

the substantive law, in consequence of which it is available for application not only by the Tribunal but also by an ordinary civil Court. We did not read section 16 in that manner and on this argument we do not find that we can read sub-section (4) as separate and apart from the other sub-sections of section 16. As has been said above, the benefit of sub-section (4) in regard to mortgage of agricultural land can only be had by the mortgagor provided the proceedings are before the Tribunal under the Act.

(15) In the wake of sub-section (4) of section 16 this might appear to be a hard case, but the fault lies with the debtor, the present applicant, who could have made a move under section 5 of the Act within the time stated in that section, but he did not make the move and we rejected the argument of the learned counsel during the hearing of the appeal that this Court can give a direction to the respondents to approach the Tribunal under section 10 of the Act.

(16) In consequence, this application is dismissed, but there is no order in regard to costs in the same. This judgment will be read as a continuation of our Judgment in the appeal of the applicant decided on September 16, 1968.

H. R. SODHI, J.—I agree.

R.N.M.

APPELLATE CIVIL

*Before Mehar Singh, C.J., and H. R. Sodhi, J.*

DALIP SINGH AND OTHERS,—Appellants.

*versus*

HARDEV SINGH AND OTHERS,—Respondents.

**Second Appeal from Order No. 17 of 1966**

September 24, 1969.

*Punjab Pre-emption Act (I of 1913)—S. 22(1)—Court ordering deposit of one-fifth of sale consideration in cash—Such court—Whether has the authority to direct subsequently the furnishing of security for the sale consideration—Time fixed for deposit—Whether can be extended.*

Dalip Singh and others *v.* Hardev Singh and others (Sodhi, J.)

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*Held*, that it is open to a Court having once ordered the one-fifth of the sale consideration to be deposited in cash to subsequently change that order and direct that the security for the sale consideration be furnished. (Para 9)

*Held*, that the Court can, from time to time, in the exercise of its sound judicial discretion extend the period for deposit of cash or furnishing of security, subject to the condition that either of these things must be done before the settlement of issues. (Para 9)

Case referred by the Hon'ble Mr. Justice Harbans Singh on 16th November, 1967, to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice H. R. Sodhi after deciding the question of law on 24th September, 1968, returned the case to the Single Bench for deciding the case on merits.

Second appeal from order of the Court of Shri J. P. Gupta, District Judge, Kapurthala, dated 22nd February, 1966.

K. N. TEWARI, ADVOCATE, for the Appellants.

J. N. KAUSHAL, H. L. SARIN, ASHOK BHAN, A. L. BAHAL AND A. L. BAHRI, ADVOCATES, for the Respondents.

#### ORDER

**SODHI, J.**—The following two questions of law arising in S.A.O. No. 17 of 1966 have been referred to a larger Bench by a learned Single Judge by an order, dated 16th November, 1967, and it is in these circumstances that the case is before us—

1. If the Court once orders under section 22(1) of the Punjab Pre-emption Act, 1913 (Act 1 of 1913), that one-fifth of the sale consideration be deposited in cash, has the Court authority subsequently to change this order and direct that security for the sale consideration be furnished ?
2. If the Court fixed the time for deposit for cash can it subsequently extend the time ?

The facts which led to this reference are not in dispute. Hardev Singh and others plaintiffs filed a suit on 4th July, 1964, in the Court of the Subordinate Judge, Sultanpur Lodhi, District Kapurthala, for possession by pre-emption of agricultural land measuring 234 Kanals

12 Marlas situate in village Dauley alleged to have been sold for a consideration of Rs. 40,876 in favour of Dalip Singh, etc. defendants 1 to 4 by the other defendants 5 to 12, Joginder Singh, etc. The trial Court ordered on 25th July, 1964, that the plaintiffs should deposit one-fifth of the sale consideration (Zare Panjam) amounting to Rs. 8,175.20 Paise up to 7th August, 1964. On the same day, an application was made by the plaintiffs requesting the Court to extend the time for deposit of one-fifth of the sale consideration and this request was allowed, the time having been extended up to 25th August, 1964. Again another application was made on 12th August, 1964, in which it was stated that the plaintiffs were minors and it was difficult for them to arrange for the huge amount of Rs. 8,175.20 Paise which had been ordered to be deposited as one-fifth. The counsel for the plaintiffs did not press this application when it came up for hearing on 13th August, 1964 and it had consequently to be filed. There was then another application made by the plaintiffs on 14th August, 1964, which was almost in similar terms, but a further prayer was added that instead of the plaintiffs being called upon to deposit one-fifth cash, they may be permitted to give security for the payment of the sale price amounting to Rs. 40,876. The Court allowed this to be done by 21st September, 1964. The security was furnished on 19th August, 1964 and the Court accepted the same.

(2) The vendees defendants Dalip Singh and others filed an application with a prayer that the plaint be rejected in terms of section 22(4) of the Punjab Pre-emption Act, hereinafter called the Act, as the plaintiffs had failed to deposit the amount of one-fifth within the period allowed by the Court. This application was dismissed and issues were settled.

(3) Some evidence was led and the case adjourned to 9th August, 1965 to enable that parties to reach some compromise, as desired by them. No compromise could be arrived at and the defendants made another application on 9th August, 1965 praying that the suit be dismissed as no security could be taken instead of the cash deposit which had been directed earlier. It was pleaded that the order allowing the plaintiffs to furnish security instead of the deposit of cash was a nullity. There were other objections also taken by the vendees, namely, that the security bond was not executed on a proper stamp-paper and the counsel who made the application to get the order for the deposit of cash converted into that of furnishing

Dalip Singh and others *v.* Hardev Singh and others (Sodhi, J.)

security had no authority to do so, since he did not hold any power of attorney from the plaintiffs. It is not necessary to recapitulate all the objections and it is enough for the purpose of this reference to mention that the trial Court accepted the objections of the vendees-defendants and rejected the plaint by its order, dated 12th August, 1965.

(4) The plaintiffs preferred an appeal before the District Judge, Kapurthala who allowed the same by his order, dated 22nd February, 1966, holding that it was competent for the trial Court to ask for security instead of the deposit of one-fifth of the sale price as previously ordered by it. The security bond was held to have been written not on a properly stamped paper, but it was directed by the appellate Court that the Subordinate Judge should have called upon the plaintiffs to make up the deficiency as laid down in section 22(5) of the Act. The case was accordingly remanded and against that order of remand, Dalip Singh etc. the vendees came up in second appeal to this Court. When the appeal came up for hearing, the learned Single Judge was of the view that the two questions of law referred to above and arising in the case be better settled by a larger Bench.

(5) We have heard Mr. K. N. Tiwari on behalf of the appellants and Mr. J. N. Kaushal for the plaintiffs-respondents. The answer to the second question can be found in sub-section (4) of section 22 of the Act. At this stage, the whole of section 22 may be reproduced with advantage—

“22. (1) In every suit for pre-emption the Court shall at, or at any time before, the settlement of issues, require the plaintiff to deposit in the Court such sum as does not, in the opinion of the Court, exceed one-fifth of the probable value of the land or property, or require, the plaintiff to give security to the satisfaction of the Court for payment, if required, of a sum not exceeding such probable value within such time as the Court may fix in such order.

(2) In any appeal the Appellate Court may at any time exercise the powers conferred on a Court under sub-section (1).

(3) Every sum deposited or secured under sub-section (1) or (2) shall be available for the discharge of costs.

(4) If the plaintiff fails within the time fixed by the Court or within such further time as the Court may allow to make

Dalip Singh and others v. Hardev Singh and others (Sodhi, J.)

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the deposit or furnish the security mentioned in sub-section (1) or (2), his plaint shall be rejected or his appeal dismissed, as the case may be.

- (5) (a) If any sum so deposited is withdrawn by the plaintiff, the suit or appeal shall be dismissed.
- (b) If any security so furnished for any cause becomes void or insufficient, the Court shall order the plaintiff to furnish such security or to increase the security, as the case may be, within a time to be fixed by the Court, and if the plaintiff fails to comply with such order, the suit or appeal shall be dismissed.
- (6) The estimate of the probable value made for the purpose of sub-section (1) shall not affect any decision subsequently come to as to what is the market value of the land or property."

In view of the provision of law contained in sub-section (4) there can be no manner of doubt that it is within the discretion of the Court to extend time once or more than once as it may think just and proper in the circumstances of each case subject to the over-riding condition as laid down in section 22(1) of the Act that the deposit of the amount not exceeding one-fifth of the probable value of the land or property in dispute or the furnishing of security, as the case may be, is effected at any time before the settlement of issues. As a matter of fact, it is conceded by Mr. Tiwari, that sub-section (4) of section 22 of the Act does not prohibit the Court from extending the time for deposit to be made or security to be furnished, but contents that the trial Court did not exercise its discretion judicially. We are not going into the question as to whether the discretion was exercised judicially or not, since it is a matter which will be dealt with the learned Single Judge.

(6) As regards the first question relating to the power of the Court to withdraw any earlier order directing deposit of one-fifth of the sale price in cash and substituting the same by the one allowing security to be furnished to the satisfaction of the Court for payment of the sale price, it is submitted by both the learned counsel that there is no reported case bearing directly on this point except (*Malaghar Singh v. Karnail Singh*, (1), decided by

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(1) R.S.A. 29 of 1967 decided on 16th May, 1967.

Dalip Singh and others *v.* Hardev Singh and others (Sodhi, J.)

Mahajan, J. of which mention has been made by the learned Single Judge as well in the referring order. Our attention has been invited by Mr. Kaushal to (*Suraj Parakash v. Smt. Nina Rani Aggarwal*) (2), decided by Mahajan, J. The latter decision cannot be of any assistance in answering the question before us. The learned Judge has held in this case that the Court can pass a consolidated order asking for part payment in cash and for furnishing of security with respect to the remaining sale price. We doubt if it is the correct enunciation of law. But be that as it may, it is not necessary to finally pronounce on the correctness of this view taken by the learned Single Judge, since it has no relevancy in the present case, which arises out of a different set of circumstances. Section 22(1) of the Act gives a power to the Court in every suit for pre-emption to pass either of two orders directing the deposit in cash by the plaintiff of an amount not exceeding one-fifth of the probable value of the land or property or to require him to give security to the satisfaction of the Court for the payment of an amount not exceeding the probable value of such a land or property. The object of this provision seems to be that the Court wants to make sure that the plaintiff is *bona fide* prosecuting his pre-emption suit which is sometimes collusive and may be that when a suit is decreed, the plaintiff is not in a position to get himself substituted for the vendee because of his inability to pay the sale price. Any such situation would naturally result in harassment for the vendee and the legislature in its wisdom has taken the precaution of enabling a Court to obtain some sort of security from the plaintiff. The deposit of cash to the extent of one-fifth is also by itself a security. There may be cases where the plaintiff, who is a *bona fide* pre-emptor, is not possessed of ready money to pay one-fifth of the sale price, but can arrange to furnish security. The Court, in the exercise of its sound judicial discretion, is bound to consider all the relevant circumstances to decide as to whether it is a case where the plaintiff should be called upon to deposit one-fifth in cash or furnish security.

(7) Reliance has been placed by Mr. Tiwari on a case reported as *Zaman Mehdi Khan v. Hayat Khan* (3), the facts of which are clearly distinguishable. In the said case, the plaintiff had been initially ordered to furnish security under section 22(1) of the Act

(2) C.R. 148 of 1967 decided on 5th May, 1967.

(3) A.I.R. 1938 Lahore 452.

but the surety withdrew and the plaintiff was then asked to deposit cash within a certain time. It was in these circumstances that the learned Single Judge held that such an order could not be passed in view of the provision of law contained in section 22 (5) (b) of the Act which is specifically intended for such cases. The security bond having become void or ineffective since the surety had withdrawn the same the Court had to act within the ambit of Clause (b) of sub-section (5) of section 22 which is a special provision. The Court could, therefore, only call upon the plaintiff to furnish fresh security within a time to be fixed for the same. Any order directing the cash deposit of one-fifth of the sale price would have been presumably more onerous and not warranted by the language of section 25(b). The case before us is just the converse of that case and not covered by clause (b) of Sub-section (5) of section 22 of the Act. In a case where the initial order of cash deposit of one-fifth is made but later is it sought to be changed into that of furnishing security, what we have to find out is whether there is any prohibition to that effect contained in section 22. There is, in our opinion, no such prohibition. If it was open to the Court at the initial stage to pass any such order calling upon the plaintiff to furnish security instead of making a cash deposit of one-fifth, there is no reason to hold that the Court is prohibited from deciding this matter at any subsequent stage before the settlement of issues, if the facts brought to its notice indicate that the plaintiff is really not in a position to deposit cash and security should be taken from him. Any interpretation which causes hardship must be avoided and we cannot agree with Mr. Tiwari that a pre-emptor plaintiff should be considered to be exercising a piratical right and on that score an interpretation should be placed which tends to deprive him of the exercise of his statutory right. The Court should not be led away from construing a plain provision of law in a just and equitable manner simply because of certain preconceived notions that the right of pre-emption is sometimes described as a piratical right. It is not necessary to comment on such observations or if such a right is in derogation of any freedom of contract. A right of pre-emption is a statutory right to acquire property on certain conditions which law considers to be in the interest of the society.

(8) The contention of Mr. Tiwari that the Court has no power to subsequently allow a security to be furnished when it had directed earlier the deposit in cash of one-fifth of the sale price has, therefore, no merit. In this view of the matter, it cannot also be reasonably

Dalip Singh and others v. Hardev Singh and others (Sodhi, J.)

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contended that the plaintiff having failed to deposit the amount, the suit should have been dismissed under section 22(5) (a) of the Act. When an order directing cash deposit of one-fifth is converted into one for furnishing security, it cannot be said that such a case is covered by section 22(5) (a). In the instant case, the plaintiff deposited no amount and all that happened was that the Court in the exercise of its powers and judicial discretion, as given to it by section 22(1) of the Act, decided to give relief to the plaintiff by permitting him to furnish security for the probable value of the land in dispute rather than calling upon him to deposit cash to the extent of one-fifth which he might not be in a position to pay. Mahajan, J. was right in observing that in many cases during the pendency of an appeal the final disposal of which is likely to take a long time, the plaintiff is usually permitted to withdraw the amount with a direction to re-deposit the same in case the ultimate decision went against him. **Withdrawal of the amount contemplated by clause (a) of sub-section (5) of section 22 of the Act which must lead to the dismissal of the suit, is where the amount has been withdrawn with no alternative order made by the Court. In case of such a withdrawal, the plaintiff can certainly be penalised and his suit dismissed inasmuch as it becomes clear that he is not acting *bona fide* or is not otherwise serious in proceeding with the suit. Sub-section 5(a) does not over-ride the power of the court as given in sub-section (1) of section 22 of the Act to pass any of the alternative orders either at the time of the institution of the suit or subsequently before, of course, the settlement of issues.**

(9) In view of the above discussion, the questions referred to this Division Bench are answered as follows:—

- (1) It is open to a Court having once ordered the one-fifth of the sale consideration to be deposited in cash to subsequently change that order and direct that the security for the sale consideration be furnished; and
- (2) the Court can, from time to time, in the exercise of its sound judicial discretion extend the period for deposit of cash or furnishing of security, subject to the condition that **either of these things must be done before the settlement of issues.**



(10) The case will now go back to the learned Single Judge for decision on other questions raised in the second appeal. The costs in this reference will be costs in the cause.

Mehar, Singh, C. J.—I agree.

K.S.K.

LETTERS PATENT APPEAL

Before S. B. Kapoor and R. S. Narula, JJ.

LT. COL. MICHEAL A. R. SKINNER AND OTHERS,—Appellants

versus

THE MUNICIPAL COMMITTEE, HANSI AND ANOTHER,—Respondents

Letters Patent Appeal No. 27 of 1964

September 25, 1968.

*Punjab Municipal Act (III of 1911)—S. 3(1)—Building not let out—“Annual value” of such building—Whether to be fixed under S. 3(1) (c).*

*East Punjab Urban Rent Restriction Act (III of 1949)—S. 4—‘Building’ or ‘land’ in occupation of the owner—Rent Controller—Whether has the jurisdiction to fix fair rent for such building or land.*

Held, that rent of a building which has never been let out cannot be fixed under clause (b) of sub-section (1) of section 3 of the Punjab Municipal Act, 1911 and therefore, the ‘annual value’ of such a property has to be fixed in accordance with the principles laid down in clause (c) of sub-section (1) of section 3 of the Act. (Para 7).

Held, that the Rent Controller under the East Punjab Urban Rent Restriction Act, 1949 has no jurisdiction to fix the fair rent of any premises which do not fall within the expression “building or rented land” and such fair rent can be fixed only on an application of a tenant or landlord of a “building or rented land.” The expression “rented land” itself implies that it should be a land which is already rented out on the date when the application is made and it is only of rented land that fair rent can be fixed and not of land in the occupation and possession of the owner, which is not rented out. Similarly, under the Act, fair rent cannot be fixed of a building or part of a building which is not let out and which has all along been and continues to