
(23) No other point was urged by Mr. Kuldip Singh, Senior Advocate, learned counsel for the petitioner.

(24) The learned counsel for the petitioners in C.W.P. Nos. 4811, 4845, 4846, and 4868 of 1984, adopted the contention of Mr. J. L. Gupta, learned Senior Advocate, on Point No. 1, as in those writ petitions only Point No. 1 arises for consideration.

(25) For the reasons recorded above, we find no merit in these petitions, and, consequently, dismiss the same, but make no order as to costs.

Prem Chand Jain, Acting Chief Justice.

D. S. Tewatia, J.—I agree.

S. C. Mital, J.—I also agree.

N.K.S.

Before R. N. Mittal, J.

PUNJAB STATE ELECTRICITY BOARD, PATIALA,—*Petitioner.*

versus

SUBHASH CHANDER KHURANA,—*Respondent.*

Civil Revision No. 2438 of 1984.

January 16, 1985.

Code of Civil Procedure (V of 1908)—Section 148—Employee suspended pending enquiry against him—Order of suspension challenged in a suit on the ground that it was illegal and void—Suit decreed and the employee directed to be reinstated subject to the decision of the enquiry—Court also directing the enquiry to be concluded within a specified period—Enquiry not concluded within the said period—Application under section 148 for extension of time for concluding the enquiry—Such application—Whether maintainable—Direction of the Court regarding conclusion of the inquiry within the specified period—Whether the essence of the decree.

Punjab State Electricity Board, Patiala vs. Subhash Chander Khurana
(R. N. Mittal, J.)

The plaintiff had been suspended and he instituted a suit for declaration that the order of suspension was illegal, void and ineffective. He also prayed that the employer be directed to issue order of his posting. The suit was decided by the Court in which it was ordered that the plaintiff stood reinstated but that would be subject to the result of the enquiry pending against him and it was further directed that the employer should complete the inquiry within a specified period. The plaintiff had not claimed in the suit that the enquiry should be completed within a particular period nor it was provided in the decree or judgment as to what would be the effect if the enquiry was not completed within the said period.

Held, that in the circumstances it could not be said that the said direction by the Court was the essence of the decree. It is well settled that if any time is fixed for performance of some act, which is not the essence of the decree, the Court has got the power under section 148 of the Code of Civil Procedure, 1908 to extend time for the performance thereof.

(Paras 4 & 6).

Petition U/s 115 C.P.C. read with article 227 of Constitution of India Praying that the direction of holding enquiry within 3 months in the decree dated 29th October, 1983 being without jurisdiction be quashed by this Hon'ble Court in exercise of its powers under Article 227 of the Constitution of India or in the alternative it is prayed that the impugned order dated 3rd August, 1984 be set aside and atleast 6 months time be granted to complete the enquiry in view of charges being grave and serious and for allowing full opportunity of defence to the respondent.

Mr. S. C. Goyal, Advocate, for the Petitioner.

Mr. Jaswant Jain Advocate, for the Respondent.

JUDGMENT

Rajendra Nath Mittal, J.

(1) Briefly the facts are that Subhash Chander Khurana was placed under suspension by the Chief Engineer (P. & M.M.), Punjab State Electricity Board, Patiala,—vide order dated 29th December, 1981, on receipt of a confidential report from Assistant Executive Engineer (Flying Squad) that he had been tampering at site the spot Welding and M&T seals originally fixed in the M.E. Laboratory with

the object of committing/aiding theft of electricity. The respondent instituted a suit in the Court of Subordinate Judge, 1st Class, Muktsar against the order of suspension. During the pendency of the suit the respondent was reinstated on 15th July, 1982, subject to the result of the enquiry. His posting order was also issued. However, the suit was partly decreed on 29th October, 1983 for declaration to the effect that the plaintiff stood reinstated with effect from 29th January, 1982, instead of 15th July, 1982 subject to the result of the enquiry pending against him. It was further directed that the Board should complete the enquiry within 90 days.

(2) The Board could not complete the enquiry within the said period and, therefore, an application was moved on its behalf before the Subordinate Judge, Muktsar for extension of three months time to complete enquiry. The application has been dismissed by the Subordinate Judge,—*vide* impugned order on the ground that the same could not be allowed under section 148 of the Code of Civil Procedure. The Board has come up in revision against the order of the Subordinate Judge to this Court.

(3) The learned counsel for the petitioner has argued that the part of the decree that the defendant should complete the enquiry within 90 days was not the essence of the decree and therefore, it could not be held that section 148 of the Code was not applicable.

(4) I have duly considered the argument and find force in it. The facts of the present case are not disputed. The respondent had been suspended,—*vide* order dated 29th December, 1981. He instituted a suit on 3rd March, 1982, for declaration that the order of suspension was illegal, void and ineffective. He also prayed that the Board be directed to issue order of his posting. During the pendency of the suit he was reinstated by the Board on 15th July, 1982. The suit was decided by the Court on 29th October, 1983 in which it was ordered that he stood reinstated with effect from 29th January, 1982 instead of 15th July, 1982, but that would be subject to the result of the enquiry pending against him. It was further directed that the Board would complete the enquiry within 90 days. It is not disputed that the respondent had not claimed in the suit that the enquiry should be completed within a particular period. It is also noteworthy that it was not provided in the decree or judgment as to what would be the effect if the enquiry was not completed within the said period. In the circumstances it cannot be said that the said direction was the essence

Punjab State Electricity Board, Patiala *vs.* Subhash Chander Khurana
(R. N. Mittal, J.)

of the decree. It is well-settled that if any time is fixed for performance of some act, which is not the essence of the decree, the Court has got the power under section 148 to extend time for the performance thereof. Reference in this regard may be made to a Division Bench judgment of Pepsu High Court in *Nanha v. Baroo and others*, (1) and *Sarat Chandra Patro v. Harmingha Patro and others*, (2). In the former case the Judicial Committee had given the appellants six months time to deposit the amount and ordered that they could get the possession of the land only if the deposit was made. The judgment was silent as regards the effect of appellants' failure to deposit the amount. It was held by Teja Singh, C.J., speaking for the Bench—

“This makes me think that time fixed for the deposit was not the essence of the matter, and even though the deposit was not made within time the appellants' right to obtain possession was not altogether lost. Different, however, would have been the condition if it had been laid down by the Judicial Committee that if deposit was not made within time the appellants' suit for possession of the land shall stand dismissed or that they would be debarred from taking the possession.

It was urged by the respondents' counsel that when time is once fixed for performance of a certain act in a decree it cannot be extended under Section 148. This is no doubt the general rule, but there are exceptions to it. In this connection I cannot do better than to refer to a Bench decision of the Patna High Court *Surajmal v. Bhubaneswar Prasad*, (3). It was held that ‘though general rule is that where a party is required to do something under a decree the time-limit is prescribed for doing it, the court which passed the decree has no jurisdiction to extend the time limit but it is subject to the qualification that where the decree or order which fixes the time is not intended to be final and the court still retains control over the proceedings the Court may extend time under section 148. It was further held that whether the Court still retains control over the proceedings or not must be deter-

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- (1) AIR 1952 Pepsu 88.
 - (2) AIR 1976 Orissa 12.
 - (3) AIR 1940 Pat. 50.

mined upon the nature of the proceedings and the order passed therein'. In the present case, absence of any order on the part of the Judicial Committee that if the appellants do not deposit the amount within time they would lose right to obtain the possession of the land makes me think that its intention was that their direction in so far as it related to the time fixed for the deposit of the amount was not final and it was intended that the Court, should still retain control over the proceedings."

The said case was followed in *Sarat Chandra Patro's case* (supra). In that case a decree for possession in favour of the plaintiff was passed by the trial Court on paying some compensation to the defendant. The compensation was deposited in execution of the decree. The defendant went up in appeal and the appellate Court increased the amount of compensation. The plaintiff was directed to deposit the balance amount within two months which was deposited by him after the expiry of the said period. During the execution proceedings an objection was taken by the judgment-debtor that the decree could not be executed as the plaintiff decree-holder had not deposited the enhanced amount within the stipulated period. It was observed by the learned Judge that the absence of an order that if the said amount was not deposited within the said time, the decree-holder would lose his right to obtain possession of the property indicated that the Court wanted that the amount should be paid within that time so that the matter pending in Court for a long time could be finally disposed of without unnecessary delay. In the context and perspective of the facts and circumstances of the case the specification of time in the order did not appear to be the essence of the said order. I am in respectful agreement with the above observations.

(5) The learned counsel for the respondent made reference to *Himmun v. Fauji* (4) wherein it was observed that a decree could be altered by review on appeal or revision but either section 148 or 151 could not be utilised for the purpose of altering the decree. The observations were made in the facts and circumstance of that case which are distinguishable. In my view, he cannot derive any benefit from the said observations.

(6) After taking into consideration all the aforesaid facts and circumstances I am of the opinion that the Court had the power to extend time under section 148 of the Code.

Punjab State Electricity Board, Patiala vs. Subhash Chander Khurana
(R. N. Mittal, J.)

(7) Now the question that arises for determination is whether the time should be extended under section 148 or not in the present case. I have been informed that one of the witnesses who is to be examined is at present employed outside the country and it will take some time to secure his presence. Mr. Goyal has, however, given an undertaking that the Department shall close its case by 30th April, 1985. Mr. Jain, counsel for the respondent, states that he shall take at the most one month for producing his evidence. Thus the evidence of the parties should conclude by the end of May, 1985. Thereafter the enquiry officer will require some time to complete the report. Mr. Goyal has further given an undertaking that the report shall be completed by the enquiry officer within 15 days after the respondent concludes his evidence. In case he concludes the evidence within a shorter period than one month. It is expected from the enquiry officer to give the report within 15 days after the conclusion of the evidence. Mr. Goyal has made an oral request that the period be further extended for completion of the enquiry up to 15th June, 1985. Section 148 provides that where any period is fixed or granted by the Court for doing of any act prescribed, the Court may in its discretion from time to time enlarge such period even though the period originally fixed or granted may have expired. It is well settled that the power given to the Court under section 148 is discretionary and is given for the purpose of securing the ends of justice in case of necessity (see *Shri Joydhayan v. Babu Ram and others*, (5), decided by the Supreme Court. After taking into consideration the facts and circumstances of the case and in order to avoid further litigation between the parties I extend the time up to 15th June, 1985. However, I hope that the enquiry will be completed prior to that date and in any case no further extension will be sought by the petitioner.

(8) For the aforesaid reasons I accept the revision petition and grant extension to the petitioner up to 15th June, 1985. I, however, leave the parties to bear their own costs.

N.K.S.

(5) CA 94/72 decided on 23-11-82.