

Pratap Singh Vs. Bademjee

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Court : Madhya Pradesh

Decided On : Jul-29-2003

Reported in : 2003(4)MPHT292

Judge : S.K. Pande, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 148

Appeal No. : Civil Revision No. 663/99

Appellant : Pratap Singh

Respondent : Bademjee

Advocate for Def. : None

Advocate for Pet/Ap. : K.N. Agrawal, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

S.K. Pande, J.

1. This revision under Section 115 of CPC is directed against the order dated 2-2-99, passed by ADJ, Khurai in MJC No. 28/98, whereby application under Section 148, CPC filed by JDR/non-applicant has been allowed.

2. DHR/applicant instituted C.S. No. 94-A/94 in the Court of Civil Judge Class-II, Khurai for specific performance of contract dated 27-4-82, whereby, as alleged, JDR/non-applicant agreed to sell his house situated on Khasra No. 50/1, 51/K, Shashtri Ward, Khurai Distt. Sagar for a sum of Rs. 10,000/- out of which he received an amount of Rs. 9,500/- as part payment. Vide judgment/decreed dated 2-4-84, passed by Civil Judge, C.S. No. 94-A/94 was decreed directing JDR/non-applicant to refund Rs. 9,500/- part payment received by him and Rs. 500/- as damages alongwith interest at the rate of 6% p.a. for the date of filing of suit till date of its payment. It was directed that in case the JDR/non-applicant fails to make the aforesaid payment within a period of 90 days, from the date of passing the aforesaid judgment/decreed, DHR/applicant would be entitled to get the sale deed executed after paying the balance consideration of Rs. 500/-. JDR/non-applicant preferred first appeal before ADJ, Khurai. The appeal was dismissed vide judgment dated 2-8-97, however, further time for making payment, within 90 days from the date of aforesaid judgment was granted. For non-payment within the prescribed period of 90 days, DHR/applicant filed execution on 5-11-97. JDR/non-applicant filed application under Section 148 of CPC praying that he could not deposit the amount for the reasons stated in the said application. JDR/non-applicant deposited Rs. 10,000/- in CCD and prayed that further time of one month's be granted for depositing the balance. This application under Section 148, CPC has been opposed by DHR/applicant. The Court below vide impugned order dated 2-2-99 allowed the application and observed that total sum of Rs. 20,772/- has been deposited by JDR/non-applicant in C.C.D. Only interest at the rate of 6% p.a. from 29-11-98 is to be paid. Accordingly, one week's time has been granted.

3. The impugned order dated 2-2-99 allowing the application under Section 148, CPC has been assailed mainly on the ground that in C.S. No. 94-A/94, a conditional decree for specific performance of agreement for sale was passed. The decree being conditional, the Court below has no jurisdiction to extend time for deposit. In support, judgment (SB) Hindurao Annasaheb Patil (deceased by L.Rs.) v. Yeshwant Laxman Yadav, reported in AIR 1983 Bombay 60, has been relied. In the judgment Smt. Laxmi Bala Chanak v. Brojendra Nath Pain and Ors., reported in AIR 1971 Calcutta 243, in similar circumstances the Court has held that the Court has power to extend time under Section 148, CPC even after the

time fixed by the decree or order, has expired. The facts of the instant case are identical with that of AIR 1971 Calcutta 243 (supra). On consideration whether the Court has power under Section 148, CPC to extend time after the time fixed by Court for decree had expired, it has been observed :--

Different High Courts, from time to time, have expressed different opinions regarding the powers of Courts to extend time fixed by decrees or orders. In Abdul Shaker Sahib v. Abdul Rahiman Sahib, AIR 1923 Mad. 284, a Division Bench of the Madras High Court held, that, a decree for specific performance of a contract fixing a period of payment of sale consideration, is in the nature of a preliminary decree and therefore, the delay in depositing the amount can be condoned. The Court has power in such a case to allow extension of time and condone delay in depositing the amount. The above case was followed in Ram Bhatlu v. Annayya Bhatlu, AIR 1926 Mad. 144. The Allahabad High Court in Someshwar Dayal v. Widow of Lalman Saha, AIR 1958 All. 488, followed the same principle as of the Madras High Court. A Division Bench of this Court in Bhutnath v. Sahadeb, 66 Cal. WN 645 = (AIR 1962 Cal. 485) did not accept the view of the Madras High Court and held that after the expiry of the time limited by the decree, the Court loses seisin over the matter and can not extend time. But after the pronouncement of the Supreme Court in Mahanth Ramdas v. Ganga Das, AIR 1961 SC 882, the law seems to have been altered. In that case, the application for extension of time was made before the time fixed by the Patna High Court for payment of deficit Court-fees. The said application, however, came up for hearing after the period had expired. Hidayatullah, J. (as He then was) observed, that Section 148 of the Code in terms, allowed extension of time, even if the original period fixed had expired. The Supreme Court has expressly laid down that the Court has power to condone the delay and extend the time fixed under Section 148, Civil Procedure Code, even if the original time fixed by the Court had expired. This material passage in the judgment of the Supreme Court seems to have been overlooked in the Single Bench decision of this Court (AIR 1965 Cal. 354) relied upon by the Trial Judge. It is true that, in the case before the Supreme Court, the directions were made in the order and not in the decree, but I think that the same principle can be applied in case of decree also.

8. In view of the decision of the Supreme Court as referred to above, in my opinion, the Court has power to extend time under Section 148 of the Civil Procedure Code, even after the time fixed by the Court in the decree had expired.

4. The Court below in the impugned order has discussed the evidence adduced by the parties and recorded that the JDR/non-applicant being poor could not have deposited the amount within the stipulated time. Further the decree for specific performance of contract has not been passed looking to the difficulties of JDR/non-applicant, if deprived of his residential house. Under Section 148 of CPC where any period is fixed or granted by the Court for doing of any act, the Court may in its discretion from time to time, enlarge such period even though the period originally fixed or granted may have expired. The discretion vested with the Court below can not be said to have been exercised erroneously.

5. Order impugned, therefore, does not suffer from any material irregularity. Revision fails and is dismissed. No order as to cost.

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