(14) Inasmuch as the answer to the core issue involved in the case needs to be adjudicated in favour of the appellant-State, other questions that came to be debated before the learned Single Judge need not be answered. What we have said above is also promoted in view of the findings of learned Single Judge that if it had been found that certain persons suitable for appointment by promotion were available and their names were wrongly ignored or that even persons selected for appointment by direct recruitment were available but they were wilfully kept out, probably the action of the then Director who passed the order, Annexure P-5, could have been successfully assailed. However, in the absence of any finding to that effent or even an averment in that behalf, I am unable to sustain the plea that the order was violative of the provisions contained in the proviso to Rule 5(2). All that we might add to th observations of learned Single Judge, quoted above and, as mentioned above as well, that in the present case no effort at all was made to find out a suitable person from either of the two sources.

(15) In view of the discussion made above, we allow this appeal. Resultantly, order passed by the learned single judge dated 19th November, 1991 is set aside and writ petition is dismissed. In view of the fuluctuating fate of the parties, they are, however, left to bear their own Costs.

R.N.R.

Before M.M. Kumar, J

BHIM SINGH—*Petitioner*

versus

SMT. MAMO & OTHERS—*Respondents*

C.R. No. 1732 of 1996

20th August, 2001

Code of Civil Procedure, 1908—O. XX Rl. 14(1) & S. 148—Haryana (Amendment) Act, 1995—S. 15—Decree in pre-emption suit—Deficiency in deposit of pre-emption amount—No, wilful default or

negligence on the part of the decree holder in depositing deficient amount—Bona fide *mistake by the Court in the calculation of pre-emption amount—Executing/Civil Court has jurisdiction to extend time to make up deficiency in the deposit of pre-emption amount—Amendment of 1995 Act is prospective so the right of the decree holder remains unaffected.*

Held, that the executing/Civil Court could extend time to make up deficiency in the deposit of pre-emption amount at the stage of execution of the pre-emption decree. When the pre-emption amount has been deposited in the Court then the time could be extended by the Civil Court. It cannot be claimed that the civil Court has become functus officio or for its mistake the pre-emption decree could be defeated for want of deposit of small amount of Rs. 100.00. It is no body's case that the decree holder did not have the capacity to pay that amount or had no intention to do so. Once the calculations have been made by the Court or at the instance of the Court by its officials then no fault can be found with the decree holder.

(Para 20)

Rajive Bhalla, Advocate and Vikram Singh, Advocate for the Petitioner.

C.B. Goel, Advocate and Vikas Mor, Advocates for the respondents.

JUDGMENT

M.M. Kumar, J

(1) Could the Court grant extension of time to make up the marginal deficiency in deposit of pre-emption amount in execution of a decree passed in favour of pre-emption is the significant question which arises for consideration in the present revision petition ?.

(2) The brief facts of the case are that the decree holder-respondent Inder Singh (now represented by Smt. Mamo his widow, Smt. Resalo, Roshni, Phullo daughters of late Shri Inder Singh, Zille Singh, Dharam Singh sons of Late Shri Inder Singh) filed a pre-emption suit being suit No. 638 of 1974 claiming decree for possession by pre-emption of 24 kanals 1 marla of land representing 1/2 share

of land bearing Rect. No. 407, Rect. No. 59 Killa Nos. 3 to 9, 10/2, 11 to 13, 14/1, 20/1, (Total Killas 14) entered at Khewat No. 1 according to jamabandi 1968-69 of village Sanch, Tehsil and District Kaithal. It was further claimed that the suit be decreed in respect of the above said land on payment of Rs. 31,100. A decree for possession by pre-emption in respect of land measuring 24 kanal 1 marla representing ½ share of the ownership and 1/4th share of the land measuring 96 kanal 3 marlas comprised in Rect. No. 407, Rect. No. 59 (Killa Nos. 3 to 9, 10/2-11-12-13-14/1, 20/1 (Total 14 killas) situated in village Sanch, Tehsil Kaithal as per jamabandi 1968-69 was passed by the learned trial Court on 5th March, 1976. It was directed that a sum of Rs. 31,100 be deposited on or before 20th May, 1976. Against the decree, first appeal was dismissed on 3rd August, 1977 and the High Court dismissed R.S.A. No. 1331 of 1977 on 16th July, 1986. Even the S.L.P. No. 11796 of 1986 also stood dismissed on 9th October 1987. Hence, the decree dated 5th March, 1976 had attained finality. It is appropriate to mention that on the direction of the trial Court dated 13th September, 1974 1/5th of the pre-emption amount was deposted by the respondent decree holder in the trial Court on 23rd October, 1974 i.e. at the time of filing of suit in compliance with the provisions of Section 22 of the Punjab Pre-Emption Act, 1913 (as applicable to the State of Haryana). On 7th May, 1976, when the suit was decreed, the remaining 4/5th amount of Rs. 25,400 was also deposited although the trial Court has fixed the date for that deposit to be 20th May, 1976. In order to execute the decree, the execution petition was filed being Execution No. 75 of 1992. In the execution petition all the afore-mentioned details were given and the petition was thumb marked by the legal representatives of Late Shri Inder Singh, respondent- decree holder. To the execution petition, petitioner- judgment debtor filed objections and an objection was taken in paragraph 4 of the objection petition that the decree holder- respondent did not deposit the full amount and it was mandatory to verify the same before warrant of possession could be issued. In paragraph 5 it was further objected that unless full amount is deposited, the execution is liable to be dismissed because the suit itself stood dismissed and no execution would lie. Another application was also filed by the petitioner- judgment debtor seeking stay of the execution proceedings. In reply to the objections filed by the judgment debtor- petitioner, replication was also filed alleging that the objections were *mala fide* and were filed to protract

the illegal possession. It is also pertinent to point out that the decree-holder respondent revealed in the replication that the decree was also challenged in a suit on the ground of gross negligence and the *ex-parte* stay order granted in that suit by the Court of Shri Subhash Goel, Sub-Judge Kaithal, stood vacated on 21st May, 1988. Even the appeal against that order was dismissed on 9th September, 1988 and the High Court dismissed the revision petition on 30th September, 1988.

(3) The decree holder-respondent also filed an application in the original suit being Suit No. 638 of 1974 under Section 148 and 151 of the Code of Civil Procedure, 1908 (for short the Code'). In the application averments were made that the learned trial Court calculated the amount payable under the decree and filled the same in the challan in words as well as in figures. The challan, after calculation of the amount duly signed by the Sub-Judge, Ist Class alongwith the date, was given to the decree holder-respondent and a sum of Rs. 25,400 was ordered to be deposited. In order to make up the deficiency of Rs. 100 a request was made for extending time and permission of the Court was sought to deposit the deficient amount of Rs. 100. in the Court. The learned trial Court after perusal of the record and recording of statements of various witnesses reached the conclusion that the decree holder was not at fault in depositing deficit amount of Rs. 100 Vide impugned order dated 24th April, 1996, the Civil Judge (Sr. Division) Kaithal, allowed the decree holder-respondent to deposit the short amount of Rs. 100 in the Court by 25th May, 1996 failing which he was to face the consequences in terms of the decree dated 7th March, 1976. The record shows that balance amount of Rs. 100 was deposited on 6th May, 1996 in the Court. The findings of the trial Court are as under :—

> "Moreover, decree in question is silent about the exact pre-emption amount which was to be deposited and the pre-emption money of Rs. 25,400 had been deposited by DH on the basis of challan Ex.DH, which bears the signatures of Presiding Officer and official who filled the challan by figuring Rs. 25,400. The concerned official namely: Chanan Dass and Pawan Kumar have appeared before the Court and proved the signatures of concerned person

by whom it has been filled. From this it appears that concerned official has committed error in calculating the pre-emption amount which was to be deposited and it is the view of the Hon'ble Surpeme Court in case Jang Singh vs. Brij lal 1963 C.L.J. (S.C.) that due to mistanke of court or its official, litigants should not suffer and they cannot be held responsible for that mistake. This authority is extending full support to the stand of the DH and in view of the same, present DH should not suffer if the amount in question has been filled wrongly by concerned official and same view is also of our Hon'ble High Court in supra case Het Ram vs. Rajinder Parshad according to which DH cannot be made to suffer for fault of Court officials and no *malafides* can be attributed to decree-holder for depositing short amount. This authority is also giving full support to the case of the DH and in view of the same court cannot fix responsibility of DH for depositing short Pre-emption amount."

(4) It is against this order, the present revision petition has been preferred by the judgment-debtor.

(5) I have heard Shri Rajive Bhalla, Advocate and Shri Vikram Singh, Advocate for the judgment-debtor/petitioner and Shri C.B. Goel, Advocate and Shri Vikas Mor, Advocate, for the decree-holder/ respondent.

(6) The learned counsel for the judgment-debtor has made two fold submissions. Firstly, he contended that under Order XX Rule 14(1) (b) of the Code of Civil Procedure, 1908 (for short the Code'), it is only after payment of pre-emption amount that title is conferred on the decree holder. He further contends that the decree becomes final when full amount is deposited. The Court passing the decree becomes functus officio and the executing Court would not have any jurisdiction to grant extension of time under Section 148 of the Code. Secondly, he contends that vide Haryana Act No. 10 of 1995, the Pre Emption act has come to an end and, therefore, the Courts deciding the pending matters should take into consideration the change in law and refuse relief to the pre-emptor on that score.

(7) For the first propsition, the learned counsel cited numerous judgments. He relied in *Naguba Appa vs. Namdev* (1) *Mahanth Ram Das vs. Ganga Das* (2) *Kirpa Ram vs. Ghasi* (3) *Sulleh Singh and others vs. Sohan Lal and another* (4). He further relied on *Jang Singh vs. Brij Lal and others* (5) to argue that althought exact amount was not given yet it was the responsibility of the decree holder - respondent to calculate the amount and to pay the same. The act of calculation by the Court officials, in the absence of any statutory obligation on them, should be treated as an act of the decree holder himself. He further contended that once the amount has not been deposited, howsoever short it may be, the suit should be deemed to be dismissed. He cites *Jagtar Singh and another vs. Kartar Singh and others* (6). He goes to the extent of arguing that even for the amount rendered in short, the suit would stand dismissed in the case of conditional decree. For this proposition he relies on *Labh Singh vs. Hardayal* (7). Learned counsel argued that in procedural matters the power of condonation of delay in depositing the pre-emption amount could be condoned but not in cases of conditional decrees. For this proposition, he relies on *Smt. Parmeshri vs. Naurata* (8).

(8) For the second proposition, the learned counsel argued that the right of pre-emption should be available to the plaintiff-decree holder on the date of the sale, on the date of the suit, on the date when the decree was passed. He relied on *Karan Singh and others vs. Bhagwan Singh and others* (9) to contend that once the right of pre-emption has been effaced from the statute book by an enactment of Haryana Act No. 10 of 1995 then the Court should exercise powers in negation to that statute.

(9) On the other hand, the learned counsel for the decree holder-respondent, argued that once the application is filed on which the order has been passed for deposit of pre-emption amount of

(1) AIR 1954 SC 50
(2) AIR 1961 SC 882
(3) 1981 PLJ 257
(4) 1975 PLJ 400
(5) 1963 CUR. LJ 11 (SC)
(6) AIR 1980 Pb. & Hy. 313
(7) AIR 1977 P & H 294
(8) AIR 1984 P & H 342
(9) 1996 PLJ 89

Rs. 25,400.00 which was actually deposited on 7th May, 1976 it cannot be claimed by the judgment-debtor that there was any fault on the part of the decree-holder to deposit the whole amount as on the application having been made by the decree holder for deposit of pre-emption amount, the learned trial Court has given a finding of fact that the decree holder did not commit any error in the calculation of pre-emption amount. The shortage of Rs. 100.00 was on account of the *bona-fide* mistake committed by the Court officers/officials. He submits that it is well settled propositions, of law that for the fault of the court or the counsel, the litigant should not suffer. For this Proposition he relies on *Jang Singh vs. Brij Lal and others* (supra). However, the most firm reliance has been placed by the learned counsel for the decree holder-respondent on a Supreme Court judgment in *Johri Singh vs. Sukh Pal Singh and others* (10). It was argued by him that the observations made in para 5 of the afore mentioned judgment of the Supreme Court squarely covers his case. It is pointed out by the learned counsel that before the Supreme Court the facts were identical to the case in hand as there was deficiency of Rs. 100 in that case also. He further argured that a decree would not become inoperative or ineffective merely because a fraction of amount, which was result of bone-fide mis-calculation/mistake could be defeated for that reason. According to him, such a decree becomes final and to be executed. He sought support from *Het Ram versus Rajinder Parshad* (11) *Manohar Singh versus Amar Singh and others* (12) and *Sher Singh versus Puran and others* (13) Moreover, in their objection, the judgment debtor has never raised this point before the learned trial Court. Such a point had also not been raised either before the first appellate Court, High Court or before the Hon'ble Supreme Court at the time of challenging the decree itself. Therefore, he claimed that a small amount of Rs. 100 which was the result of bona-fide mistake could be made the basis for defeating the decree.

(10) I have given my thoughtful consideration to the arguments raised by the learned counsel for the parties and have perused the record which was requisitioned from the trial Court through special messenger.

(10) 1989 PLJ 723
(11) 1988 PLJ 103
(12) 1985 PLJ 364
(13) 1985 PLJ 536

(11) Before I deal with the various judgments cited by the learned cousel for the parties, I deem it appropriate to refer to the provisions of order XX Rule 14(1) of the Code which reads as under :

> "14. Decree in pre-emption suit-(1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase money has not been paid into Court, the decree shall-
>
> (a) specify a day on or before which the purchase money shall be so paid, and
>
> (b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title therto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs."

(12) A perusal of Rule 14(1) of the Code makes it obvious that an obligation has been imposed on the Court to specify the date on which the purchase money had to be paid and issue direction that on payment of pre-emption money into the Court, the defendant would deliver possession of the property to the decree-holder. The title of the decree holder would accrue from the date when such payment is made. In the absence of payment of purchase money/pre-emption money, the suit would be deemed to be dismissed. At the first place, the decree require to satisfy these things in case the purchase money has not been paid in the Court. In the absence of such a situation, the decree does not need to specify any such thing.

(13) In so far as the judgment of the Hon'ble Supreme Court in *Naguba Appa's case (supra)* is concerned it was a case of non compliance of a pre-emption decree in as much as no amount was deposited making it absolutely clear that the decree holder had no intention to comply with the decree. Therefore, this judgment does not advance the case of the judgemant debtor-petitioner. The judgment in *Mahanth Ram Dass's case* (supra) also has no bearing on the

proposition which arises for consideration in this case. In that case, their Lordships of the Supreme Court were seized of a situation as to whether a Bench of the High Court while deciding the appeal was competent to grant extension beyond the period fixed for payment of pre-emption amount by the inferior Court. There an application for extension of time had been made before the Division Bench of the High Court. Their Lordships of the Supreme Court held that the High Court was not powerless to enlarge the time even though it had pre-emptorily fixed the period for payment. With regard to Section 148 it was observed that Section 148 allows time even if the original period fixed had expired. This judgment rather goes against the judgment debtor-petitioner. The judgment rendered by a Single Bench of this Court in *Kirpa Ram's* case (supra) also renders no help to the case of the judgment debtor-petitioner. In that case, the decree holder did not comply with the terms of the decree and failed to deposit even a single penny. Therefore, that judgment is distinguishable on facts as well as on law. The next judgment relied on by the learned counsel for the judgment debtor-petitioner in Jang Singh's case (supra) also to my mind go against him. In that case also, the facts were similar to the case in hand as the mistake had occured on the part of the officials of the Court and resultantly, their Lordships of the Supreme Court held that the Court must undo that mistake. Even the judgment of the learned Single Judge in *Het Ram v. Rajinder Parshad (supra)* goes against him.

(14) On the second proposition, the judgment cited by the learned counsel for the judgment debtor-petitioner in Karan Singh's case (supra) also does not lend support to his case. In that case, their Lordships of the Supreme Court observed that the right to claim pre-emption must be available on the date of sale, the date of suit and on the date on which the decree is passed. The observations of the Hon'ble Supreme in para 7 of the judgment are as under :

> ".....the right of claim pre-emption must be available on the date of sale, the date of suit and the date on which the decree is passed. When appeal against a decree is pending, the Court of appeal has seisin of the whole case *and the whole matter becomes sub judice agains though for certain purposes, i.e., execution, the decree is regarded as final.* The decree of the trial Court gets merged with

the decree of the appellate Court. Therefore, the Court of appeal shall have all the powers and shall perform as nearly as may be, the same duties as are conferred and imposed on the court of original jurisdiction. When the appeal, therefore, is pending in the Supreme Court, it is a continuation of the original proceedings and the entire issue is at large." (emphasis supplied)

(15) The other judgments relied by the judgment debtor-petitioner also lacks support to the proposition which arises for considereation in the present case. In *Jagtar Singh's case* (supra) the facts were entirely different as no part of the pre-emption amount was paid. Similarly, Full Bench judgement in *Labh Singh's* case (supra) also deals with entirely different proposition namely, whether failure to take objection for the deficit pre-emption amount at the appellate stage would amount to waiver of the right to raise such an objection at the execution stage. Hence, I find that even this judgment has no application to the facts of the present case. The judgment rendered by the learned Single Judge in *Parmeshri's* case (supra) also has no bearing. In that case, the conditional decree for possession on payment of certain amount in instalments within specified period was passed. The plaintiff having failed to pay the last instalement according to the conditions of the decree had asked for extension of time. It was in these circumstances that the learned Single Judge of this Court held that the Court was not competent to extend the time for payment under Section 148.

(16) In so far as the argument of Shri Rajive Bhalla, learned counsel for the judgment-debtor that the right of pre-emption of co-sharer has been abolished by the Haryana (Amendment) Act, 1995 which has substituted Section 15 is concerned, also deserves to be rejected. In a recent judgment, Constitution Bench of the Supreme Court in the case of *Shyam Sunder and another v. Ram Kumar and another* (14) has held that the amendment of 1995 is prospective. The basic reason given by their Lordships of the Supreme Court is that in procedural law, there might be retrospective effect but so far as substantive rights of parties are concerned, they would remain unaffected by the amendment in the enactment. The observations of their Lordships in para 29 are pertinent in this regard and reads as under :

"From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a

(14) JT 2001 (6) SC 94

fresh legislation such legislation does not effect the substantive rights of the parties on the date of suit or adjudication of suit unless such a legislation is retrospective and a Court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumtion against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless amending Act provides otherwise. We have carefully looked into new substituted Section 15 brought in the parent Act by amendment Act 1995 but do not find it either expressly or by necessary implication retrospective in operation which may effect the right of the parties on the date of adjudication of suit and the same is required to be taken into consideration by the Appellate Court ."

(17) On the other hand, the judgments cited by the learned counsel for the decree holder-respondent lends substantial support to the proposition arising for consideration of this Court. It appears to me that the judgment in *Johri Singh's* case (supra) provides a complete answer to the proposition in hand. The observation of the court in paragraphs 9, 10, 11 and 12 of that case squarely covers the case of the decree holder respondent and the same reads as under :

9. From the above provisions there is no doubt that where the entire purchase-money payable has not been paid and there is no order from any Court to justify or excuse

not-payment, the suit shall be dismissed with costs. This shall be done by virtue of the above provision. But when the decre-holder deposits into Court what he believes to be the entire purchase-money but due to inadvertent mistake what is deposited falls shorts of the decretal amount by a small fraction thereof and the party within such time after the mistake is pointed out or realised, as would not prove wilful default or negligence on his part, pays the deficit amount into the Court with its permission, should the same result follow ?

10. This Court in Naguba Appa v. Namdev AIR 1954 S.C. 50, has held that mere filing of an appeal does not suspend the pre-emption decree of the trial Judge and unless that decree is altered in any manner by the Court of appeal, the pre-emptor is bound to comply with its directions and has upheld the finding that the pre-emption suit stood dismissed by the reasons of his default in not depositing the pre-emption price within the time fixed in the trial Court's decree and that the dismissal of the suit is as a result of the mandatory provisions of Order 20 Rule 14 and not by reason of any decision of the Court. There the pre-emption money was not deposited within the fixed time. The pre-emptor thereafter made an application to the Court for depositing amount without disclosing that the time fixed had expired. The application was allowed; but the defendant applied to the Court for disposal of the suit pointing out that the time fixed for deposit had expired. The trial Judge held that the pre-emption money not having been paid within the time fixed in the decree the suit stood dismissed. This decision was held to be correct. It was a case of non-deposit of the whole of the purchase money and not of any fraction thereof.

11. In Jang Singh v. Brijlal and Ors. (supra) the pre-emption decree on compromise was passed in favour of Jang Singh and he was directed to deposit Rs. 5951.00 less Rs. 1000.00 already deposited by him, by 1st May, 1958, and failing to do so punctually his suit would

stand dismissed with costs. On 6th January, 1958, Jang Singh made an application to the trail Court for making the deposit of the balance of the amount of the decree. The clerk of the Court, which was also the executing Court, prepared a challan in duplicate and handed it cover with the application to Jang Singh so that the amount might be deposited in the Bank. In the challan (and in the order passed on the application, so it was alleged) Rs. 4950.00 were mentioned instead of Rs. 4951.00 and it was deposited. In May, 1958, he applied for and received an order for possession of the land and the Naib Nazir reported that the entire amount was deposited in Court. Bhole Singh (the vendee) then applied on 25th May, 1958, to the Court for payment to him of the amount lying in deposit and it was reported by the Naib Nazir on that application that Jang Singh had not deposited the correct amount and the deposit was short by one rupee. Bhola Singh applied to the Court for dismissal of Jang Singh's suit and for recall of all the orders made in Jand Singh's favour. The trial Court allowed that application and also ordered reversal of its earlier orders and directed that the possession of the land be restored to him. On appeal, the District Judge, holding that Jang Singh having approached the Court with an application intending to make the deposit the Court and its clerk made a mistake by ordering him to make the deposit of an amount which was less by one rupee. Jang Singh was excused inasmuch as the responsibility was shared by the Court and it accordingly held that the deposit made was a sufficient compliance with the terms of the decree and accordingly allowed the appeal setting aside the trial Court's order dismissing the suit. On appeal by Bhola Singh the High Court took the view that the decree was not complied with and that under the law the time fixed in the decree for payment of the decretal amount in pre-emption case could not be extended by the Court and that the finding that the short deposit was due to the act of the Court was not supported by evidence and accordingly allowed the

appeal, set aside the decision of the District Judge and restored that of the trial Court. On appeal by Jang Singh this Court found that the application whereupon the Court directed the deposit of Rs. 4950 remained untraced. However, it was quite clear that the challan was prepared under the Court's direction and the duplicate challan prepared by the Court as well as the one presented to the Bank had been produced in the case and they showed the lesser amount. The challan was admittedly prepared by the Execution Clerk and it was also an admitted fact that Jang Singh was an illiterate person. The amount was deposited promptly relying upon the Court's Officers. The execution Clerk had deposed to the procedure which was usually followed and he had pointed out that first there was a report by the Ahlmed about the amount in deposit and then an order was made by the Court on the application before the challan was prepared. It was , therefore, quite clear that if there was an error the Court and its officers largely contributed to it. This Court observed :

"It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. 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."

12. In the facts of that case it was held that an error was committed by the Court which the Court must undo and which could not be undone by shifting the blame on Jang Singh, who was expected to rely upon the Court and its officers and to act in accordance with their directions. It was also observed that he deposited the amount promptly and a wrong belief was induced in his mind by the action of the Court that all he had to pay was stated in the challan. The appeal was accordingly allowed, the High Court's order was set aside and the appellant was ordered to deposit Re. 1 within one month from the date of receipt of the record in the trial Court. It should be noted that in the facts and circumstances of a case of non-deposit of a fraction of the purchase-money extension of time to deposit the balance was granted by this Court. It cannot therefore be said that on failure to deposit a minute fraction of the amount by the fixed date owing to wrong belief induced by Court officials the suit must be taken to have stood dismissed. No doubt this was so because of the maxim "actus curiae neminem gravabit" but there is no reason why the same result should not follow on similar justifiable grounds."

(18) On the second proposition, Shri C.B. Goel, learned counsel for the decree holder-respondent relied on a judgment in the case of *Atma Parkash vs. State of Haryana* (15) rendered by a Constitution Bench. The Constitution Bench laid down that a right of pre-emption was violative of Article 14 of the Constitution in certain specified categories of persons. However, it saved the right of pre-emption in those cases where the decrees have become final and such decrees would be binding inter-parties. It further laid down by carving out exception that declaring the right of pre-emption in certain cases as violative of Article 14 of the Constitution would not adversely effect those decrees which were binding inter-parties. Learned counsel for the decree holder-respondent placed strong reliance on the observations made in para 14 which reads as under :

"We are told that in some cases suits are pending in various Courts and, where decrees have been passed, appeals are

(15) 1986 SC 859

pending in appellate Courts. Such suits and appeals will now be disposed of in accordance with the declaration granted by us. We are told that there are few cases where the suits have been decreed and the decrees have become final. No appeal having been filed against those decrees. The decrees will be binding inter parties and the declaration granted by us will of no avail to the parties."

(19) These observations of the Constitution Bench protect the rights of the decree holder-respondents as decree in this case had attained finality.

(20) The position of law is absolutely clear from the binding precedents noted in the preceding paras. Their Lordships of the Supreme Court in **Johri Singh's case** *(supra)* also relied upon earlier judgment rendered in **Jang Singh's case** *(supra)* and concluded that the executing Court/Civil Court could extend time to make up deficiency in the deposit of pre-emption amount at the stage of execution of the pre-emption decree. When the pre-emption amount has been deposited in the Court then the time could be extended by the Civil Court. It cannot be claimed that the Civil Court has become functus officio or for this mistake the pre-emption decree could be defeated for want of deposit of small amount of R. 100. It is no body's case that the decree holder did not have the capacity to pay that amount or had no intention to do so. Once the calculations have been made by the Court or at the instance of the Court by its officials then no fault can be found with the decree holder/respondent.

(21) No other point has been argued.

(22) In view of the reasons given above, I am of the considered view that the answer to the question which arises for consideration in the present revision has to be in affirmative and the revision petition merits dismissal. The revision petition is accordingly dismissed with no order as to costs. The records summoned be returned forthwith by the Registry.

R.N.R.