

In the High Court of Punjab and Haryana at Chandigarh.

**C R No. 1602 of 2012 (O&M)
Decided on 16.1.2015**

S.Himmat Singh

--Petitioner

Vs.

S.Sahib and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Arun Singal, Advocate, for the petitioner

Mr.S.K.Gautam, Advocate, for respondent No.3.

Rakesh Kumar Jain,J: (Oral)

This petition is against the order dated 09.11.2011 by which application filed by the petitioner under Section 148 of the Code of Civil Procedure, 1908 (for short, 'the CPC') has been dismissed.

In brief, the petitioner and performa respondent Nos.4 and 5, being the plaintiffs, filed a suit for possession of House No. R-966, Ward No.8, Panipat, by way of partition by metes and bounds. The suit was filed through Gopal Krishan son of Ghanshyam Dass, resident of House No.261, Ward No.8, Panipat.

At the time, when the suit was filed, it was averred in the plaint that value of the suit for the purpose of Court fee has been assessed at ₹200/- and therefore, Court fee of ₹25/- has been affixed. In any case, the suit was decreed on 31.5.2004 and the trial Court ordered partition of the

suit land in favour of the petitioner to the extent of 1/6th share in the suit

and asked him to pay the Court fee on the market value of the house within two months. Preliminary decree was ordered to be drawn.

Against the aforesaid judgment and decree, two appeals were filed i.e. Civil Appeal No. 33 of 2004 by the defendants and Civil Appeal No.36 of 2004 by the plaintiffs. Both the appeals were dismissed with certain modification by the Appellate Court vide its judgment and decree dated 06.10.2004.

The petitioner then filed an application under Section 148 of the CPC for enlargement of time to pay the Court fee in respect of the decree of the trial Court. The said application was contested by the respondents and dismissed vide the impugned order dated 09.11.2011 on the ground that it has been filed by the petitioner after a gap of 3 and ½ years.

Learned counsel for the petitioner has argued that though the application under Section 148 of the CPC has been filed, yet the Court can grant relief to the petitioner under Section 151 of the CPC and has relied upon a judgment of the Andhra Pradesh High Court in the case of **P.Hari & Ors. Vs. Anjuru Yellappa** 2011 (1) Civil Court cases 0531. It is submitted that in the aforesaid case, appeal was filed. Stay was granted on 23.1.2008 subject to the condition that the suit costs would be deposited by the appellant by 27.2.2008, which was not deposited within time. However, the suit cost was deposited in the treasury vide treasury challan dated 15.7.2009. It is submitted that under Section 148 of the CPC, time can be extended, not exceeding thirty days in total, even though the period originally fixed or granted may have expired. So, the Court can extend the time by exercising inherent powers under Section 151 of the Code to make

up the deficiency. The reason given by the petitioner is that his power of attorney appearing on his behalf and the counsel who had appeared in the trial Court did not inform him about the deposit of Court fee and when he came from Bangalore in 2007, the fact with regard to Court fee came to his notice and then application was filed.

Learned counsel for the respondent has submitted that there is an inordinate delay in filing the application and also the petitioner has not come to the Court with clean hands as he himself had filed the first appeal against the judgment and decree dated 31.5.2004 by which he was directed to pay the Court fee within two months. It is submitted that since the appeal was filed by the petitioner on 30.7.2004, therefore, it has to be presumed that he very well knew about the decree dated 31.5.2004 and the contents thereof. It is submitted that it is not believable that the petitioner was not aware of the case as he was in Bangalore and nothing has been given in the application that he did not return to Panipat for last three years.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that there is no merit in this revision petition.

The petitioner is guilty of “*suppressio veri and suggestio falsi*” as in the judgment and decree dated 31.5.2004, he was asked to pay the Court fee within two months. No doubt, the Court has the jurisdiction to extend time for the purpose of depositing the Court fee but not on the ground which has been projected before the Court below that the petitioner was not aware of the order of the trial Court for about 3 and ½ years, and therefore he could not deposit the Court fee in time. Since the petitioner himself had filed his first appeal No.36 of 2004 on 31.7.2004 against the

judgment and decree regarding 1/6th share in the house, it can be presumed that he knew very well about the judgment and decree dated 31.5.2004 and could have filed the Court fee as directed instead of making a lame excuse that since he was away to Bangalore and the counsel and the power of attorney did not inform him, therefore, he could not deposit the Court fee. The judgment relied upon by the learned counsel for the petitioner is thus not applicable to the facts of the case in hand.

In view of the above, the present revision petition is hereby dismissed being without any merit.

16.1.2015
rr

(Rakesh Kumar Jain)
Judge