

Parmeshri v. Naurata (R. N. Mittal, J.)

(10) The impugned order thus warrants no interference in Revision which is consequently hereby dismissed with costs. Counsel's fee Rs. 300.

N.K.S.

Before R. N. Mittal, J.

PARMESHRI,—Appellant.

versus

NAURATA,—Respondent.

Civil Misc. No. 2819-C of 1983. ...

R.S.A. 1951 of 1971

May 10, 1984.

Code of Civil Procedure (V of 1908)—Section 148—Conditional decree for possession on payment of certain amount passed—Time within which the amount to be paid specified therein—Court—Whether entitled to extend time under section 148.

Held, that from a reading of section 148 of the Code of Civil Procedure, 1908 it is evident that the Court has power to extend time for doing such acts which are prescribed or allowed by the Code. In other words, it applies to procedural orders and not to conditional decrees. In the case of conditional decrees, the Court cannot extend time though in other cases it can do so. It is, therefore, held that in the case of conditional decree for possession on payment of some amount by a party within specified time, the Court is not entitled to extend time for payment under section 148 of the Code for sufficient cause, if the amount is not deposited within the specified time.

(Paras 5 and 6).

Application under Section 148 read with Section 151 C.P.C. on behalf of respondent praying that this Hon'ble Court may extend the time for payment of 3rd instalment upto 25th October, 1983 or till the amount is accepted by the plaintiff/appellant under the orders of this Hon'ble Court.

Rajesh Chawdhary, Advocate, for the applicant Respondent.

J. K. Sharma, Advocate, with I. S. Saini, Advocate, for the Appellant.

JUDGMENT

R. N. Mittal, J.—

(1) Briefly the facts are that Ram Saran, the father of the plaintiff, died on 8th November, 1966. The defendant got the mutation of the land sanctioned in his favour on the basis of a will alleged to have been executed by Ram Saran in his favour. The plaintiff challenging the execution and validity of the will, filed a suit for possession which was contested by the defendant. He controverted the allegations of the plaintiff and alleged that the will was duly executed by Ram Saran deceased in his favour in lieu of services.

(2) The trial Court held that Ram Saran executed a valid will in favour of the defendant. Consequently it dismissed the suit. On appeal by the plaintiff the first appellate court affirmed the judgement and decree of the trial Court and dismissed the same. In second appeal to this Court a compromise was effected between the parties according to which it was agreed that an amount of Rs. 15,000 would be paid by the respondent to the appellant in instalments and in case he failed to pay any of the instalments, the suit of the plaintiff would stand decreed. The matter was listed before me and I, in accordance with the compromise, passed the following judgment :—

“A compromise has been effected between the parties according to which it has been agreed that the respondent shall pay Rs. 15,000 to the appellant by Bank drafts against receipts in three equal instalments of Rs. 5,000 each. The first instalment is to be paid on or before 15th October, 1982, the second on or before 15th June, 1983, and the third on or before 15th October, 1983. In case the respondent fails to pay either of the said instalments, the appeal shall stand accepted and the suit of the plaintiff decreed. However, if the respondent pays all the instalments as stated above, the appeal shall stand dismissed. The compromise, Exhibit C.I., be deemed to be part of the judgement and decree. The parties are left to bear their own costs.”

The respondent failed to pay the last instalment in time. Consequently he moved an application under section 148 read with section 151 of the Code of Civil Procedure for extension of time in making

Parmeshri v. Naurata (R. N. Mittal, J.)

payment of the third instalment. It is stated in the application that the applicant, who was 80 years of age, fell seriously ill on 5th October, 1983 and remained on the verge of death during that period. As soon as he started moving he arranged for the amount of Rs. 5,000 and sent the money,—vide Bank draft dated 25th October, 1983, to Smt. Parmeshwari Devi plaintiff who refused to accept the same. It is alleged that the delay in tendering the third and last instalment was due to illness of the applicant which was beyond his control. It is further alleged that the paddy crop was late due to late sowing in the village and, therefore, it became difficulty for him to make arrangement for the balance amount. The application has been opposed by the plaintiff who controverted his allegations. She also denied the allegation that the applicant suffered from a serious ailment. Consequently it is prayed that the application be dismissed.

(3) The main question for determination is that if a conditional decree for possession on payment of certain amount within a specified period is passed in favour of a party and it fails to pay the amount within that time, whether the Court is entitled to extend time for payment under section 148 of the Code of Civil Procedure for sufficient cause? The learned counsel for the applicant submits that the Court has the power to extend time under section 148 of the Code. In support of his contention he made reference to **Mahanth Ram Das v. Ganga Das (1)**, **Smt. Periyakkal and others v. Smt. Dashyani (2)**, **Jadabendra Nath Mishra v. Smt. Manorama Debya (3)**, **Gobardhan Singh v. Barsati (4)**, and **New Bangesree Bastralaya and another v. Ramanlal Phurma Karta (5)**.

(4) I have heard the Learned Counsel for the parties at a considerable length and given my thoughtful consideration to their arguments. Section 148 says that where any period is fixed or granted by the Court for the doing or 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.

(1) A.I.R. 1961 S.C. 882.

(2) A.I.R. 1983 S.C. 428.

(3) A.I.R. 1970 Cal. 199.

(4) A.I.R. 1972 All. 246 (F.B.).

(5) A.I.R. 1976 Cal. 335.

(5) From a reading of the section it is evident that the Court has power to extend time for doing such acts which are prescribed or allowed by the Code. In other words it applies to procedural orders and not to conditional decrees. In the above view I am fortified to some extent by the observations of the Supreme Court in **Mahanth Ram Das's case (supra)**. It was observed by Hidayatullah, J., (as he then was) as follows :—

“How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out, often enough to be inexpedient. Such procedural orders, though peremptory (**conditional decrees apart**) are, in essence, in *terrorem*, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed.” (emphasis supplied by underlining).

It is evident from the above observations that in the case of conditional decrees the Courts cannot extend time though in other cases it can do so. Following the above case, similar view was taken in **P. K. Sukhumaran v. Sulaiman Khan (6)**, **S. Mahalinga Bhatta v. Assanare Beary (7)**, **Bhujanrao Ganpati v. Sheshrao Rajaram (8)** and **Kumari Sushila Devi Jain v. Mohammad Shafi (9)**. It was held in **P. K. Sukumaran's case (supra)**, where a suit is decreed on condition that a certain amount is paid within a specified time and in default that suit will stand dismissed the Court, after the expiry of the fixed time, loses seisin over the matter and therefore, cannot extend the time. While interpreting section 148 the following observations were made in **Kumari Shushila Devi Jain's case**:

“It is only procedural orders in respect of which time for compliance can be enlarged. It is not in respect of conditional decrees, which are self-operative, that time can be enlarged under this provision.”

I am in respectful agreement with the above observations.

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- (6) A.I.R. 1971 Madras 454.
 - (7) A.I.R. 1973 Kerala 185.
 - (8) A.I.R. 1974 Bombay 104.
 - (9) A.I.R. 1982 All. L.J. 478.

(6) Now I advert to the cases referred to by the learned counsel for the applicant. **Mahanth Ram Das's case** (supra) has already been referred to above. In **Smt. Periyakkal's case** (supra), a property was auctioned in pursuance of a decree which was purchased by the decree-holder. The legal representatives of the judgment-debtor filed objections against the sale. A compromise was arrived at between the parties by which the legal representatives agreed to deposit certain amount by a particular date. From the above facts it is evident that the compromise was not in a suit but in execution proceedings. Thus the order did not amount to a decree. In **Jadabendra Nath Mishra's case** an **ex parte** decree was passed against the defendant who made an application for setting aside the **ex parte** decree. During the pendency of the application a compromise was arrived at between the parties according to which it was agreed that if the defendant deposited certain amount within a certain period, the **ex parte** decree would be set aside and the suit restored. There was also a default clause providing that if the amount was not paid within the specified period, the miscellaneous application would stand dismissed. This order too was not a decree. Similarly in **Gobardhan Singh's** and **New Bancesree Bastralava's cases** (supra) that orders did not constitute decrees. Mr. Chaudhary then made reference to another Supreme Court case reported as **Joghayan v. Babu Ram and others** (10). In that case a decree for possession in a pre-emption suit was passed in favour of the plaintiff on payment of Rs. 17,936.25 Paise. The decree-holder deposited the amount of Rs. 17,936 but through oversight did not deposit twenty-five paise. Later, he deposited the said amount but beyond time. Thereafter, he was directed to deposit another Rs. 500 in second appeal which he did within the time prescribed. In execution, an objection was taken by judgment debtor that the decree could not be executed as full amount had not been deposited by the decree holder. The executing Court held that the mistake was **bona fide** and consequently over-ruled the objection. In 1st appeal the order of the executing Court was reversed and in second appeal the view of the 1st appellate Court was affirmed. The Supreme Court on further appeal by the decree holder, held that the short deposit was due to the **bona fide** mistake of the appellant. It therefore accepted the appeal and restored the order of the executing Court. In my view the above observations are to be read in the context of the peculiar circumstances of

that case. It is thus evident that all the above cases are distinguishable and the ratio therein will not apply to this case. I am, therefore, of the view that in the case of conditional decree for possession on payment of some amount by a party within specified period, the Court is not entitled to extend time for payment under section 148 of the Code for sufficient cause, if the amount is not deposited within the specified time.

(7) In the present case the last instalment was not deposited by the applicant in time. It is admitted by him that he had no money to deposit it within the specified period. It is not necessary to go into the question as to why he could not deposit the amount as I am of the opinion that the delay in the present case cannot be condoned in depositing the amount under section 143 of the Code. Consequently the application is liable to be dismissed.

(8) For the aforesaid reasons I do not find any merit in the application and dismiss the same. No order as to costs.

...N.K.S.

Before S. S. Sandhawalia, C.J., S. C. Mital and K. S. Tiwana, JJ.

JAGRAJ SINGH AND ANOTHER,—Petitioners.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 5218 of 1981.

October 6, 1982. ...

Constitution of India 1950—Article 226—Punjab Municipal Act (III of 1911)—Sections 25, 26, 27, 29 and 30—Punjab Municipal Election Rules 1952—Rules 47, 53 and 63—Election of a Vice-President sought to be challenged in a writ petition—Remedy of an election petition provided by Rule 53—Whether an exclusive remedy in the first instance—High Court—Whether should exercise its extraordinary jurisdiction when such a remedy is provided.

Held, that on a reading of the relevant sections of the Punjab Municipal Act 1911 and Rules 47, 53 and 63 of the Punjab Municipal