

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 4102 of 2015(O&M)
Date of decision: 24.7.2015

Ex. HC Rakesh Kumar

.. Petitioner

v.

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

**Present: Mr. Kamaldip Singh Sidhu, Advocate for the petitioner.
Mr. P. S. Bajwa, Deputy Advocate General, Punjab.**

...

Rajesh Bindal J.

The petitioner has filed the present petition impugning the order dated 26.2.2015, passed by the learned court below, whereby the application filed by the petitioner for restoration of the appeal, which was dismissed as time-barred on 17.11.2014, was dismissed.

Learned counsel for the petitioner submitted that the petitioner filed a suit challenging the order passed by the Authorities, whereby he was removed from service invoking the provisions of Article 311(2)(b) of the Constitution of India. The suit was dismissed by the trial court vide judgment and decree dated 11.3.2014. Against the judgment and decree of the learned trial court, the petitioner preferred appeal before the lower appellate court, which was delayed by one day. The delay was condoned vide order dated 28.5.2014 subject to payment of ₹ 500/- as cost. As the

amount of cost could not be deposited, the appeal was ordered to be dismissed as time-barred on 17.11.2014. The application was filed for restoration of the appeal on the plea that the order passed by the court condoning the delay in filing the appeal subject to payment of cost could not be conveyed to the petitioner, hence, the cost could not be deposited in time. The restoration application was dismissed by the court below vide impugned order dated 26.2.2015 opining that the court does not have the power to enlarge the time in view of the bar provided in Section 148 CPC. The submission is that the view expressed by the court below is contrary to the law laid down by Hon'ble the Supreme Court in Salem Advocate Bar Association, T. N. v. Union of India, (2005) 6 SCC 344.

On the other hand, learned counsel for the State submitted that once the petitioner had not complied with the condition laid down in the order passed for condoning the delay in filing the appeal, the appeal was rightly dismissed as time-barred and the order was rightly not re-called by the court below.

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

The facts of the case in hand are that application seeking condonation of delay in filing the appeal was allowed by the court below vide order dated 28.5.2014 subject to deposit of ₹ 500/- as cost. The cost was to be deposited with District Legal Services Authority. The next date of hearing was fixed as 25.9.2014 and thereafter on 17.11.2014. On account of non-deposit of cost, the appeal was dismissed as time-barred. The application was filed seeking re-calling of the order taking the plea that the counsel inadvertently could not inform the petitioner about the condition imposed in the order condoning delay in filing the appeal. On 17.11.2014, when the counsel came to know about this fact, he immediately called the petitioner, however, he could not come to the court as he was at Gurdaspur and the matter was listed in the court at Amritsar. The application for re-calling the order was dismissed by the court below. The reason assigned by the court below for dismissing the application filed by the petitioner was that in view of the amendment carried out in Section 148 CPC, effective

from 1.7.2002, the court cannot enlarge the time beyond a period of 30 days. The reason assigned is totally erroneous, if considered in the light of various judgments of Hon'ble the Supreme Court.

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.'s case (supra), 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. 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.” *[Emphasis supplied]*

To similar effect are the judgments of this Court in Hukam and others v. Manga and another, 2004(1) RCR (Civil) 422; Gram Panchayat \Sahupura v. Panna Lal and others, 2010(2) RCR (Civil) 88 and Civil Revision No. 3925 of 2013—Harcharan Singh v. Pushpa Devi and others, decided on 17.3.2015.

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 extend 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.

In the case in hand, as stated by learned counsel for the petitioner, there was delay of merely one day in filing the appeal. The same was condoned subject to deposit of ₹ 500/- as cost with District Legal Services Authority. The reason assigned for non-compliance of the order within the time permitted is that the counsel inadvertently could not inform the petitioner of the conditional order. The same seems to be justifiable. The matter is pending in the court at Amritsar. The petitioner is resident of village Sahawal, District Gurdaspur. The issue raised in the appeal is regarding removal of the petitioner from service. As the court had the power to extend the time further, in my opinion, in the facts and circumstances of the case in hand, the power should have been exercised to do substantial justice as against technicalities.

For the reasons mentioned above, the present petition is allowed. The impugned order dated 26.2.2015, passed by the learned court below, is set aside. The order dated 17.11.2014 dismissing the appeal as time-barred on account of non-deposit of the cost imposed within the time permitted is also set aside, subject to the condition that the petitioner will

now deposit the cost upto 31.8.2014. The petitioner shall appear before the learned District Judge, Amritsar for further proceedings in the appeal on 4.9.2015.

(Rajesh Bindal)
Judge

24.7.2015
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(Refer to Reporter)