
(2011) 11 J&K CK 0016
In the Jammu And Kashmir High Court
Case No : C. Rev. No. 29 of 2009

Gh. Qadir Dar and Another	Vs	APPELLANT
Punjab National Bank		RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 2012 J&K 35 : (2011) 4 JKJ 251

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, Judge

1. Challenge in this revision petition is to order dated 18.12.2008 passed by Additional District Judge (Bank Cases), Srinagar in case titled as

Punjab National Bank v. Ghulam Qadir Dar and others, whereby application moved by plaintiff-Bank for revival of proceedings of the suit was

granted and suit was revived (for short impugned order).

2. It appears that the suit titled as Punjab National Bank v. Gh. Qadir Dar & others was consigned to records vide order dated 21.05.2000.

Accordingly plaintiff made an application for its restoration/revival of proceedings, was allowed vide order dated 18.12.2008, impugned herein.

3. It appears that the suit was consigned to records on 11.11.1991 and the application moved for its revival was also consigned to records on

14.05.1994. During the pendency of said application, plaintiff-respondent herein moved an application u/s 151 CPC (for short C.P.C.) on

15.11.1994 for treating the said application for revival of the proceedings, came

to be consigned to records and plaintiff-respondent herein moved

an application on 04.06.2005 for revival of the suit and taking to its logical end on the ground that the same has not been dismissed but was simply

consigned to records and is still on the dockets of the Court, was resisted by the defendants-petitioners herein on various grounds including the

ground of delay.

4. Admittedly, the suit was consigned to records vide order dated 11.11.1991 and thereafter application for its restoration was also consigned to

records. Thus, admittedly, the suit was not dismissed in default but was simply consigned to records.

5. Mr. Qureshi, learned counsel for petitioners admitted that it is a fact that the suit was not dismissed in default, but was consigned to records, but

argued that the impugned order is illegal on the ground that application u/s 151 C.P.C. was barred by time. According to him the limitation

prescribed for filing application u/s 151 C.P.C. is three years. The argument of Mr. Qureshi is devoid of any force for the following reasons.

6. Dismissing a suit in default is a decision, but simply consigning the case to records for default is no decision. Consigned to records means 'Dakal

Daftar' and can be revived on the motion of any of the interested party. Even the Court suo motu can call the record for civil proceedings or such

order can be made on the motion of any interested party. Delay has no role to play in.

7. This Court in Mst. Hajira v. Mst. Hanifa, C. Revision Petition No. 50/1997 has held that the order came to be passed u/s 151 CPC and suit

was simply consigned to records, it was alive and can be called from records for further proceedings. It is apt to reproduce relevant portion of

para-6 of the judgment herein:

6. From the perusal of the order referred to above, it seems that the suit has been only consigned to records and has not been dismissed. Had the

order been that the suit is dismissed in default and ordered to be consigned to records, then it would be deemed that the suit was dismissed. Thus

vide order dated 26.12.1995, the suit has only been consigned to records and not dismissed. The file is still alive and can be called from the

records for further proceedings, in case the plaintiff or the court so desires.

8. This Court also in a case reported in 1979-1991 PLR J&K Rulings 418 has held

that the order consigning the case to records (dakal daftar) is

not an order of dismissal which would put an end to pendency of the suit. After such an order proceedings may be continued by filing an

application by a party and question of limitation does not arise at all.

9. A Division Bench of this Court in Punjab Singh & others v. Teju & others, SLJ 1981 J&K 278 has also held that the order consigning the case

to records is not an order in terms of Order 17 Rule 2.

10. A Division Bench of Orissa High Court in case Bhuyan Shyam Sunder Mohapatra and Another Vs. Ch. Nilakantha Das and Others, (V 43 C

48 Sept.) has held as under:

Where the Court has power to act at any time either upon or without application, such power may be exercised even if an application is made by a

party after the limited time. If the Court invokes its inherent jurisdiction under S. 151, Civil P.C., in the ends of justice, then irrespective of the fact

whether the Court acts suo motu or on an application, it is clear that limitation would not be taken into consideration. Where the Court amends a

decree which is not in conformity with the judgment, it can do so under S. 151 at any time, but no amendment ought to be followed by the Court

if it is inexpedient or inequitable to do so where third parties have acquired rights under the erroneous decree without knowledge of the

circumstances which would tend to show that the decree was erroneous.

11. This Court in C. Rev. No. 30/2011, titled as Bashir Ahmad Shooru v. Jawahar Lal Koul, decided on 02.09.2011 has also held that the order

consigning the case to records is not an order of dismissal which would put an end to pendency of the suit.

12. In view of the above, no case is made out and the civil revision is, accordingly, dismissed along with all CMPs.