

(1967) 08 CAL CK 0026

Calcutta High Court

Case No: An Application for Extension of Time to Deposit an Instalment in Connection
with F.M.A. 264 of 1965

Indrapuri Studio (p.) Limited

APPELLANT

Vs

Sm. Shanti Debi and Others

RESPONDENT

Date of Decision: Aug. 30, 1967

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151

Citation: 71 CWN 1034

Hon'ble Judges: P.N. Mookerjee, J; A. K. Dutt, J

Bench: Division Bench

Advocate: Tapash Chadra Roy, for the Appellant; Chittatosh Mookerjee for opposite parties 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

P.N. Mookerjee, J.

This is an application by the petitioner for extension of time to deposit an amount of Rs. 12,000/- which was due to be deposited within March last under the order of this court, dated September 7, 1965, passed in the connected appeal (F.M.A. No. 264 of 1965). In that appeal, the present petitioner was the respondent and the appeal was directed against an unconditional order of temporary injunction, made in favor of the petitioner by the trial court. The connected suit (T.S. No. 29 of 1964 of the Ist Court of the Subordinate Judge at Alipore) was brought by the petitioner as plaintiff under Order 21, rule 63 of the CPC for setting aside the summary order or rejection of the petitioner's claim under Order 21, rule 58 of the Code in Misc. case No. 11 of 1962 of the 4th court of the Subordinate Judge at Alipore, against the attachment of certain properties in T. Ex. case No. 29 of 1961 of the same court. In the said suit, which was inter alia. for a permanent injunction, restraining the present opposite parties Nos. 1 and 2, who were defendants Nos. 1 and 2 in the suit, from proceeding with the above Ex. Case, the petitioner prayed for temporary injunction, that is, injunction

pendent liter, which was granted by the learned trial Judge unconditionally, as aforesaid. In this court, the said order was varied in the above appeal only to this extent that it was made subject to certain conditions, one of them being that the petitioner was to deposit a sum of Rs. 12,000/- within March every year, in the court below, the first of such deposits to be made within March, 1966 That first deposit was duly mad but for the next deposit, falling due in March. 1967, the instant application was made by the petitioner on March 21, 1967 for extension of time. It is to be noted here that, in the above order of this court, it was also expressly provided that the suit in question was to be heard out by the learned trial Judge within a year from the date of the said order, namely. September 7, 1965, at the latest.

2. The suit, however, could not be disposed of within the above time-limit, fixed by this court, because the records did not reach the learned Subordinate Judge before February 24, 1967. The suit is still pending and. although it was taken up for hearing, it has remained pending, as the records have since been called up to this court in connection with certain administrative matters.

3. The present application by the petitioner for extension of time to make the deposit of Rs. 12,000/- due in March 1967, Was, as stated above, filed in this court on March 21, 1967, that is, well within time. The application, however, could not be taken up by this court prior to this day as the relevant records were not available. The said records are still not available, but we have decided, with the concurrence of the parties, to dispose of the application, even without the said records, as it appears to us that the application can be disposed of upon the affidavits of the parties before us and facts and circumstance admitted in those affidavits or acceptable on the same.

4. It is to be mentioned here further that the above application s in connection with an order, passed by this court (Chattrjee and Gupta, JJ.) but we are told that, when the matter was mentioned before Chatterjee, J., Gupta, J., not being available as he was away on official duty, he (Chatterjee, J.) gave liberty to the petitioner to move it before the regular Bench. There is also authority in this court [vide (1) Aghore Kumar Ganguli v. Mahomed Musa, 11 CLJ 155], which, substantially and on principle, supports the view that such applications, which are, obviously, u/s 151 of the Code of Civil Procedure, may be entertained by the regular Bench and, except in very special circumstances, need not await a hearing before the same or the original Bench. The broad reasons for this view appear sufficiently in the said decision of this court. The application has accordingly, been heard by us.

5. At the hearing of this application, Mr. Mukherjee, appearing for the opposite parties, has raised two objections. In the first place, he has argued that the court, after the time for deposit, fixed in the original order, had expired, became functus officio, and, accordingly, cannot entertain this application u/s 151 of the Code of Civil Procedure. In the second place, Mr. Mukherjee has argued that this is not a fit case for extension of time, as the petitioner was guilty of default or lashes on its part and

was disentitled to any relief under the inherent powers of this court.

6. We are unable to accept any of the above submissions of Mr. Mukherjee in the facts and circumstances of this case. In support of his first submission, Mr. Mukherjee drew our attention to (2) [Bhutnath Das and Others Vs. Sahadeb Chandra Panja](#), (3) [Bokaro and Ramgur Ltd. Vs. The State of Bihar](#), and (4) [Mahanth Ram Das Vs. Ganga Das](#). On behalf of the petitioner, our attention was drawn to the decision of this court in (5) [Subodh Chandra Mukherjee Vs. Sudhir Kumar Basu and Others](#), but we do not think that it is of much relevance to the instant case.

7. For our present purpose, it is not necessary for us to go into any detailed examination of the above cases, cited by Mr. Mukherjee. but it will be enough to say that the two decisions of this court, relied on by him in support of his above first submission, are distinguishable, as the first was a case of a "decree" - a decree, a conditional decree, for specific performance, - and the second was decided on considerations, which do not arise here or apply to the present case, and which, in any event, cannot be regarded as exhaustive, so as to conclude the point before us, and the authority of the Supreme Court in the case, cited by Mr. Mukherjee, is really in favors of the view that this court, under circumstances, which are now before us, is entitled to exercise its powers u/s 151 of the Code, provided, of course, a case for the exercise of such powers has been made out on the merits. The broad distinction, which has been made in such cases, is to the effect that, in the case of a decree, the court becomes functus officio after the passing of the decree, which, whether conditional or not, is final as regards the substantive rights of the parties, involved therein. We do not treat this instant case as the case of a decree, as the proceeding, in which the order of the trial court or the order of this court in appeal from that order, was made, was a proceeding under Order 39 of the Code of Civil Procedure, which does not contemplate a decree, as recognized or envisaged by the Code. The distinction between a decree and an order is clearly expressed in the CPC and is inherent in its provisions, which apply to this court as well, sitting in appeal over District Courts. That distinction, which is patent and fundamental, is in essence, based on the distinction between decisions or adjudications on substantive rights and decisions or adjudications on procedure or procedural rights. And. in matters like the present, this latter distinction has special relevance and importance and has been particularly emphasized by the Supreme Court in the case, cited above, where their Lordships have substantially expressed the view that, except in the case of decrees, - to wit, conditional decrees, as mentioned by their Lordships, - the court does not lose seisin or jurisdiction to extend time for complying with its directions in appropriate cases. This will be evident from the following passage in the above judgment of their Lordships:

How undesirable it is to fix time peremptorily for a future happening which leaves the court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out, often enough, to be

inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorism, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely stop a court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves the day previous, he could not ask for extension of time, or that the court was powerless to extend it. Such orders are not like the law of the Medes and the Persians. Cases are known in which courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed." (Vide AIR 1961 SC supra, at pp. 883-4)", their Lordships, quite appropriately - as the underlined sentences, or sentences, underlined by us above, sufficiently indicate, only reserving their final opinion about the undesirability of passing peremptory orders, leaving the court powerless to relieve the defaulting party against fatal or penal consequences even in deserving circumstances.

8. That, again, the instant case involves, in essence, a matter of procedure will be clear from the observations of Sarkar, J., as he then was, in (6) Printing and Industrial Machinery Limited v. Swastika Press Limited, 00 CLJ 105, at p. 114, which observations have our respectful concurrence and approval.

9. In the circumstances, we are inclined to hold that we have ample powers to give relief to the petitioner in the instant case, provided we are satisfied that it has a case on the merits for the exercise of our inherent powers in its favor.

10. This brings us to the second contention of Mr. Mukherjee. On this question, the position appears to be as follows: As we read the order of this court, which was passed on September 7, 1965, the provision therein that the suit must be disposed of by the trial court within a year, at the latest, from the date of this court's order, was an integral part of that order and the said order cannot be read without the Some. This, however, was made impossible for the trial court by reason of delay in the matter of receipt of the records, as noticed above. How and why this delay happened is not a matter now before us but this much is clear that, because of the non-receipt of the said records in time, the suit could not be heard out by the learned trial Judge within a year from September 7, 1965, as directed by this court, with the result that this court's intention in fixing the said time-limit for the hearing of the suit, which sufficiently indicates that this court contemplated, in substance, that only one deposit under the deposit provision, as embodied in its aforesaid order, namely, the deposit of March 1965 will be required under the circumstances, could be given effect to. The petitioner also applied to this court well within time for extension of the period in question, as the relative application, as we have said above, was made on March 21, 1967, that is, sufficiently before the expiry of the relevant period. If the petitioner's said application had been rejected before the expiry of the aforesaid period, the petitioner could only blame its own misfortune, if

it had failed to make the deposit and was made to suffer the consequence. On the facts before us, however, it was the court, which, for its own reasons, could not take up the matter for disposal before this day, and, in the meantime, the relative period for the deposit in question expired. That, certainly, was not in the above circumstances, due to any laches or default on the part of the petitioner, strictly speaking, and, for the same, the petitioner cannot be blamed or penalized, it being well-settled that no one should suffer for the fault or inability of the court, for which he is not responsible.

11. We are also satisfied, from the circumstances, stated in the petition, that this is a case, where the petitioner should be granted some extension of time to comply with the relative direction for the deposit in question, and, taking into consideration the facts, stated in the affidavits before us, and the situation of the parties, we grant the petitioner time until September 22 next making the said deposit, which will leave the opposite parties sufficient time to take steps in the pending execution proceedings, in case of any default in the matter on the part of the petitioner.

12. The application will, accordingly, be allowed to the above extent, namely, that the time for depositing the amount of Rs. 12,000/- in question will be extended till September 22 next and the order of this court, dated September 7, 1965, will be modified accordingly, and, subject to the said modification, the said order will stand in all its details except that the time for the hearing out of the suit will be extended, in the circumstances, stated above, till the end of January next.

13. Let the records of the suit, which are now in this court, be sent down to the court below at once and let the office take necessary steps so that this part of the order is carried out without fail. In the circumstances of this case, we further direct that the petitioner will pay to the contesting opposite parties costs of this hearing, hearing-fee being assessed at five gold mohurs.

A.K. Dutt, J.

I agree.