
declared on that day when the recovered 139 ballot papers were produced before the Commission on 16th.

- (4) No mention of the votes being recovered is there in the letters written by Respondent No. 1 before 16th.
- (5) No opportunity of hearing was given to respondent No. 2 before ordering repoll.

27. With the abovesaid picture being clear, the argument of learned counsel for respondent No. 1 regarding opportunity of being heard not given before repoll was ordered tilts the scale in favour of Respondent No. 1. The principle laid down by the Supreme Court in the case of *Mohinder Singh Gill (supra)* is very clear and directly apply to the facts of the case. As no opportunity of hearing was given, the counsel for the respondent has rightly made out the point that had the opportunity been given to him, he could have shown that repoll was not necessary. Even, the giving of the opportunity of hearing would have eliminated the production of 139 votes if they were not in possession of Respondent No. 1.

28. In view of the above reasons, I find that this appeal deserves to be dismissed.

29. As a result, his appeal is hereby dismissed.

S.C.K.

Before Swatanter Kumar, J

DARSHAN GIR—*Petitioner*

versus

SURJIT KAUR—*Respondent*

C.R. NO. 5544 OF 1999

8th September, 2000

Code of Civil Procedure, 1908—Ss. 148& 151—Suit for specific performance decreed—Two months time granted for payment of balance sale consideration—Period expired—No payment made—Application for extension—Whether Court has jurisdiction to do so—Held, yes.

Held, that the Court has jurisdiction u/s 148 of the Code of Civil Procedure to extend the period for compliance of the terms of

the decree. Where ever the language of the decree is definite, the applicant would be obliged to show a sufficient cause for condoning the delay or extending the period for compliance. Furthermore, he will have to show that he has acted bonafidely and carefully.

(Para 9)

J.K. Sibal, Sr. Advocate with Abhisheka Srivastav, Advocate
for the petitioner.

K.S. Grewal, Advocate, for the respondent.

JUDGMENT

Swatanter Kumar, J

(1) An interesting question with regard to the scope of the powers which the Court could exercise under Section 148 read with Section 151 of the Civil Procedure Code for extension of time to deposit amounts beyond the granted period by a decree, falls for consideration of the Court in this revision.

(2) Darshan Gir had filed a suit for specific performance of the agreement, dated 6th December, 1994, praying for the execution of a registered sale deed in relation to the immoveable property and in the alternative for recovery of Rs. 37,700 against the defendant Smt. Surjit Kaur. The learned trial Court,—*vide* its judgment and decree, dated 27th November, 1998 decreed the suit for specific performance. While decreeing the suit the learned trial Court worded the decree as under :—

“I pass a preliminary decree of specific performance of the agreement to sell, dated 6th December, 1994 in favour of the plaintiff and against the defendant alongwith costs. The plaintiff is directed to deposit the balance sale consideration amount within a period of two months from the date of passing of the judgment, failing which it shall be presumed that no decree for specific performance has been passed in favour of the plaintiff and against the defendant. The defendant is directed to execute the sale deed in favour of the plaintiff on receipt of balance sale consideration amount from the plaintiff with regard to the suit property within three months from the date of judgment, failing which the plaintiff shall be entitled to move an application for final decree and to get the sale deed executed through court.”

(3) This decree became final between the parties. The decree-holder failed to deposit the amount within a period of two months from the date of passing of the judgment. The decree-holder then moved an application under Section 148 and 151 of the Civil Procedure Code on 10th March, 1999 giving causes for delay and praying for permission of the Court to deposit the amount and passing of the final decree. This application was opposed by the judgment debtor who filed a reply on 3rd May, 1999 and after hearing the learned counsel for the parties, the learned Civil Judge (Jr. Division), Fatehgarh Sahib,—*vide* his judgment dated 29th September, 1999 dismissed the application of the decree—holder giving rise to the filing of the present revision.

(4) The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of *K. Kalpana Saraswathi vs. P.S.S. Somsundaram Chettiar*, (1) and *Johri Singh vs. Sukh Pal Singh and others*, (2) and contended that whether the decree is conditional or otherwise, the power of the Court under Section 148 and 151 of Civil Procedure Code is not restricted and the Court always has power to condone the delay in the facts and circumstances of a given case.

(5) On the other hand, learned counsel for the respondent while relying upon a judgment of this Court in the case of *Mohinder Singh vs. Gurdial Singh and another*, (3) and *Jasa Bai and others Versus Udey Singh* (4) contended that the decree passed by the learned trial Court was conditional and the decree holder having violated the condition, by not depositing the amount within two months from the date of the judgment, and as such the default of the decree-holder has rendered the decree ineffective and unexecutable. The default wipes out the decree in favour of the decree—holder. During the course of hearing, the learned counsel for both the parties ultimately conceded that the gist of the above enunciated principles of law would grant power to the Court to enlarge the time for compliance of the terms and conditions of the decree provided sufficient cause is shown. In the case of *Mohinder Singh* (supra) the Court was concerned with a case where no consequence of default had been spelled out in the judgment.

(1) AIR 1980 SC 512

(2) 1989 (2) PLR 617 (SC)

(3) 1997 (1) PLR 73

(4) 1993 (2) PLR 502

(6) Thus, the question as arisen in the present case was really not in consideration before the Court in that case. But certainly the Court had indicated that probably the Court would have hardly any jurisdiction where a decree is conditional and consequences of default are also stated therein. Somewhat similar view was expressed in the case of *Jasa Bai (supra)* by another Bench though in principle it was stated that for bonafide reasons Court would have power to extend the time on the facts of that case.

(7) At this stage it will be appropriate to refer to the view taken by the Hon'ble Supreme Court of India in the case of *K. Kalpana Saraswathi (supra)* where the Court granted extension of time to deposit the amount even at the appellate stage and held as under :—

“Specific performance is an equitable relief and he who seeks equity can be put on terms to ensure that equity is done to the opposit party even while granting the relief. The final end of law is justice, and so the means to it too should be informed by equity. That is why he who seeks equity shall do equity.”

(8) In the case of *Johri Singh (supra)* a preemptory decree had been passed and the amount deposited fell short by Rs. 100. There was a mistake in calculation. The Court permitted the decree—holder to deposit the amount despite the decree being conditional while holding as under :—

“Coming to the question as to whether the Senior Subordinate Judge had jurisdiction to make the order by him it may be pointed out that section 148 CPC, as seen above, conferred ample jurisdiction on him in this regard. Apart from the cases cited above in support of the proposition we may refer to a Full Bench decision of the Allanhabad High Court succinctly laying down the law on the point in *Gobardhan Singh v. Barsati*. Relying on a decision of this court in *Mahanth Ram Das v. Ganga Das* it has held :—

“Even in cases where an order is made by the Court for doing a thing within a particular time and the order further provide that the application, suit or appeal shall stand dismissed if the thing is not done within the time fixed, the Court has jurisdiction, if sufficient cause is **made** out, to extend the time even when the application

for extension of time is made after the expiry of the time fixed. It is not the application for grant of further time, whether made before or after the expiry of the time granted, which confers jurisdiction on the Court. The Court possesses the jurisdiction under Sec. 148 C.P.C. to enlarge the time and the application merely invokes the jurisdiction.”

In *Ganesh Prasad Sah Kesari and another v. Lakshmi Narayan Gupta* it was held :—

“.....Where the Court fixes a time to do a thing, the court always retains the power to extend the time for doing so. Section 148 of the Code of Civil Procedure provides that where any period is fixed or granted by the court for the doing of any act prescribed or allowed by the Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired. The principle of this section must govern in not whittling down the discretion conferred on the court.”

In this view of the matter there seems to be no manner of doubt that the Senior Subordinate Judge had jurisdiction to extend the time under section 148 C.P.C. on sufficient cause being made out. The first condition precedent to enable the High Court to exercise its revisional jurisdiction under section 115 C.P.C. was, therefore, lacking.”

(9) There is really no conflict between the views expressed in the afore-noticed judgment. The basic principle that emerges from the cited judgments is that the Court has jurisdiction under Section 148 of the Civil Procedure Code to extend the period for compliance of the terms of the decree. Where-ever the language of the decree is definite, the applicant would be obliged to show a sufficient cause for condoning the delay or extending the period for compliance. Further more, he will have to show that he has acted bonafidely and carefully. It is a settled principle of law that the rules of procedure are meant to further the cause of substantial justice to the parties. No party can be permitted to take advantage of his intentional wrong.

(10) In view of the above enunciated principles it is now necessary for this Court to discuss whether sufficient cause has

been shown for grant of extension of time and the application was *bona fide*. In the application for permission to deposit the balance sale consideration in terms of the decree, the applicant stated that he did not come to know that he was required to deposit the amount by 26th January, 1999 as Clerk of the Advocate did not give the correct information to the applicant. Immediately after having come to know of the fact, the applicant deposited the balance amount on 10th March, 1999. These allegations were denied by the judgment—debtor who contended that the order was passed in presence of counsel for the parties and the plaintiff had the knowledge of the direction of the Court in relation to deposit of balance sale consideration within two months on that very date.

(11) After examining the merits of these respective contentions, the learned trial Court dismissed the application of the decree-holder. The default on the part of the decree-holder does not appear to be intentional and the application was *bona fide*. If the clerk of the counsel did not communicate to the decree-holder about the direction of the Court in time, then it will not be just and fair, to deny the relief to the decree-holder which otherwise has attained finality between the parties. The relief for specific performance is a discretionary relief and once the Court had exercised that discretion in favour of the applicant-decree holder, the ends of justice would demand that the delay of one month and fourteen days could be condoned and accordingly period for deposit could be extended. The principle enunciated by the Full Bench of Allahabad High Court, which was quoted with approval by the Hon'ble Apex Court in Johri Singh's case (*supra*) is the law of the land and would call for a liberal construction in favour of the applicant-decree holder. But the Court cannot lose sight of one very material fact that the amount of balance sale consideration has not been deposited till date. The applicant-decree holder was required to deposit the said amount by 26th of January, 1999. Admittedly, he failed to do so. Thus, in order to balance the equity between the parties, which is the very basis of exercise of judicial discretion by the Court in such matters, the Court considers it appropriate to award interest at the rate of 18% per annum to the judgment-debtor on the balance sale consideration. The balance sale consideration as for all this period being retained by the decree-holder to his benefit and advantage, thus, he must pay something in excess thereto to create equilibrium in the rights and obligations of the respective parties to the suit.

(12) Resultantly this revision is allowed. The impugned order dated 29th September, 1999 is hereby set aside. The decree holder-applicant is granted 30 days time from the date of pronouncement of this order to deposit the entire balance sale consideration with interest at the rate of 18% per annum from the date of decree till deposit. Once this amount is deposited, the learned executing Court shall proceed in accordance with law and the decree passed. However, in the facts and circumstances of the present case, there shall be no order as to costs.

S.C.K.

Before Swatanter Kumar, J
GURDEV SINGH,—Appellant

versus

HARDEV SINGH & OTHERS,—Respondents

R.S.A. NO. 2415 OF 2000

13th July, 2000

Specific Relief Act, 1963—Trial Court passing a decree for specific performance—Appellate Court affirming the said decree—Concurrent finding of facts & law—Appellant admitting the execution of the agreement—No grievance made either in the written statement before the trial Court or in the memo of appeal before the 1st appellate Court that alternative relief for recovery of money should be granted instead of specific performance—Appellant cannot raise new pleas in appeal before the High Court—Appeal liable to be dismissed.

Held, that in view of the written statement filed by the defendants before the trial Court on the basis of which the parties concluded their evidence and which are the very foundation of the judgment of the learned trial Court, new contentions cannot be raised for the first time in a regular second appeal. Even in the memorandum of appeal, before the first appellate Court none of these pleas was raised by the appellant. On that short ground alone and keeping in view the facts that there is concurrent finding of fact and law arrived at by the learned Courts below, I would have no hesitation in dismissing the appeal.

(Para 5)