

CR No.1693 of 2014

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.1693 of 2014
Date of decision:18.02.2015**

Ami Chand

...Petitioner

Versus

Smt. Urmila

...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajesh Khandelwal, Advocate,
for the petitioner.

Mr. Jainander Saini, Advocate,
for the respondent.

Rakesh Kumar Jain, J.

The petitioner is aggrieved against the order dated 19.12.2013, dismissing his application for enlargement of time to affix the *ad valorem* court fee.

In short, the plaintiff-petitioner filed a suit for declaration that he is owner in possession of a house and challenged the sale deed dated 13.05.2013, allegedly executed by him in favour of the defendant. The defendant filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (here-in-after referred to as the "CPC") which was allowed on 15.10.2013 and the plaintiff-petitioner was directed by the trial Court to affix the *ad valorem* court fee as per value of the sale deed. He moved an application for extension of time on 20.11.2013. The time was extended

CR No.1693 of 2014

[2]

uptill 19.12.2013 but on that day, the petitioner moved another application for extension of time on the ground that he is 80 years old, suffering from various old age ailments, could not walk properly, therefore, unable to attend the Court and would pay the *ad valorem* court fee on the next date. He also prayed that his personal appearance be also exempted for that date. This application dated 19.12.2013 has been dismissed by the trial Court on the ground that the Court cannot extend the time beyond 30 days in total and since 30 days had already expired, therefore, further extension cannot be granted. The plaint was thus rejected on the ground of not affixing the *ad valorem* court fee.

Learned counsel for the petitioner has relied upon a judgment of the Allahabad High Court in the case of **Amar Nath Gupta v. District Judge, Gorakhpur and others**, 2006(6) ALJ 784 in which, while relying upon a judgment of the Supreme Court in the case of **Salem Advocate bar Association, T.N. v. Union of India**, AIR 2005 SC 3353, it has been held that despite the limit fixed in Section 148 of the CPC, the Court can exercise its inherent powers under Section 151 of the CPC to extend the time. It was observed therein that the Court below did not consider the request made by the plaintiff while passing the impugned order except following the provisions of Section 148 of the CPC.

On the other hand, learned counsel for the respondent has argued that the time cannot be extended beyond 30 days, as fixed by the Legislature.

I have heard learned counsel for the parties and after

CR No.1693 of 2014

[3]

considering the available record, I am of the considered opinion that there is an error in the impugned order because the trial Court did not opine on the difficulty expressed by the plaintiff to pay the *ad valorem* court fee. In the application, he has averred that he is 80 years of age and suffering from arthritis, therefore, he cannot walk and unable to attend the Court on the date fixed. It is also urged by him that he would pay the *ad valorem* court fee on the next date of hearing and also sought exemption from appearance on 19.12.2013.

In view of the decision of the Supreme Court in **Salem Advocate Bar Association's case (supra)**, it is clear that the Court retains its power under Section 151 of the CPC to extend the time but it depends upon the facts of each case and if the reasons assigned by the plaintiff for not approaching the Court in time were beyond his control.

In **Amar Nath Gupta's case (supra)**, the Court had found that the plea of the plaintiff that he was suffering from financial constrains was not considered by the trial Court nor any finding has been recorded that he is delaying the execution of the decree, therefore, it was held that the Court should have looked into that aspect as well before passing the impugned order. The relevant portion of the order passed in **Amar Nath Gupta's case (supra)** is reproduced as under:-

“8. The Supreme Court in Salem Advocate Bar Association, T.N. v. Union of India (2005) 6 SCC 344 : (AIR 2005 SC 3353), while interpreting the provisions of Sections 148 and 149 after the amendment vide Act

No.46 of 1999 w.e.f. 1-7-2002 held (paras 45 & 47 of AIR)--

“41. The amendment made in Section 148 affects the power of the Court to enlarge time that may have been fixed or granted by the Court for the doing of any act prescribed or allowed by the Code. The amendment provides that the period shall not exceed 30 days in total. Before amendment, there was no such restriction of time. Whether the Court has no inherent power to extend the time beyond 30 days in the question. We have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the Court to pass orders as may be necessary for the ends of justice or to prevent abuse of process of the Court. The rigid operation of the section would lead to absurdity. Section 151 has, therefore, to be allowed to operate fully. Extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for reasons beyond the control of the party. We are not dealing with a case where time for doing an act has been prescribed under the provisions of the Limitation Act which cannot be extended either under Section 148 or Section 151. We are dealing with a case where the time is fixed or granted by the Court for performance of an act

prescribed or allowed by the Court.”

“43. There can be many cases where non-grant of extension beyond 30 days would amount to failure of justice. The object of the Code is not to promote failure of justice. Section 148, therefore, deserves to be read down to mean that where sufficient cause exists or events are beyond the control of a party, the Court would have inherent power to extend time beyond 30 days.”

9. From the aforesaid, the Supreme Court held that the upper limit fixed under Section 148 of the Code cannot take away the inherent powers of the Court to pass an order as may be necessary for the ends of justice. The Court has an inherent power under Section 151 C.P.C. to extend the time. In the present case, the plea of financial constraints on the part of the appellant has nowhere been considered by the Court below nor any finding has been given that the appellant had the requisite resources to pay the Court fee and that he was seeking time in order to delay the execution of the decree. In the absence of any findings on this aspect, this Court is of the opinion that the Court below was not justified in rejecting the application of the petitioner, especially, when during the interim period he had deposited the remaining balance amount of the Court-

CR No.1693 of 2014

[6]

fee. The Court below should have considered this aspect of the matter, considering that the delay in clearing the deficiency of the amount was only five months.”

In view of the aforesaid discussion, the present revision petition is found to be meritorious and hence, the same is hereby allowed and the impugned order is hereby set aside.

February 18, 2015
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(Rakesh Kumar Jain)
Judge