

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

**RA-CW-285-2015 in
CWP No. 17582 of 1999
Date of decision: 22.12.2017**

Jagan Nath (deceased) through his LRs

...Petitioner

Versus

The Market Committee, Panipat & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE S. J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. Arun Jindal, Advocate
for the applicant-petitioner.

Mr. Vishal Garg, Advocate
for the respondents.

JAISHREE THAKUR, J.

CM-7941-CWP-2015

This is an application, filed under Section 5 of the Limitation Act,
for condoning the delay of 216 days in filing the review application.

For the reasons mentioned in the application, the same is allowed
and the delay of 216 days in filing the review application is hereby condoned.

**RA-CW-285-2015 in
CWP No. 17582 of 1999**

This is an application, filed under Order 47 Rule 1 read with
Section 114 CPC, for review of the order dated 30.10.2014 passed by this
Court in *CWP No. 17582 of 1999* titled as *Jagan Nath vs. The Market
Committee, Panipat & another.*

In brief, the facts are that the applicant-petitioner filed the

aforesaid writ petition seeking an appropriate writ, order or direction for setting aside notice dated 05.07.1999 (Annexure P-10) issued by respondent No. 2 herein as well as a writ to be issued in the nature of Mandamus directing the respondents to give physical possession of Plot No. 155, situated at New Grain Market, Panipat. It was contended that without handing over the physical possession of the plot, notice dated 05.07.1999 for non-payment of installment/construction of shop/booth could not have been issued. The writ petitioner argued that in terms of the allotment letter issued on 01.02.1999 (Annexure P-1), the petitioner had paid the first and second installments for the plot, however, physical possession was not handed over despite several requests made to them. The petitioner had also addressed a letter on 27.01.1999 (Annexure P-7) asking for demarcation and possession of the shop so that he would be in a position to start construction. It was submitted that instead of handing over the physical possession of the shop, the respondents had issued the impugned notice asking the petitioner to pay a sum of Rs. 4,41,861/- towards principal amount and for extension fee.

The writ petition was decided holding that the demand raised by the Market Committee against the extension fee and non-delivery of the shop/plot was wholly unjustified, while also holding that without handing over the physical possession of the shop, it was not possible for the allottee to start construction. While deciding the writ petition, the demand notice asking for extension fee was set aside. As the petitioner had not deposited the principal amount towards the price of the plot, the petitioner was directed to deposit the outstanding due along with interest within a period of two months of the communication of the amount payable by the petitioner. On deposit of the

amount, the respondents-authorities were directed to hand over the physical possession of the plot to the petitioner forthwith.

After the writ petition was decided, the Executive Officer-cum-Secretary, Market Committee, Panipat by letter dated 04.05.2015 (Annexure A-3) raised a demand of Rs. 55,14,237/- calculated upto 01.02.2015 as arrears payable in regard to the plot allotted to the petitioner. This calculation was disputed by the petitioner contending that the amount was on the higher side and not in consonance with the judgment rendered by this Court. However, as the Market Committee failed to re-calculate the amount, the instant review application has been filed.

Learned counsel for the petitioner contends that the amount so calculated is unsustainable as only a sum of Rs. 1,51,000/- was due towards the principal amount, whereas a demand has been made asking the petitioner to deposit Rs. 55,14,237/-. It is contended that the order dated 30.10.2014 had asked the petitioner to deposit the balance amount of “*installment due along with interest*” and under no circumstances it can be construed that the petitioner has to deposit the balance amount with compound interest @ 12.5% per annum along with penal interest @ 4% per annum.

Per contra, learned counsel for the respondents argues that a reading of the allotment letter (Annexure P-1) dated 01.02.1991 clearly specifies that “*in case of failure to deposit the installment(s) by 10th of due month, he shall be charged compound interest @ 12.5% per annum along with penal interest @ 4% per annum with installment*”. It is submitted that the petitioner herein failed to deposit the third installment and, therefore, he has rightly been charged compound interest in terms of the Clause 6 of the

allotment letter and held liable to pay a sum of Rs. 55,14,237/- as per demand raised.

We have heard learned counsel for the parties and have also perused the order dated 30.10.2014 sought to be reviewed.

Admittedly, this Court while deciding the writ petition came to a firm conclusion that physical possession of the shop had not been handed over and instead the respondents had issued a notice asking the petitioner to pay a sum of Rs. 4,41,861/- towards principal amount and extension fee. A categorical finding had also been arrived at that the respondents are bound by the terms and conditions of the allotment letter and can only demand extension fee for non-construction in case the physical possession of the plot has been handed over and, therefore, demand asking for extension fee was set aside.

A plain reading of Clause 6 of the allotment letter allows the respondents herein to charge compound interest @ 12.5% per annum along with penal interest @ 4% per annum **in case of failure** to deposit the installments by the 10th of the month. The petitioner herein had addressed a letter dated 20.07.1992 (Annexure P-4) asking for demarcation and physical possession of the plot which admittedly was not handed over to him and he had paid Rs. 1,76,953/- out of total price of Rs. 3,02,000/- and a balance amount of Rs. 1,25,047/- remained to be paid. After holding that the respondents-Market Committee had failed to hand over the physical possession of the shop/plot despite letters being addressed for the same, the petitioner had been directed to deposit the outstanding dues along with interest. Compound interest was obviously not stipulated in the judgment in view of the findings which indicate that there was no deliberate failure on the part of the petitioner in depositing

the balance amount. The respondents-Market Committee would have been justified in charging compound interest and penal interest in terms of Clause 6 of the allotment letter only if the physical possession had been handed over to the petitioner and thereafter there had been a default on his part in making the payment of balance amount.

Therefore, the instant review application is allowed to the extent that we direct the applicants-petitioners (legal heirs of petitioner Jagan Nath) to pay the outstanding principal due along with simple interest @ 12.5% per annum, as offered through letter dated 13.05.2015 (Annexure A-6) till the date of payment.

Let fresh calculations be made by the respondents in accordance with this order and communicated to the applicants-petitioners within a period of one month from today. The applicants-petitioners will pay the amount communicated by the respondents within a period of one month thereafter.

(S. J. VAZIFDAR)
CHIEF JUSTICE

22.12.2017

Waseem Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No