

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

RSA No.3497 of 2013

Date of decision: 25th February, 2020

Muni Lal & another

... Appellants

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vikas Kumar, Advocate for the appellants.

Mr. Rohit Jindal, Advocate for

Mr. P.S. Poonia, Advocate for the respondents.

FATEH DEEP SINGH, J.

The short point involved in the present regular second appeal is as to the scope and applicability of provisions of Section 149 CPC empowering the Courts and their indulgence to permit deficit Court fees subsequent to the time granted. The case has a very unfortunate initiation. Muni Lal and his wife Smt. Manju, both the parents of deceased Vinay Kumar, had filed as plaintiffs a suit against the respondents Dakshin Haryana Bijli Vitran Nigam Limited (for short, 'DHBVNL') by way of declaration with consequential relief for grant of compensation and mandatory injunction. The averments were on the basis that in the evening on 22.09.2006 the deceased son of the plaintiffs, who happened

to be a 12th Class student, was going on the road and an electric wire left unattended on the road which was live, touched the deceased resulting in his instantaneous death. The parents had sought compensation from the DHBVNL for the gross acts of their negligence. The Court of learned Civil Judge (Junior Division), Faridabad vide judgment and decree dated 25.02.2012 decreed the suit for recovery of a sum of ₹ 2.00 lacs to be paid within three months with interest @ 6% per annum from the date of occurrence till realization of the decretal amount, however with the rider that the plaintiffs shall deposit Court fee on the amount granted within three months from the date of the order, failing which the suit shall be dismissed. The plaintiffs, unfortunate parents, failed to take note of this finer print in the directions of the trial Court and through the impugned judgment dated 17.05.2013 the Court of learned Additional District Judge, Faridabad held that since the appellants have failed to comply with the mandatory directions of the Court and did not pay the Court fees and therefore dismissed the appeal holding that even the suit stands dismissed. The unfortunate parents have come up in this regular second appeal challenging only the non-exercise of jurisdiction by the courts below by the aid of Section 149 CPC.

In view of the recent pronouncement in '**Kirodi (since deceased) through his LR vs. Ram Parkash & others**' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Upon hearing Mr. Vikas Kumar, Advocate for the appellants; Mr. Rohit Jindal, Advocate appearing on behalf of Mr. P.S. Poonia, Advocate representing the respondents and perusing the records of the case.

It is a suit which is more based on the unfortunate accidental death of a young son on account of having come in contact with a live electric wire left on the road by the insolence and the gross negligence of the officials of the respondent DHBVNL. It is not that the appellants before this Court, then plaintiffs, had used any dilatory tactics to evade their obligation but apparent as is to this Court, is more of an outcome of lack of proper legal advice and sensitivity to such an order by their counsel who had been representing them at the time of disposal of the suit. The order decreeing the suit being a peremptory one, as it was a pure

conditional decree and therefore in essence a decree in-terrorem and it is not the averment and apparent stand of the respondent side that it was an intentional lapse for which the unfortunate parents should be put to more distress. This Court seeks support from '**Mahanth Ram Dass v. Ganga Das**' 1961 (3) SCR 763 and '**Municipal Corporation, Faridabad & another v. Suresh & others**' 2007(4) Civil Court Cases 645 (P&H), wherein it has been held that the Court has vast discretion to enlarge the time for making good the deficiency of Court fees by exercise of powers under Sections 148, 149 & 151 CPC even after expiry of the time fixed. The Court below has acted in a more lackadaisical manner and merely failed to garnish enough compassion and sensitivity towards the unfortunate parents who cannot be denied the fruits of their labour by such a small negligence which is not likely to cause any prejudice to the other side. The Court of learned Additional District Judge, Faridabad lost sight of the provisions enshrined in Section 148, 149 and 151 CPC and failed to put to apt use these provisions which are for the advancement of justice and merely acting in a highly technical manner by a constricted approach has certainly, to the mind of this Court, fallen into an error necessitating allowing of the present appeal thereby setting aside the impugned judgment of the first appellate Court dated 17.05.2013 and

ordering restoration of the judgment and decree dated 25.02.2012 of the trial Court subject to the plaintiffs (present appellants) depositing the requisite Court fees in compliance of the judgment and decree of the trial Court dated 25.02.2012 within three months from the date of receipt of a certified copy of this order. The present appeal stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

February 25, 2020
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No