

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

RSA-449-1992 (O&M)

Date of Decision:-10.5.2018

Nafe Singh

...Appellant

Versus

Hazari Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Bhanu Sharma, Advocate for the appellant.

Mr. J.S. Yadav, Advocate for the respondent.

GURVINDER SINGH GILL, J.

1. Nafe Singh plaintiff has filed this appeal challenging judgment dated 20.11.1991 passed Additional District Judge, Rewari, whereby his appeal challenging order dated 6.10.1990 passed by Additional Senior Sub-Judge, Rewari declining permission to the plaintiff to deposit 1/5th of the pre-emption amount, has been dismissed.
2. It is not disputed that the plaintiff was to deposit the 1/5th of the pre-emption amount i.e. ₹ 4,000/- before 5.10.1990. The plaintiff did not deposit the said amount by the said date. On the next day i.e. on 6.10.1990, the date already fixed, the plaintiff moved an application in the Court of Additional Senior Sub-Judge, Rewari seeking permission to deposit the amount of ₹ 4,000/- stating therein that he could not deposit the said amount on 5.10.1990 as he is staying away and could not reach the Courts on account of non-availability of any mode of conveyance due to stoppage of

vehicular movement. It was further stated therein that the said default was not intentional and that he was in possession of the amount to be deposited and that he is still in possession of the said amount. A prayer was thus made seeking permission to deposit the said amount of ₹ 4,000/-.

3. The learned lower Court considered the said application on 6.10.1990 itself and dismissed the same holding therein that a valuable right had accrued to the defendant on account of lapse of the plaintiff to deposit the amount by the stipulated date. The learned lower Court further held that the pleas taken by the plaintiff justifying his inability to deposit the amount were very vague and do not inspire confidence and that in case the plaintiff was living somewhere else then he could entrust this job to some of his relatives. Aggrieved with the aforesaid order dated 6.10.1990, the plaintiff preferred an appeal, which was also dismissed by the learned Additional District Judge, Rewari on 20.11.1991, which has been challenged by way of filing the present appeal.
4. The learned counsel for the appellant has submitted that it was on account the disturbances in the entire country due to agitations on account of 'Mandal Commission' in the first week of October 1990 that the plaintiff was unable to go to the Courts to deposit the amount and that his absence was not intentional and his *bona fides* would be borne out from the fact that on the very next day he approached the Courts alongwith amount of ₹ 4,000/- for the purpose of depositing the same. The learned counsel has submitted that the trial Court as well as the lower Appellate Court did not properly appreciate the aforesaid circumstances and erroneously dismissed his application as well as appeal.

5. On the other hand, the learned counsel representing the respondent has submitted that there is nothing on record to suggest that there was any 'curfew' in the area or that the movement of traffic was absolutely frozen. The learned counsel has further submitted that the plaintiff had ample time to deposit the 1/5th of the pre-emption amount and that 5.10.1990 was the last date fixed for such deposit and that the plaintiff ought to have been careful and should have taken adequate steps to deposit the amount well in time rather than waiting for the last date. He has further submitted that in any case the same could have been deposited on 5.10.1990 itself.
6. I have considered the rival submissions addressed before this Court and have also carefully perused the record of the case.
7. It is a fact that there was disturbance all over India due to agitations on account of 'Mandal Commission' during the first week of October 1990. In fact, a judicial notice has also been taken by the learned Additional District Judge, Rewari as regards the said fact. There were various incidents of violence, damage, riots and fire during the said period. Even if it is held that there was no 'curfew' at that point of time in Rewari i.e. on 5.10.1990, still it goes without saying that due to the nation wide agitations there was an element of fear in the minds of the common people and nobody would venture out of their houses. The traffic had also come to a stand still including public transport. In these circumstances, the inability on part of the the plaintiff to deposit the said amount on 5.10.1990 cannot be said to be intentional. Rather the circumstances and conditions prevalent during those days would furnish sufficient reasons to extend the time for depositing the amount of ₹ 4,000/-.

8. In the present case, on the very next day i.e. on 6.10.1990, the date already fixed in the case, the applicant moved an application before the Court seeking permission to deposit the said amount of ₹ 4,000/-. A perusal of the application indicates that it is specifically written therein that he is ready with the amount of ₹ 4,000/-. No doubt, the judgments which were cited before the learned lower Appellate Court i.e. **Umrao Singh Vs. Dharma etc. 1972 CLJ 355** and **Mehar Mohhamed Din. Vs. Pandit Annand Rai and others, AIR 1945, Lahore 25** were distinct on facts inasmuch as in the cited cases, the amount could not be deposited in time due to certain confusion of date, but at the same time, the said judgments would atleast indicate that, in justifying circumstances, the time can be extended. As already discussed above, the disturbed conditions prevalent at that time would furnish sufficient explanation for the inability of the plaintiff to deposit the amount of ₹ 4,000/- on 5.10.1990. However his readiness and willingness is borne from the fact that on the very next day he went to the Court alongwith the amount in question.
9. In view of the aforesaid discussion, the impugned order cannot sustained and is hereby set aside. The apellant is permitted to deposit the amount in question within a period of one month from today. The needful be done thereafter, in accordance with law.

10.5.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No