

Before S.S. Saron, J.

BALWINDER KAUR,—Petitioner

versus

FINANCIAL COMMISSIONER (APPEALS-I)

PUNJAB AND OTHERS,—Respondents

C.W.P. No. 17464 of 2008

16th September, 2009

Constitution of India, 1950—Art. 226—Code of Civil Procedure, 1908—S. 149—Failure to make payment of Court fee—Whether liable to be non-suited on mere technical defect of non-payment of Court fees—Held, no—Provisions of S. 149 CPC provide for power to make a deficiency of Court-fees—Where whole or any part of fee prescribed for any document by law not paid, Court may, in its discretion, allow to pay of such Court fee—Court may enlarge time for payment of prescribed fee and on such payment document shall have same force and effect as if such fee had been paid in first instance—However, in such circumstances other side can always be compensated by payment of costs.

Held, that the petitioner has been non-suited merely for non-payment of court fees. It is well known that where technical consideration and merit or cause of substantial justice are pitted against each other, the cause of merit and substantial justice is to prevail for no party can seek a vested right in injustice to be done because of a non-deliberate act of not depositing the Court fee. If the petitioner as also respondents No. 37 and 38 had been given adequate opportunity to pay the Court-fees, they would have paid the same. They are not liable to be non-suited on mere technical defect of non-payment of Court-fees. The principle underlying Section 149 of the Code of Civil Procedure is liable to be applied which provides for power to make a deficiency of Court-fees. It is *inter alia* provided that where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court

fee; and upon such payment the document, in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance. Though the provisions of CPC are not applicable to proceedings under the Pepsu Tenancy and Agricultural Land Act, however, nevertheless the general principles of C.P.C. can always apply to such proceedings. Therefore, the Court may enlarge the time for the payment of prescribed fee and on such payment it shall have the same force and effect as if such fee had been paid in the first instance. In such circumstances, the other side can always be compensated by payment of costs.

(Para 7)

S.K. Arora, Advocate *for the petitioner.*

H.S. Gill, Deputy Advocate General, Punjab *for respondents No. 1 to 4.*

Surinder Garg, Advocate *for respondents No. 5 to 12.*

S.S. SARON, J.

(1) Heard learned counsel for the parties.

(2) The petitioner by way of the present petition under Articles 226/227 of the Constitution of India seeks quashing of the order dated 4th February, 2004 (Annexure-P3) passed by the Collector, Faridkot (respondent No. 3), the order dated 23rd January, 2008 (Annexure-P4) passed by the Commissioner, Faridkot Division, Faridkot (respondent No. 2) and the order dated 26th August, 2008 (Annexure-P 6) passed by the Financial Commissioner (Appeals-I), Punjab (respondent No. 1).

(3) Respondents No. 5 to 12 filed a suit against the petitioner and proforma respondents for recovery of share of produce on the ground that they are owners of land measuring 18 Kanals. It was alleged that Sukhwinder Singh (respondent No. 37), Uttar Singh (respondent No. 38) and Balwinder Kaur (petitioner) were cultivating 6 Kanals 3 Marlas of land which was in excess of their share in the land. It was also alleged that Sukhwinder Singh etc. (respondents No. 37 and 38 and the petitioner) had purchased the said 6 Kanals 3 Marlas of land from co-sharer Jangir Singh (respondent No. 21). The share of produce was not being paid by them and, therefore, respondents No. 5 to 12 claimed that they were entitled to share of produce from Kharif 1992. The petitioner as also respondents No. 37 and 38 were proceeded against *ex parte*. The suit of respondents No. 5 to 12 was decreed by the Assistant Collector Ist Grade, Faridkot *vide* judgment and

decree dated 16th April, 2002 (Annexure-P.1) holding that respondents No. 5 to 12 were entitled to recover Rs. 26,258 i.e. 1/3rd share which was considered produce from Sukhwinder Singh (respondent No. 37), Uttar Singh (respondent No. 38) and Balwinder Kaur (petitioner). The petitioner on coming to know of the *ex parte* judgment and decree dated 16th April, 2002 (Annexure-P.1) along with respondents No. 37 and 38 filed an appeal before the District Collector, Faridkot. The said appeal was accepted by the District Collector *vide* judgment and decree dated 25th August, 2003 (Annexure-P.2). While allowing the appeal it was directed by the learned District Collector that the appellants i.e. respondents No. 37 and 38 and the petitioner shall fix the requisite court-fees with the appeal. According to the petitioner, no time period was fixed for payment of the court-fees. Thereafter, on 1st December, 2003, Jagtar Singh (respondent No. 5) filed an application before the District Collector, Faridkot mentioning therein that the appellants Sukhwinder Singh etc. had not filed the requisite court-fees in terms of order dated 25th August, 2003 (Annexure-P.2). A notice of the said application was given to the counsel for the appellants but despite service he did not appear. Accordingly, *ex parte* proceedings were initiated. The learned Collector *vide* order dated 4th February, 2004 (Annexure-P.3) dismissed the appeal of the petitioner and respondents No. 37 and 38 for non-compliance of the Court order dated 25th August, 2003 (Annexure-P.2) with regard to payment of court-fees. Aggrieved against the said order, the petitioner as also respondents No. 37 and 38 filed a revision petition before the learned Commissioner, Faridkot Division, Faridkot. It was stated that they were never summoned by the learned Collector the passing of the order dated 4th February, 2004 (Annexure-P.3). The learned Commissioner *vide* order dated 23rd January, 2008 (Annexure-P.4). The petitioner dissatisfied with the orders dated 4th February, 2004 (Annexure-P.4) held that the Collector had summoned the appellants i.e. the petitioner as also respondents No. 37 and 38 but they did not appear. Accordingly, the revision petition of the petitioner and respondents No. 37 and 38 was dismissed by the learned Commissioner *vide* order dated 23rd January, 2008 (Annexure P-4). The petitioner dissatisfied with the orders dated 4th February, 2004 (Annexure-P.3) and dated 23rd January, 2008 (Annexure-P.4) filed a revision petition under Section 84 of the Punjab Tenancy Act, 1887 ('Act'—for short) before the Financial Commissioner. It was pleaded that once the case was remanded to the learned Assistant Collector, 1st Grade, there was no necessity to pay the court-fees and if the same had been paid with the memorandum of appeal the same was liable

to be refunded as per Section 13 of the Court-fees Act, 1870. It was further stated by the petitioner that if otherwise the Court came to the conclusion that the petitioner was required to pay Court-fees in terms of order dated 25th August, 2003 (Annexure-P. 2), the petitioner undertakes to pay the same within the stipulated period. The said revision petition was, however, dismissed by the Financial Commissioner in limine *vide* order dated 26th August, 2008 (Annexure-P. 6). The petitioner aggrieved against the same has preferred the present petition.

(4) At the time of issuing of notice of motion by this Court *vide* order dated 24th October, 2008, it was acknowledged by the learned counsel appearing on behalf of the petitioner that there has been unreasonable delay on the part of the petitioner in depositing the Court-fees. It was further stated that the petitioner was ready and willing to compensate respondents No. 5 to 12 with costs of Rs. 5,000, in case the petitioner is given a further opportunity to deposit the Court-fees. On recording the statement of the learned counsel, notice of motion was issued by this Court to respondents No. 5 to 12 who have put in appearance and filed their written statement.

(5) Learned counsel for the petitioner contends that after the passing of the order dated 25th August, 2003 (Annexure-P. 2) by the learned District Collector, the notice is stated to have been given to their counsel who did not inform the petitioner otherwise the petitioner would have deposited the necessary Court-fees. It is further submitted that the petitioner is not liable to be non-suited for non-payment of Court-fees and her cause is liable to be heard on merit.

(6) In response, learned counsel appearing for respondents No. 5 to 12 has submitted that the petitioner and respondents No. 37 and 38 have unnecessarily delayed the proceedings and have not paid a single penny to respondents No. 5 to 12. Therefore, it is submitted that the case has been rightly decided. It is further submitted that the offer of Rs. 5,000 as payment of costs is not acceptable to respondents No. 5 to 12.

(7) I have given my thoughtful consideration to the matter. It may be noticed that the petitioner has been non-suited merely for non-payment of Court-fees. It is well known that where technical consideration and merit or cause of substantial justice are pitted against each other, the cause of merit and substantial justice is to prevail for no party can seek a vested right in injustice to be done because of a non-deliberate act of not depositing the Court fee. It the petitioner as also respondents No. 37 and 38 had been

given adequate opportunity to pay the Court-fees, they would have paid the same. They are not liable to be non-suited on mere technical defect of non-payment of Court-fees. The principle underlying Section 149 of the Code of Civil Procedure is liable to be applied which provides for power to make a deficiency of Court-fees. It is *inter alia* provided that where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance. Though the provisions of C.P.C. are not applicable to proceedings under the Pepsu Tenancy and Agricultural Land Act, however, nevertheless the general principles of C.P.C. can always apply to such proceedings. Therefore, the Court may enlarge the time for the payment of prescribed fee and on such payment it shall have the same force and effect as if such fee had been paid in the first instance. In such circumstances, the other side can always be compensated by payment of costs. The petitioner though has considerably delayed the payment of Court-fee but nevertheless her case is liable to be decided on merit rather than being of non-suited on technical default, even otherwise the other side can be compensated with costs and in the circumstances Rs. 7,500 would be adequate costs.

(8) In view of the above, the civil writ petition is allowed. The impugned order, dated 4th February, 2004 (Annexure-P.3), the order, dated 23rd January, 2008 (Annexure-P.4) and the order, dated 26th August, 2008 (Annexure-P.6) passed by the respondents No. 1 to 3 respectively are set aside and quashed. The petitioner shall in compliance with the order, dated 25th August, 2003 (Annexure-P.2) furnish the amount of Court-fees due and payable within the period of one month from the date of receipt of copy of this order and on such payment the memo of appeal in respect of which Court-fees was payable shall have the same force and effect as if it had been paid in the first instance. The petitioner for the delay that has caused shall pay to respondents No. 5 to 12 costs of Rs. 7,500.

R.N.R.