auction sale regulated

by order XXI Rule 90 C.P.C. It was held therein that the judgment debtor can deposit the amount at any time before the sale. Since by seeking

extension of time, the limit prescribed under Order 21 Rule 90 had to be violated, the Court found that the time cannot be extended. But in the

present case, there is no time limit prescribed under the statute which impinges upon the discretion of the trial Court to extend the period fixed by

the parties for deposit of the arrears of rent. In fact, the Hon"ble Supreme Court in Smt. Periyakkal and Others Vs. Smt. Dakshyani, , considered

the judgment in Hukum Chand's case (supra) and held that, that was a case of statutory compulsion to confirm sale. The Court found that the time

for deposit stipulated by the parties became the time allowed by the court and this gave the Court the jurisdiction to extend time of appropriate

cases. The Court found that the time would not be extended ordinarily nor for the mere asking but it would be granted in the rare cases to prevent

manifest injustice. It was held to the following effect:-

In the case before us, the situation is totally different. Unlike the case of Hukamchand Vs. Bansilal and Others, where there was a statutory

compulsion to confirm the sale on the dismissal of the application under O.XXI Rule 90 and, therefore, postponement and further postponement of

the confirmation of the sale could only be by the consent of the parties, in the case before us, there was no statutory compulsion to dismiss the

application under O.XXI, Rule 90 in the absence of an agreement between the parties. The Court would have then decided the appeal arising out

of the application on the merits. The parties, however, entered into a compromise and invited the Court to make an order in terms of the

compromise, which the Court did. The time for deposit stipulated by the parties became the time allowed by the Court and this gave the court the

jurisdiction to extend time in appropriate cases. (Emphasis supplied). Of course, time would not be extended ordinarily, nor for the mere asking. It

would be granted in rare cases to prevent manifest injustice. True, the Court would not re-write a contract between the parties but the court would

relieve against a forfeiture clause: And, where the contract of the parties has merged in the order of the Court, the Court's freedom to act to

further, the ends of justice would surely not stand curtailed.

9. The judgment in Parmeshri's case (supra) does not lay down any binding precedent in view of the Hon'ble Supreme court judgment in

Smt.Periyakkai's case (supra) and in view of the Pushpa Devi Bhagat 's case (supra), wherein the distinction between an executable decree by

compromise and adjustment or satisfaction by way of compromise has been pointed out. Since the Court has passed an executable decree, the

Court will have the jurisdiction to. extend the period for execution of the decree, fixed in terms of the compromise.

In view of the above, I do not find any material illegality or irregularity in the impugned order, which may require interference by this Court in

exercise of its revisional jurisdiction.

Hence, the present petition is allowed.