

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

**RSA No.4951 of 2015(O&M)
Date of Order:25.02.2019**

Ram Kanwar

..Appellant

Versus

Satpal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harish Bhardwaj, Advocate,
for the appellant.

Mr. R.S.Malik, Advocate,
for the respondent

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court.

Plaintiff, who claims to be owner, had filed a suit for possession against his own brother while asserting that he had permitted his brother to reside in the house temporarily. It has further been pleaded that by a notice dated 01.10.2007, the licence stands revoked.

Defendant admitted that the plaintiff is owner but it was claimed that it was the defendant who had raised the construction. Defendant in the alternative pleaded that he has perfected his title by way of adverse possession.

Learned trial court on appreciation of the evidence decreed the suit filed by the plaintiff, however, subject to payment of court fee as per the Court Fees Act, 1870.

Before the first appellate court, defendant filed the appeal

whereas plaintiff-appellant filed cross-objections. Learned first appellate court affirmed the findings of the learned trial court with regard to plaintiff being owner and entitled to possession of the house in question. However, the first appellate court held that since the plaintiff has failed to deposit the court fee as directed by the learned trial court within 30 days, therefore, the suit filed by the plaintiff is liable to be dismissed.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments and decrees passed by the courts below and the record.

Learned counsel for the appellant, at the outset, has submitted that the plaintiff-appellant is ready to deposit the court fee within one month. He submitted that, although, the court fee is not payable as the suit filed by the plaintiff was against his brother after revocation of the licence. However, without going into the aforesaid controversy, he has instructions that the plaintiff is ready to deposit the court fee.

On the other hand, learned counsel for the respondent has submitted that the payment had to be made within 30 days and there cannot be any enlargement of time beyond the period of 30 days as provided in Section 148 of the Code of Civil Procedure. He has also relied upon a judgment of the Hon'ble Supreme Court passed in **Nashik Municipal Corporation vs. M/s R.M.Bhandari and another, (2016)6 SCC, 245.**

This court has analysed the arguments of learned counsels and gone through the aforesaid judgment referred to by learned counsel for the respondent.

It is apparent from the reading of the aforesaid judgment that the power to enlarge time does exist and the outer limited for making up the

deficiency in Court fee is not circumscribed by Section 148 of the Code of Civil Procedure. In the aforesaid judgment passed, the Hon'ble Supreme Court has held that the discretion to enlarge time is with the Court, however, such discretion is to be exercised for valid reasons.

As noticed above, the plaintiff-appellant claims that defendant was only a licensee and after termination of license defendant is bound to surrender back the possession. In such circumstances, even suit for mandatory injunction in which *ad valorem* Court fee is not payable could very well be maintained. Still further, plaintiff-appellant is owner of the property. The defendant-respondent also admits that the plot in question is owned by the plaintiff. He only claims that he was permitted to raise construction. Both the Courts have found that the defendant has failed to prove those facts. In such circumstances, the plaintiff, who is entitled to possession being owner cannot be deprived of the property only because he could not deposit the court fee within the time prescribed.

Keeping in view the aforesaid facts, the judgment and decree passed by learned first appellate court is set aside subject to plaintiff-appellant depositing the court fee as directed by the learned trial court within one month from the date of receipt of a certified copy of this judgment.

The regular second appeal is allowed.

February 25, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No