In the High Court of Punjab and Haryana at Chandigarh.

C R No. 2050 of 2007 (O&M)
Decided on 28.01.2015

Union Bank of India --Petitioner

Vs.

M/s.Benwalt & Kornik Pharmaceutical ad others --Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Whether Reporters of Local Newspapers may be allowed to see the judgment ?
To be referred to Reporters or not ?
Whether judgment should be reported in the Digest ?

Present: Mr. Sanjiv Ghai, Advocate, for the petitioner
Mr.Rakesh Gupta,Advocate, for respondent No.5.
Mr.Amit Jhanji, Advocate, for respondent Nos.7 and 8

Rakesh Kumar Jain,J: (Oral)

This petition is against the order dated 18.1.2007 where by an application filed by the petitioner under Section 149 read with Section 151 of the Code of Civil Procedure,1908 (for short,'CPC') for extension of time to make up the deficiency in Court fee, has been declined.

The revision petition was admitted on 06.9.2010.

The petitioner filed an application bearing CM No.1063-CII of 2014 for staying the proceedings before the Executing Court during the pendency of the revision petition.

With the concurrence of both the learned counsel for the parties, the main revision petition is taken on board and the arguments have been heard.

In brief, the petitioner filed a suit for declaration to the effect that the Saving Bank Account Nos. 1421,1422 and 1423 of defendant Nos. 6 to 8 were opened for grant of facility to defendant No.1, therefore, the same were rightly transferred and appropriated to the account of defendant No.1 on 28.9.1982 and in the alternative, it was prayed that in the event the Court holds that the transfer and appropriation was not proper, decree for recovery of ₹2,00,000/- plus interest against defendant Nos.1 to 5 and 9 may be ordered.

The suit was partly decreed on 22.2.1995.

The decree reads thus:-

> "It is ordered that this suit of the plaintiff for declaration fails, but the suit for recovery of ₹2,00,000/- is decreed against defendant Nos.1 to 5 jointly as well as severally, with costs and future interest at the agreed rate i.e. 17% per annum from the date of the decree till the date of realization, subject to its depositing court fee on the amount of ₹2,00,000/- up to 10.3.1995".

Although, specific time was provided to the decree holder to deposit the court fee on the amount of 2,00,000/- up to 10.3.1995, the Decree Holder preferred an appeal under Section 96 of the CPC on 26.5.1997, but by that time, the said appeal had become time barred, therefore, an application under Section 5 of the Limitation Act, 1963, was filed to condone the delay of 2 years and 3 months.

The Appellate Court dismissed the application for condonation of delay vide order dated 12.8.2002 and as a consequence thereof, appeal was also dismissed.

Aggrieved against the said order, the petitioner filed a Civil Revision No. 4923 of 2003 before this Court along-with an application for condonation of delay of 393 days in re-filing the said revision petition.

Be that as it may, the revision petition of the petitioner was also dismissed on 16.2.2006 on the ground that it had failed to explain the delay in filing the appeal.

Having lost up to this Court in securing an order in regard to declaration which was declined by the trial Court, the petitioner decided to execute the decree dated 22.2.1995 and at that time, filed an application under Section 149 of the CPC, seeking permission of the Court to make up the deficiency in the Court fee good. The reason given in the application was that *"it may be submitted that since the plaintiff bank filed appeal against the judgment and decree dated 22.02.1995 and thereafter the matter went upto the Hon'ble High Court. The officer incharge remained under the impression that the amount of court fee will have to be deposited after the matter in controversy attains finality".* This application has been dismissed by the impugned order 18.1.2007. Hence, this revision petition.

Learned counsel for the petitioner has argued that the Court has ample power under Section 149 of the CPC to enlarge the time for depositing the court fee. In this regard, he has relied upon the following judgment:-

(i) Gurdial Singh Vs. Massa Singh, etc. 1977 PLJ 130;

(ii) Mannan lal Vs. Chhotla Bibi (dead) by her legal representative and others, 1970 (1) SCC 769;

(iii) Mahasay Ganesh Prasad Ray and another

Vs.Narendra Nath Sen and others, 1953 AIR (SC) 431 and

(iv) Balwinder Kaur Vs.Financial Commissioner (Appeals-1), Punjab and others, 2010 (1) RCR (Civil) 739

On the other hand, learned counsel for the respondents has submitted that the application filed under Section 149 of the CPC is not maintainable as it should have been filed under Section 148 of the CPC but the said provision applies where the Court orders to do any particular thing in a particular manner and Section 149 of the CPC applies where Court fee has to be paid in accordance with law. He has also submitted that petitioner was supposed to act diligently to pursue the litigation but it was more interested in seeking declaration from the Appellate Court without paying the Court fee which could have been easily paid being a bank and even again first appeal was filed after a delay of 2 years and 3 months, as a result thereof, their case may be meritorious as alleged, was dismissed by the Appellate Court and the revision petition was also dismissed by this Court. He has also submitted that the revision petition filed in this Court remained pending in default and was filed with a delay of 393 days in its re-filing. He has also relied upon a judgment of the Supreme Court in the case of **Buta Singh (Dead) by LRs Vs. Union of India,** 1995 AIR (SC) 1945.

I have heard learned counsel for the parties and perused the available record.

Before adverting to my findings, it would be relevant to refer to Sections 148 and 149 of the CPC which are reproduced below:-

"148.Enlargement of time.- When any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to fime, enlarge such period,[not exceeding thirty days in total,] even though the period originally fixed or granted may have expired".

"**149.Power to make up deficiency of Court-fees.**- Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court fees, has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance".

Since the facts are not in dispute, therefore, in the case in hand, it is to be seen as to whether the petitioner could have deposited the Court fee at the stage when it filed the execution application just 3/4 days before the expiry of the period of limitation ? Section 148 of the CPC provides that where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, but after the amendment in the CPC w.e.f. 01.07.2002, power of the Court to extend time beyond 30 days has been curtailed. Insofar as Section 149 of CPC is concerned, power is given to the Court to exercise its discretion in favour of a party who wanted to make up the deficiency in the Court fee good.

The question involved in this case is as to whether this case is covered under Section 148 or 149 of the CPC, where discretion can be exercised by the Court in all circumstances.

In respect of the case of **Gurdial Singh** (Supra), learned counsel has argued that this Court, while referring to Section 148 of the CPC, has observed that the Court has the power to extend the time. This judgment is before the amendment was brought in Section 148 of CPC in which extension of time up to 30 days has now been provided.

In the case of **Mannan Lal** (Supra), the issue was whether the Court fee can be allowed to be paid in the appeal also, which is not the issue in the present case. But in any case, the judgment relied upon by learned counsel for the petitioner, in the case of **Balwinder Kaur** (Supra), is close to the facts of the case in hand in which it has been held that the petitioner should not be non suited merely on the ground of non payment of Court fee. It was observed that where technical consideration and merit or cause of substantial justice are pitted against each other, the cause of substantial justice is to prevail for no party can seek a vested right in injustice to be done because of a non- deliberate act.

Insofar as the judgment relied upon by the learned counsel for the respondent in **Buta Singh's case** (Supra) is concerned, the Supreme Court while referring to Section 149 of the CPC has observed that this Section can be invoked when the party was not able to pay Court fee because of the circumstances beyond his control or under unavoidable circumstances and the Court would be justified in an appropriate case to exercise its discretionary power under Section 149 after giving due notice to the affected party.

From the perusal of the aforesaid judgments, I have come to the conclusion that discretion under Section 149 of the IPC is not to be exercised in all the matters, rather it would depend upon the facts of each case as held in **Buta Singh's case** (Supra) wherein it has been discussed that aid of Section 149 CPC is not available to a party in appeal if the circumstances are not beyond his control.

In the present case, the bank is the petitioner who could have easily paid the Court fee on the amount of ₹2,00,000/-, decreed in its favour, but instead of paying the Court fee, it kept on lingering it on to contest for the relief which was not granted by the Court by filing the appeal after 2 years and 3 months. There is no explanation as to why the Court fee was not paid before filing the appeal except that it was not deposited by the Manager of the bank, who was under the impression that the amount of Court fee shall have to be deposited after the matter in controversy attains finality.

It is really strange that the Manager of the Bank could not even read the decree passed by the trial Court in which it was clearly provided that the decree shall be operative when the Court fee is paid. If the Court fee is not paid, then there is no question of any execution of the decree and the officers of the bank did not know about it.

In view of the above, I find that there is no error on the part of the Court below in dismissing the application. Hence, this revision petition is also dismissed.

28.01.2015 **(Rakesh Kumar Jain)**
rr **Judge**