

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4162 of 2012(O&M)
Date of decision: 08.09.2015

Mahender Ram

... Petitioner

Versus

Sardul Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. PS Jammu, Advocate for the petitioner.
Mr. Sanjeev Gupta, Advocate for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Vide order being assailed dated 04.11.2009, rendered by Civil Judge (Jr. Divn.), Sirsa, the application moved by the petitioner, under Section 148 of Civil Procedure Code, seeking extension of time to deposit the balance sale consideration, in terms of the judgment and decree dated 27.11.2006, has since been declined.

In an application moved by the petitioner-plaintiff, it was maintained that the suit filed by him was decreed by the trial court on 27.11.2006, and he was directed to deposit the balance sale consideration within 15 days, failing which suit of the petitioner-plaintiff shall stand dismissed. Plaintiff happened to be an illiterate person and when the matter was

pronounced in the court, it was only heard by the clerk of his counsel. Petitioner-plaintiff was never informed of the fate of his suit or the decree passed in his favour. However, subsequently his counsel apprised him of the judgment dated 27.11.2006. Therefore, non-deposit of balance sale consideration was a bona fide mistake on the part of the petitioner.

In response, it was pleaded, inter alia, that the decree passed by the trial court on 27.11.2006 was conditional in nature and thus, prayer for extension of time cannot be granted.

On a consideration of the matter in issue, the trial court declined the prayer and concluded as thus:

“It is pertinent to mention here that section 148 of the provides for enlargement of time where any period is led on granted by the court for the doing of any act prescribed or allowed by this code, the court may, in its direction, from time to time, enlarge such period, even though the period originally fixed or granted may have expired. In the circumstances of the present case, wherein applicant is seeking enlargement of time, he has come up with a plea that he was not informed rightly by the clerk of his counsel about this time given by the court. However, in support of the application there is no such affidavit either of the applicant or of the clerk of the counsel. Mere averments in the applicant are not sufficient enough to believe in such a plea of the applicant.

Further more, the applicant is also seeking review of the judgment which is not at all permissible under section 148 of CPC. Though during the course of arguments it has been contended by the learned counsel for the applicant that for the mere fact that the specific provision is not written the relief cannot be dined to his client. Admittedly for want of specific provision a party cannot be denied such relief which should be made available to him. But in the facts and circumstances of the case in hand wherein applicant is not coming forward with specific pleadings and there is not affidavit in support of the application, mere assertion on the part of the applicant that he was ignorant about the decision of the court or the time granted to him, is not sufficient enough to prove this fact. Consequently there is no merit in the applicant and as such is hereby dismissed.”

I have heard learned counsel for the parties and perused the paper book.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the revision petition is wholly devoid of merit and is thus liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, the decree dated 27.11.2006, reads as thus:

“Suit of the plaintiff succeeds and the same is hereby decreed with costs. The defendant is directed to get the decreed with costs. The defendant is directed to get the sale deed of the suit and executed within a period of two months

from the passing of this judgment. The plaintiff shall also deposit the remaining sale consideration in some nationalized bank under the receipt within a period of 15 days, failing which the suit of the plaintiff shall be deemed to be dismissed.”

Ex facie, the decree dated 27.11.2006 was conditional in nature and since the petitioner failed to deposit the balance sale consideration within the stipulated time, his suit stood dismissed in terms of the said decree. This court, in Resham Singh and others v. Manmohan Singh Kent and others [CR-3271-1982, decided on 30.01.1985], reported as 1985(1) PLR 278, while considering the scope of extension of time under Section 148 of Code of Civil Procedure vis-à-vis the conditional decree, concluded as thus:

“4. I have heard the learned counsel for the parties and have also gone through the case law cited at the bar. Such a matter was considered by this Court in Smt. Sarupi’s case (supra). It has been observed in para 6 there that “the case may be different when the Court records a direction in the decree for specific performance that in the event of default of deposit of the purchase money within the prescribed time, the suit shall stand dismissed. In such a case, it would be deemed that the Court has also, in substance, passed the order of rescission of contract as contemplated by the concluding portion of sub-section (1) of Section 28 of the Specific Relief Act. It is in the case of such a decree that the Court may not, when the purchase money has not been deposited by the successful plaintiff within the prescribed time, be competent to extend

the time for its deposit.” The matter has also been considered in Smt. Parmeshri’s case (supra) where it was observed that under the provisions of Section 148, Civil Procedure Code, the Court has powers to extend the time when it applies to the procedural orders and not to conditional decrees. Similarly, in Bokaro’s case (supra) it was held: that

“Where a decree is passed on condition that if a certain sum of money be put in within a specified time, the suit would stand decreed and in default thereof the suit would stand dismissed, after the expiry of the time limited by the decree, the Court loses seisin over the matter and cannot extend the time.”

Learned counsel for the petitioner could not cite any decision to the contrary. Concededly, after the trial court declined the prayer of the petitioner vide order under challenge, he preferred an appeal against the original decree dated 27.11.2006. The said appeal i.e. Civil Appeal No.169 of 2009 was dismissed on 04.02.2012 being barred by time. It is not disputed that the judgment rendered in the said appeal was never assailed any further and the same has since attained finality. It was post dismissal of the said appeal on 04.02.2012, petitioner then chose to file the present revision assailing the order dated 04.11.2009 i.e. after almost 3 years. Be that as it may.

Learned counsel for the petitioner could not point out as to how the conclusion arrived at by the trial court was either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as sketched out above, no interference is warranted, in exercise of revisional jurisdiction under Section 115 of Civil Procedure Code. Petition being devoid of merit is accordingly dismissed.

September 8, 2015
Rajan

(Arun Palli)
Judge