
(2008) 12 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1645 of 1992

Kanhiya alias kanhi (dead) through LRs	APPELLANT
Vs	
Sukhi Ram and others	RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Citation : (2009) 2 RCR(Civil) 465

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Rajbir Sherawat, Avocate. R.K. Gupta, Avocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma. J. (Oral)

1. This revision petition is directed against the order dated 9.1.1992 passed by the learned Sr. Sub Judge, Rohtak, dismissing an application moved by the petitioner for extension of time to deposit the balance preemption amount of the land in question. The suit filed by the petitioner for a decree of possession by way of preemption was decreed on 11.8.1988.

2. The plaintiffpetitioner was directed to deposit a sum of Rs. 9214/less than 1/5th of the preemption amount, which already stood deposited by him on or before 10.10.1988. It was stipulated in the decree that in case the plaintiffpetitioner failed to deposit the entire amount, the suit shall stand dismissed. The petitioner failed to deposit the entire amount. He deposited a sum of Rs. 9200/ and failed to deposit a sum of Rs. 14/. Plaintiff petitioner thus, prayed in the application that he may be allowed to deposit the amount of Rs. 14/ and delay in depositing the amount be condoned.

3. The application has been declined by the learned Court by holding that in view of the fact that in the judgment and decree dated 11.8.1988, it was mentioned that in case, the plaintiff failed to deposit the amount within stipulated period, the suit would stand dismissed, thus as the entire amount had not been paid, the suit stood dismissed, therefore, the fate of the case could not be changed now by

allowing the petitioner to deposit the amount.

4. Mr. Rajbir Sherawat, counsel appearing on behalf of the petitioner, contends that the learned Court below has wrongly taken the application to be one for extension of time to deposit the decretal amount in pursuance of the order passed by the learned SubJudge, Rohtak. The case of the petitioner is that in pursuance of the decree passed on 11.8.1988, the petitioner moved an application before the learned Court seeking deposit of the amount less 1/5th already deposited.

5. On the said application, the Court passed an order directing the petitioner to deposit a sum of Rs. 7600/.

6. However, later on calculation the amount was found to be less by Rs. 14. The contention of the learned counsel for the petitioner, therefore, is that the revision deserve to be allowed because no party can be allowed to suffer for the fault of the Court. In support of this contention, the learned counsel for the petitioner has placed reliance on the judgment of this Court in *Het Ram v. Rajinder Parshad*, 1988(1) RRR 218 : (1988) PLR 549, wherein this Court has been pleased to lay down that if short amount is deposited due to mistake of the Court official, then Executing Court should exercise its discretionary power to accept the deposit though late.

7. Mr. R.K. Gupta, counsel appearing on behalf of the respondents, however, contends that the impugned order cannot be faulted with as it is in consonance with the settled law, the provisions for deposit of preemption amount are mandatory in nature and in case the party fails to deposit the amount within the period stipulated, then the suit is deemed to have been dismissed and the Court thereafter cannot exercise power under Section 148 of the Code of Civil Procedure to extend the time for such deposit.

8. It is also the contention of the learned counsel for the respondents that in the present case, the application for deposit of Rs. 14/ was moved after a period of 3 years and, therefore, the court was justified in rejecting the said application.

9. In support of this contention, the learned counsel for the respondents has placed reliance on the judgement of this Court in *Dinesh monor son of Rama Nand and another v. Lal Singh*, 2007(2) RCR(Civil) 864. It is also the contention of the learned counsel for the respondents that right of preemption is piratical right and, therefore, can be defeated by any lawful mean. Learned counsel for the respondents has also placed reliance on the judgment of this court in *Smt. Parmeshri v. Naurata*, AIR 1984 Punjab and Haryana 342, to contend that when the decree is conditional and the party fails to comply with the stipulation in the decree, the court cannot exercise power under Section 148 CPC to extend the time.

10. On consideration of matter, I find force in the contentions raised by the learned counsel for the petitioner. The petitioner in pursuance of the judgment

and decree, approached the Court with a specific plea that he was required to deposit a sum of Rs. 9214/ minus 1/5th of the preemption amount, which already stood deposited.

11. The Court calculated the amount to be deposited by the petitioner after adjusting 1/5th deposited by him and passed order directing the petitioner to deposit a sum of Rs. 7600/, which was deposited.

12. It was only after a lapse of three years when it was pointed out that the amount deposited was less by Rs. 14/, the petitioner moved an application invoking the inherent jurisdiction of the Court to permit him to deposit the additional amount Rs. 14/, which was calculated less by the Court.

13. The case of the petitioner is covered by the decision of this court in the case of *Het Ram v. Rajinder Prashad* (supra).

14. The contention raised by the learned counsel for the respondents cannot be disputed that the Court, in case of preemption decree, cannot extend the time for deposit of money under Section 148 of the Code of Civil Procedure. However, in the present case, the petitioner does not seek extension of time but invoked inherent jurisdiction of the Court and sought correction of error of the court.

15. The authorities relied upon by the respondents are thus be applicable to the facts of the present case.

16. Consequently, this revision petition is allowed, impugned order is set aside and the application moved by the petitioner for deposit of the balance amount of Rs. 14/ stands allowed with no order as to costs.