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

CR No. 3925 of 2013 (O&M)

Date of decision : 17.3.2015

Harcharan Singh .. Petitioner

versus

Pushpa Devi and others .. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Ajay Chaudhary, Advocate for
Mr. Vijay Guleria, Advocate, for the petitioner.
Mr. R. S. Mamli, Advocate, for the respondents.

Rajesh Bindal, J.

1. The petitioner/ decree-holder has approached this Court impugning the order dated 7.5.2013 (Annexure P-4) passed by the learned Court below vide which his application for extension of time for deposit of Court fee was dismissed.

2. Learned counsel for the petitioner submitted that the petitioner filed a suit for setting aside the sale-deed dated 23.3.2006 being a fraudulent document. The learned Trial Court decreed the suit on 18.5.2011. The petitioner was directed to value the suit for the purpose of Court fee and jurisdiction on the basis of valuation of land as per Circle rates on the date of institution of the suit and pay the Court fee within 30 days. The defendants in the suit being not aggrieved against the judgment and decree did not challenge the decree of the trial court. As the court fee could not be deposited within the period permitted by the Court, application for extension of time was filed on 24.8.2011, which was dismissed by the learned Court below vide impugned order.

3. Assailing the order, learned counsel for the petitioner submitted that in view of the judgment of Hon'ble the Supreme Court in *D. V. Paul vs Manisha Lalwani* 2010 (4) RCR (Civil) 190, and judgments of this Court in *Hukam and others vs Manga and another* 2004 (1) RCR (Civil) 422 and *Gram Panchayat Sahupura vs Panna Lal and others* 2010 (2) RCR (Civil) 88, the Court has ample power to enlarge the time granted for deposit of

Court fee or for compliance of any direction. It can even be beyond the period of 30 days. Merely on technical grounds where the petitioner on account of some reasons could not deposit the Court fee within 30 days but file application for extension of time should not be deprived of the fruits of the decree.

4. On the other hand, learned counsel for the respondents, while referring to the judgments of this Court in *Smt. Parmeshri vs Naurata* 1984 PLR 591 and *Salwant Singh vs Harinderpal Singh and others* 2014 (4) PLR 44, submitted that time granted by the Court cannot be extended especially if the same is part of the decree. Even as per Section 148 CPC extension cannot be granted beyond a period of 30 days. In the application for extension of time filed by the petitioner no reason has been mentioned to justify non-deposit of Court fee within the time granted by the Court. The judgments referred to by learned counsel for the petitioner are not applicable to the facts and circumstances of the case. As the petitioner did not deposit the Court fee in time, the respondents also did not prefer any appeal against the judgment and decree of the trial Court, a valuable right has accrued in their favour which should not be disturbed.

5. Heard learned counsel for the parties and perused the paper book.

6. The issue under consideration in the present petition is as to whether the Court can enlarge the time granted for payment of court fee and that too beyond a period of 30 days?

7. The issue regarding enlargement of time under Section 148 CPC was considered by Hon'ble the Supreme Court in *D. V. Paul*'s case (supra), 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.**
>
> 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. <u>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.</u> 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." (emphasis supplied).

8. To similar effect are the judgments of this Court in *<u>Hukam's</u>* and *<u>Gram Panchayat Sahupura's</u>* cases (supra).

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. In the case in hand, decree was passed in favour of the petitioner on 18.5.2011 subject to payment of court fee within a period of 30 days. The application for extension of time was filed on 24.8.2011, which was dismissed by the Court below on 7.5.2013. The reason assigned was that the Court had granted 30 days time for deposit of Court fee. The Court closed for summer vacations on 15.6.2011. The application seeking extension of time was filed on 24.8.2011 after obtaining certified copy of judgment and decree on 5.8.2011. As it was merely deposit of Court fee, in my opinion, the reason assigned is satisfactory on the basis of which the petitioner deserves extension in time for deposit of Court fee with a view to meet the ends of justice.

11. The judgments of this Court relied upon by learned counsel for the respondents in *Smt. Parmeshri* and *Salwant Singh'* s cases (supra), are not relevant in the light of authoritative enunciation of law by Hon'ble the Supreme Court in *D. V. Paul*'s case (supra). Even the plea raised by counsel for the respondents that the respondents did not file appeal as the petitioner had not deposited the Court fee in time, is merely to be noticed and rejected. Deposit of court fee was not one of the condition precedent to be considered by the respondents to exercise their right of appeal in case they were aggrieved of the judgment and decree of the trial Court.

12. For the reasons mentioned above, the impugned order passed by the learned Court below is set aside. The application filed by the petitioner for extension in time for deposit of Court fee is accepted. He is granted 30 days time for deposit of Court fee from the date of receipt of copy of the order.

13. The petition stands disposed of.

17.3.2015 (Rajesh Bindal)
vs Judge

(Refer to Reporter)