

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

**CR No.3018 of 2015 (O&M)
Decided on: 02.03.2016**

Raminder Bakshi		Petitioner
	Versus	
Naresh Kumar Arora		Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Bharat Bir Singh Sobti, Advocate
for the petitioner.

REKHA MITTAL J. (Oral)

The present petition lays challenge to the order dated 03.03.2015 (Annexure P-1) passed by the Civil Judge (Junior Division) SAS Nagar, Mohali whereby application filed by the respondent under Section 148 read with Section 151 of the Code of Civil Procedure (in short 'CPC') in regard to extension of time for depositing the balance sale consideration was allowed.

A brief backdrop of the case is that the respondent filed a suit for specific performance of an agreement to sell *qua* share of the petitioner in the property bearing No.1696, Phase 3-B2, Mohali. The suit was decreed by the Additional Civil Judge (Senior Division), Mohali vide judgment and decree dated 22.03.2011 and the respondent was directed to deposit balance sale consideration of Rs.4,90,000/- within a period of one month from the date of judgment. The respondent did not make deposit within the stipulated period rather filed an application dated 03.05.2011 seeking extension of time for permitting him to deposit balance

sale consideration in compliance with the decree that has been allowed by the Court below by placing reliance upon judgment of this Court "*Harbans Singh Grewal vs Puran Singh (deceased) by his LRs*", 1990(2) PLR 267.

As per the allegations in the application filed by the respondent/decreed-holder, he did not have knowledge of the direction issued by the Court *qua* deposit of balance sale consideration within a period of one month. On 01.05.2011, Clerk of his counsel met him (decree-holder) in the market and informed him that the suit has been decreed but did not inform about any such condition of deposit. On 02.05.2011, a copy of the judgment was collected from the Clerk and he came to know about the direction in regard to deposit of the balance sale consideration. He expressed his willingness to pay balance sale consideration along with interest @ 9% per annum from the due date till deposit.

Counsel for the petitioner has submitted that the application filed by the respondent in May, 2011 has been decided by the Court below after about 4 years of filing of the application. As the respondent failed to comply with the judgment and decree passed by the trial Court by deposit of balance sale consideration, suit filed by the respondent in which he obtained an *ex parte* decree is liable to be dismissed. The provisions of Section 148 CPC permits extension of time upto a maximum period of 30 days but in

the present case, extension has been allowed upto March, 2015. In support of his contentions, he has referred to judgment of the Hon'ble Supreme Court of India “**Rajinder Kumar vs Shri Kuldeep Singh and others**”, 2014(2) Civil Court Cases 184. He has relied upon judgments of this Court “**Salwant Singh vs Harinderpal Singh and others**”, 2014(4) PLR 44, “**Resham Singh and others vs Manmohan Singh Kent and others**”, 1985(1) PLR 278, “**Smt. Parmeshri vs Naurata**”, 1984 PLR 591 and judgment of the Rajasthan High Court “**Bakhtawar Singh vs Mst. Inder Kaur**”, 2014 (Supplement) Civil Court Cases 810.

I have heard counsel for the petitioner, perused the records, judgments cited at bar and the judgment relied upon by the trial Court in **Harbans Singh's case (supra)**.

Before advertng to the factual controversy involved for adjudication, it would be appropriate to deal with the judgments cited by counsel for the petitioner. In **Rajinder Kumar's case (supra)** decided by Hon'ble the Apex Court, it has been held that in a contract where no time was fixed for payment, the purchaser was obliged to pay the purchase money within a reasonable time. The judgment does not deal with the provisions of Section 148 CPC, relevant in the context. Therefore, any observations made therein have got no bearing on the case at hand.

In **Salwant Singh's case (supra)** this Court dealt with

an issue of extension of time in a case in which the direction was issued by the trial Judge to deposit the balance amount within one month with consequence of failure recorded in the judgment being a conditional decree. However, in the present case, the trial Court did not make an order as to the consequences which would ensue on failure of the decree-holder to deposit the balance sale consideration, therefore, neither the decree is a conditional one nor the judgment in *Salwant Singh's case (supra)* can be made applicable to the case at hand. This apart, in the referred authority, the plaintiff was directed to deposit balance sale consideration within a period of one month from the date of *ex parte* decree but he filed an application for grant of extension of time to make deposit after a period of 6 years. Conversely, in the present case, the application was filed just within 10 days from the expiry of stipulated period of one month.

In *Resham Singh and others case (supra)* the decree passed in favour of the petitioners was a conditional decree and as the petitioners failed to deposit sale money by a specified date, their application for extension of time for depositing sale money was declined by the Executing Court holding that it had no jurisdiction to extend time and cannot go beyond the decree. The order passed by the Executing Court was upheld by this Court with the observations that since the amount was not deposited within the time allowed according to the terms of the decree, the suit stood

dismissed automatically and, therefore, the Executing Court could not execute the decree. It was further held that to extend the time for depositing the sale price now will be varying the decree of the trial Court which could not be done as the Court has become *functus officio* after passing the said decree. As has been noticed hereinbefore, the decree in the present case is not a conditional decree which contained a simpliciter direction to the plaintiff to deposit the balance sale consideration upto a particular period of time.

Similarly, in *Smt. Parmeshri's case (supra)* the decree was a conditional decree and in those circumstances, the Court held that delay in the present case cannot be condoned under Section 148 CPC.

On the other hand, the learned trial Court has relied upon judgment of this Court in *Harbans Singh Grewal's case (supra)* wherein this Court after taking into consideration the judgments of this Court in *Smt. Parmesari's case (supra)* and *Resham Singh's case (supra)*, judgment of the Patna High Court in “*Suraj Singh vs Rajnarain Lal and another*”, AIR 1984 Patna 155 came to hold that the trial Court was fully justified in extending the time for depositing Rs.10,000/- as expense for execution of the sale deed with the observations that at no stage, the judgment-debtor moved the Court under Section 28 of the Specific Relief Act for rescinding the contract for sale on account

of non-payment of the sale consideration or the sale expenses. The Court having granted time for deposit of balance sale consideration and expenses for the sale deed within a specific period could order to extend the period while exercising powers under Section 148 CPC. Furthermore, there was no direction in the decree that on failure to deposit the balance of the sale consideration of Rs.36,000/- or a sum of Rs.10,000/- towards expenses, the suit of the plaintiff was to be dismissed. In the absence of any such directions, time granted in the decree could be extended having resort to the provisions of Section 148 CPC. It was further noticed by the Court that in a such like matter, Division Bench of the Patna High Court in *Suraj Singh's case (supra)* has held that power of the Court under Section 148 CPC would be there to extend the time granted in the decree when there was nothing in the decree that non-payment of the amount within the time allowed would result in dismissal of the suit. When the facts and circumstances of the present case are examined in the light of ratio laid down in *Harbans Singh's case (supra)*, I find myself unable to subscribe to the submissions made by counsel for the petitioner that the impugned order either suffers from any illegality or the same is perverse much less absurd. I would hasten to add that the application for seeking extension of time was filed by the respondent within a short span of 10 days of the time fixed for deposit with a justifiable explanation that he did not come to know

about the condition in regard to deposit rendering him unable to comply with the direction within the stipulated period. As far as my personal experience goes, many a times, the trial Court pronounces the judgment but the conditions imposed therein are not informed to the parties at that time. Under these circumstances, I do not find anything un-natural that the respondent did not get to know about condition of deposit thus rendered hapless to comply with the said condition within the stipulated period.

Counsel for the petitioner has submitted that Section 148 CPC empowers the Court to extend time upto maximum period of 30 days. The respondent cannot be accused much less put to disadvantage for delay in disposal of the application or non-issuance of interim directions *qua* deposit. This apart, once the application filed by the respondent has been allowed, the same would relate back to the date of application, filed just 10 days of expiry of the stipulated period. Analyzed from any angle, I do not find any error much less illegality in the impugned order as would justify intervention.

For the foregoing reasons, the petition is dismissed but without prejudice to rights of the parties in proceedings, if any, for getting the *ex parte* judgment and decree set-aside.

(REKHA MITTAL)
JUDGE

02.03.2016
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