IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 2920 of 2015 (O&M)
Date of decision: 30.4.2015

Sucha Singh

.. Petitioner

v.

Nand Lal

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Arvinder Singh, Advocate for the petitioner.

...

Rajesh Bindal J.

1. The petitioner-judgment debtor has filed the present petition impugning the order dated 27.3.2015, passed by the learned executing court, dismissing the application filed by the petitioner under Section 28 of the Specific Relief Act, 1963 (for short, 'the Act').

2. Briefly, the facts are that the petitioner entered into an agreement to sell with the respondent on 28.12.2006 for sale of the land, measuring 14 kanals 4 marlas, @ ₹ 8,00,000/- per killa. The last date for execution of the sale deed was fixed as 8.5.2007. After execution of the agreement to sell, on different occasions, the petitioner received part payments from the respondent and total amount received before the registration of the sale deed was ₹ 4,20,000/-. The petitioner having failed to get the sale deed registered, the respondent filed a suit for possession by way of specific performance of agreement to sell on 15.6.2007. The same was decreed by the trial court vide judgment dated 22.7.2011. It was directed that the petitioner will execute the sale deed and deliver possession to him within a period of 2 months after receiving the balance sale consideration, failing which the respondent-plaintiff could get the sale deed

executed and take possession of the suit land by filing execution. The petitioner, being aggrieved against the judgment and decree of the trial court, filed appeal, which was dismissed by the learned lower appellate court vide judgment and decree dated 14.1.2012. The judgment and decree of the learned lower appellate court was challenged by the petitioner by filing RSA No. 2364 of 2012, which was dismissed by this court vide order dated 27.10.2014. On 16.4.2012, the respondent filed application seeking permission to deposit the balance sale consideration, which was permitted and the amount was deposited on the same date. Thereafter, he filed application under Order 21 Rule 32 CPC for implementing the judgment and decree. In the aforesaid application, the petitioner filed application under Section 28 (1) of the Act for rescinding the contract because the decree-holder failed to deposit the balance sale consideration within the period granted and further failed to seek extension thereof. The same was dismissed by the court below vide impugned order.

3. Learned counsel for the petitioner submitted that in the judgment and decree passed by the trial court on 22.7.2011, two months' time was granted for deposit of the balance sale consideration, however, the same was deposited by the respondent-decree holder on 16.4.2012 without there being any application seeking extension of time. In the absence thereof, in terms of the provisions of Section 28 (1) of the Act, the contract was liable to be rescinded and the decree had become unexecutable. The court below was wrong in observing that there was no time fixed by the court for deposit of the amount. However, he did not dispute the fact that during the pendency of appeal before the first appellate court, there was interim stay.

4. After hearing learned counsel for the petitioner, I do not find any merit in the submissions made. The basic fact, namely, that the petitioner entered into an agreement to sell for sale of the property on 28.12.2006 is not in dispute. The last date for registration of the sale deed was 8.5.2007. The petitioner having failed to get the sale deed registered, suit for possession by way of specific performance of agreement to sell was filed by the respondent-decree holder on 15.6.2007. The same was decreed

by the trial court. The operative part of the judgment is extracted below:

> "Keeping in view of my findings on the above issues, the suit of the plaintiff is decreed with costs for possession by way of specific performance of the agreement dated 28.12.2006 with a direction to the defendant to execute a sale deed in favour of the plaintiff of suit land and further to deliver its possession to him, within a period of two months after receiving the balance sale consideration, failing which the plaintiff can get the sale deed executed and to take possession of the suit land through execution proceedings."

5. The petitioner preferred appeal against the judgment and decree of the trial court. The appeal was filed on 18.8.2011. It was not disputed that during the pendency of appeal, there was interim stay. The appeal was dismissed on 14.1.2012. Immediately thereafter, the respondent filed application before the court below on 16.4.2012 seeking permission to deposit the balance sale consideration, which was granted. The amount was deposited on the same day. After deposit of the amount, the respondent filed application under Order 21 Rule 32 CPC for implementing the judgment and decree of the trial court. In reply dated 4.8.2012 to the aforesaid application, the petitioner stated that the judgment and decree of the lower appellate court has been challenged before this court, hence, till the final disposal by this court, the judgment and decree dated 22.7.2011 should be stayed. Thereafter the application filed by the respondent-decree holder under Order 21 Rule 32 CPC remained pending. RSA No. 2364 of 2012 filed by the petitioner was dismissed by this court on 27.10.2014. Thereafter, application dated 4.3.2015 was filed by the petitioner under Section 28 of the Act on the plea that the trial court in the decree dated 22.7.2011 had granted two months' time for deposit of the amount. The same was deposited approximately 9 months thereafter without there being any application for extension of time, hence, the relief granted to the respondent had become infructuous and the agreement to sell deserved to be rescinded. A perusal of the reply to the application filed by the petitioner shows that objections filed by the petitioner to the execution were dismissed

by the court on 3.1.2015 and the respondent was directed to submit the draft sale deed. The order has not been placed on record by the petitioner. This shows that the petitioner was trying to make all efforts to stall execution of the decree passed against him. The conduct of the petitioner was even commented upon by this court while dismissing the appeal filed by him in the following terms:

> "Rather the defendant has not come to the court with clean hands. Firstly, on account of the fact that after admission of the agreement to sell, denial to a particular occasion has been made and secondly by way of filing application for additional evidence, the entire agreement to sell was sought to be denied on some afterthought grounds for which separate proceedings could have been initiated by the defendant."

6. Section 28 of the Act specifically provides that even if there is some time granted by the court for payment of the balance sale consideration in a decree for specific performance, the time can be extended. Only on failure to comply with the same, an application under Section 28 of the Act is maintainable on behalf of the judgment debtor to seek rescinding of the contract. In the facts of the case, in my opinion, the petitioner cannot take shelter of the provisions of Section 28 of the Act.

7. The issue regarding enlargement of time under Section 148 CPC was considered by Hon'ble the Supreme Court in *D.V. Paul v. Manisha Lalwani, 2010 (4) RCR (Civil) 190,* wherein it has been opined that the court has discretion from time to time to enlarge the time even if the time originally fixed or granted had expired. While referring to judgment of Hon'ble the Supreme Court in *Salem Advocate Bar Association, T.N. v. Union of India, 2005 (6) SCC 344,* it was opined that even extension beyond 30 days is also permissible in case the required act could not be performed by a party within that period for the reasons beyond his control, as the period so prescribed is not like the period prescribed under the provisions of the Limitation Act. Relevant paras of the judgment are extracted below:-

> "16. In so far as the first aspect is concerned Section 148 of the CPC, in our opinion, clearly reserves in favour of the Court the

power to enlarge the time required for doing an act prescribed or allowed by the Code of Civil Procedure. Section 148 of the Code may at this stage be extracted:-

> **"148. Enlargement of time.**
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> 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 [not exceeding thirty days in total], even though the period originally fixed or granted may have expired."

17. A plain reading of the above would show that when any period or time is granted by the Court for doing any act, the Court has the discretion from time to time to enlarge such period even if the time originally fixed or granted by the Court has expired. It is evident from the language employed in the provisions that the power given to the Court is discretionary and intended to be exercised only to meet the ends of justice. Several decisions of this Court have explained the ambit and scope of the powers exercisable under Section 148 of the CPC. In **Mahanth Ram Das v. Ganga Das, 1961 (3) SCR 763,** this Court observed:

> "Section 148 of the Code, in terms, allows extension of time, even if the original period fixed has expired, and Section 149 is equally liberal. A fortiori, those sections could be invoked by the applicant, when the time had not actually expired. That the application was filed in the vacation when a Division Bench was not sitting should have been considered in dealing with it even on 13.7.1954, when it was actually heard. The order, though passed after the expiry of the time fixed by the original judgment, would have operated from 8.7.1954. 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 terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop 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 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."

18. To the same effect is the decision of this Court in Chinnamarkathian v. Ayyavoo, 1982 (1) SCC 159, where this Court declared that the scope and exercise of the jurisdiction to grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. The Court also called in the principle of equity when circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the Court retains itself the jurisdiction to re-examine the alteration or modification which may necessitate extension of time. The following passage from the decision is apposite:

> "It is well accepted principle statutorily recognized in Section 148 of the Code of Civil Procedure that where a

> period is fixed or granted by the Court for doing any act prescribed or allowed by the Code, the Court may in its discretion from time to time enlarge such period even though the period originally fixed or granted may expire. If a Court in exercise of the jurisdiction can grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. Passing a composite order would be acting in disregard of the jurisdiction in that while granting time simultaneously the Court denies to itself the jurisdiction to extend time. The principle of equity is that when some circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the Court retains to itself the jurisdiction to re-examine the alteration or modification of circumstances which may necessitate extension of time. If the Court by its own act denies itself the jurisdiction to do so, it would be denying to itself the jurisdiction which in the absence of a negative provision, it undoubtedly enjoys."

19. Reference may also be made to the decisions of this Court in **Jogdhayan v. Babu Ram, 1983 (1) SCC 26, Johri Singh v. Sukh Pal Singh, 1989 (4) SCC 403 and Ganesh Prasad Sah Kesari v. Lakshmi Narayan Gupta, 1985 (3) SCC 53.**

20. In **Salem Advocate Bar Association, T.N. v. Union of India, 2005 (6) SCC 344**, this Court had an occasion to examine whether the restriction placed by the amendment of Section 148 on the power of the Court to grant extension of time beyond 30 days was reasonable. This Court held that a power that is inherent in the Court to pass orders that it considers necessary for meeting the ends of justice and preventing abuse of the process of the Court cannot be taken

away by putting an upper limit on the period for which an extension can be granted. Extension beyond the maximum period of 30 days was accordingly held permissible in the following words:

> "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 is 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."

21. It is not in the light of the above decisions open to the respondent to argue that a Court can fix time for the doing of an act like making of deposit, in the instant case, but has no jurisdiction to extend the said period even when a case for such extension is clearly made out. The power to fix the time for doing of an act must in our opinion carry with it the power to

> extend such period, depending upon whether the party in default makes out a case to the satisfaction of the Court who has fixed the time. There is nothing in Section 148 of the CPC or in any other provisions of the code to suggest that such a power of extension of time cannot be exercised in a case like one at hand. The argument that the power to extend time cannot be exercised where the act in question is stipulated in a conditional decree has not impressed us. We see no reason to draw a distinction depending on whether the prayer for extension is in regard to a conditional order or a conditional decree. The heart of the matter is that where the Court has the power to fix time and that power is not regulated by any statutory limits, it has in appropriate cases the power to extend the time fixed by it. It is common ground that neither the CPC nor the provisions of M.P. Accommodation Control Act places any limitation on the power of the Court in like the one in hand."
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> (emphasis supplied).

8. To similar effect are the judgments of this Court in ***Hukam and others v. Manga and another**, 2004(1) RCR (Civil) 422* and ***Gram Panchayat Sahupura v. Panna Lal and others**, 2010(2) RCR (Civil) 88.*

9. From a perusal of the aforesaid judgments, it is clear that the Court has ample power to enlarge time fixed for doing any act even if the time originally fixed or granted had expired. The power has been conferred to be exercised to meet the ends of justice. Even after amendment in Section 148 CPC, placing a limit of 30 days for extension of time, the Court still has power to extent the period beyond that if cause is made out. Even in the cases where the time has been stipulated in a conditional decree, the power of the Court to extend is not taken away. The crux is that where the Court has power to fix time and that power is not regulated by any statutory limits such as the Limitation Act, it has power to extend the same.

10. Further, the petitioner filed RSA No. 2364 of 2012 in this court on 18.4.2012. Prior to that, the respondent had already deposited the balance sale consideration after permission. The execution proceedings

remained pending as the records of the courts below had been summoned by this court on 7.8.2012. The aforesaid appeal was dismissed on 27.10.2014. Thereafter, the execution proceedings proceeded further.

11. In view of my aforesaid discussion, I do not find any error in the order passed by the court below. The petition is, accordingly, dismissed.

(Rajesh Bindal)
Judge

30.4.2015
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