

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

CR No.2021 of 2018 (O&M)

Date of decision:15.09.2022

Gursharan Singh

..... Petitioner

versus

Rajwant Kaur and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. Harish Chhabra, Advocate
for respondent No.1.

TRIBHUVAN DAHIYA J. (ORAL)

This revision petition has been filed under Article 227 of the Constitution of India against the impugned order dated 13.03.2018 passed by the trial Court, vide which the petitioner-plaintiff's application to deposit the 1/5th amount of '*Zare-Panjim*' has been declined as per provisions of Section 22(1) of the Punjab Pre-emption Act, 1913.

2. The facts of the case are, the petitioner-plaintiff filed a suit for possession by way of pre-emption with respect of the suit land measuring 1686 *kanal* 19 *marla*, on which he was a tenant paying 1/3rd share of *batai* over the land measuring 15 *kanal*. Value of the suit land for sale, as per the sale deed dated 30.04.2013, was Rs.28,12,500/-. As per provisions of the Punjab Pre-emption Act, 1913 (for short, 'the Pre-emption Act'), the petitioner-plaintiff was to deposit 1/5th amount of

'Zare-Panjim', i.e., Rs.5,62,500/-. Due to the exigency of business the plaintiff had to go to Phuket, Thailand, on 04.10.2017, and could return to India on 02.02.2018 only. The suit in question was filed on 29.04.2014. After completion of the pleadings, issues were framed on 07.11.2017. Since the petitioner-plaintiff was not in India on 07.11.2017, he could not deposit the amount of *'Zare-Panjim'*. Soon after returning to India on 02.02.2018, he filed the instant application (Annexure P-3) seeking permission to deposit the amount of *'Zare-Panjim'* by condoning the delay. Photocopies of plaintiff's passport containing the said entries were attached with the application.

3. The application was opposed by the respondents-defendants by filing reply (Annexure P-4), stating, as the plaintiff failed to comply with the provisions of Section 22 of the Pre-emption Act by non-deposited 1/5th of the sale price as *'Zare-Panjim'*, the application has been rightly dismissed. The time to deposit cannot be extended, no relaxation can be granted.

4. The trial Court while dismissing the application, vide impugned order dated 13.03.2018, recorded that it was not provided under Section 22 of the Pre-emption Act that the Court could extend the time for depositing *'Zare Panjim'* amount even after settlement of issues. It has further been held that after framing of the issues on 07.11.2017, the case was adjourned for various dates for plaintiff's evidence, who was examined on 06.02.2018; and only thereafter, on 21.02.2018, the application seeking permission to deposit the amount by condoning the delay had been moved. Although the petitioner-plaintiff was in Thailand,

he was represented by a counsel, who could have deposited the amount of 'Zare Panjim'. Therefore, delay cannot be condoned.

5. Learned counsel for the petitioner has argued that in terms of Section 22 of the Pre-emption Act, a duty is cast upon the trial Court to direct the plaintiff in a pre-emption suit to deposit in Court such sum, that does not exceed $1/5^{\text{th}}$ of the probable value of the land or property. The amount could not be deposited by the plaintiff for want of such directions from the trial Court, and the issues were framed. Therefore, it is a case where the petitioner-plaintiff should be allowed to deposit the amount by condoning the delay. *Per contra*, learned counsel for respondent No.1 has opposed the prayer by contending that time to deposit $1/5^{\text{th}}$ of the sale price, i.e., 'Zare Panjim' cannot be extended, nor mistake on that account can be ascribed to the Court.

6. In this background, the issue arises for consideration is, whether delay in depositing the amount of 'Zare Panjim' under Section 22 of the Pre-emption Act can be condoned. To decide the issue, a perusal of Section 22 is necessary, which reads as under:

“22. Plaintiff may be called on to make deposit or to file security.

- (1) In every suit for pre-emption the Court shall at, or at any time before, the settlement of issues, require the plaintiff to deposit in Court such sum as does not, in the opinion of the Court, exceed one-fifth of the probable value of the land or property, or require the plaintiff to give security to the satisfaction of the Court for the payment, if required, of a sum not exceeding such probable value within such time as the Court may fix in such order.
- (2) In any, appeal the Appellate Court may at any time exercise the powers conferred on a Court under sub-section (1).

- (3) Every sum deposited or secured under sub-sections (1) and (2), shall be available for the discharge of costs.
- (4) If the plaintiff fails within the time fixed by the Court or within such further time as the Court may allow to make the deposit or furnish the security mentioned in sub-sections (1) or (2), his plaint shall be rejected or his appeal dismissed, as the case may be.
- (5) (a) If any sum so deposited is withdrawn by the plaintiff, the suit or appeal shall be dismissed.
- (b) If any security so furnished for any cause becomes void or insufficient, the Court shall order the plaintiff to furnish security or to increase the security, as the case may be, within a time to be fixed by the Court, and if the plaintiff, fails to comply with such order, the suit or appeal shall be dismissed.
- (6) The estimate of the probable value made for the purpose of sub-section (1) shall not affect any decision subsequently come to as to what is the market value of the land or property.

7. Reading of sub-section (1) of Section 22 of the Pre-emption Act makes apparent that in every pre-emption suit, the trial Court shall at the time of settlement of issues, or at any time before that, require the plaintiff to deposit in Court such sum as does not, in the opinion of the Court, exceeds $1/5^{\text{th}}$ of the probable value of the land or property. Or, in alternative, it may require the plaintiff to give security to the satisfaction of the Court for payment of a sum not exceeding such probable value within such time as the Court may fix in such order. Therefore, passing of an order by the Court directing the plaintiff to deposit a sum not exceeding $1/5^{\text{th}}$ of probable value of the land or property, or to give security to the satisfaction of the Court, is a mandatory requirement. And in the absence of such a direction having been issued by the Court, the

consequences of failure to deposit of the amount cannot be fastened on the plaintiff.

8. In the instant case, it is not in dispute that no such order or direction has been issued by the trial Court requiring the petitioner-plaintiff to deposit in Court a sum not exceeding 1/5th of probable value of the land or property, nor has he been required to give security to the satisfaction of the Court for the payment of a sum not exceeding such probable value. That being so, in failing to issue a direction to the petitioner-plaintiff, as mandated under Section 22(1) of the Pre-emption Act, to deposit a sum not exceeding 1/5th of probable value of the land or property, or to give security to the satisfaction of the Court in terms thereof, a mistake has occurred on the part of the trial Court, for which the petitioner-plaintiff cannot be faulted. It is a settled law that a litigant cannot be made to suffer for a mistake of the Court. The maxim “*actus curiae neminem gravabit*” was invoked by the Supreme Court in *Jang Singh v. Brij Lal and Others*, (1964) 2 SCR 145 to hold as under:

There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim:

“*Actus curiae neminem gravabit.*”

9. As a result of the aforesaid analysis, the petition is allowed. The impugned order dated 13.03.2018 is set aside. The trial Court is directed to determine the amount of ‘*Zare Panjim*’ in terms of Section 22

of the Pre-emption Act, requiring the petitioner-plaintiff to deposit the same or give security in terms thereof, as may be the case. No costs.

(TRIBHUVAN DAHIYA)
JUDGE

15.09.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No