

(2013) 11 P&H CK 0184
In the Punjab And Haryana At Chandigarh
Case No : CR No. 4206 of 2010 (O&M)

Kuldip Singh

APPELLANT

Vs

Sukhdev Singh

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2014) 2 PLR 481

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The revision petition is against the order allowing the objection taken by the defendant to prevail that the plaintiff should have paid the court fee for the amended relief for specific performance on the basis of a new Court Fee Act that was introduced on 1.2.2010 providing for higher scale of levy of court fee for specific performance. The contention of the revision petitioner who is aggrieved against the order of the court below is that his own application for amendment of the plaint to include the relief for specific performance was allowed on 12.9.2007 and if at all the liability arose was on the day when the amendment was ordered. According to him, therefore the court fee payable would be as per the existing scales when the order was passed since the taxing statute such as Court Fee Act cannot be taken to be retrospective unless there was a specific provision to that effect. The supervening event was that the suit was dismissed for default on 31.10.2007 and it was restored on 16.1.2010. He had not filed any application for condonation of delay for payment of court fee or for carrying out the amendment within 14 days as required by the Civil Procedure Code. Consequently when the application was filed by the plaintiff which was beyond time, it was actually subsequent to the amendment to the Court Fees Act. Counsel for the respondent would therefore submit that the court fee ought to be paid only as per the amended provisions of the Act. If there was a delay in carrying out amendment but the court had not declined the benefit of

amendment but still allowed it, the amendment will take effect only from the date when the order was passed permitting such amendment, unless there are issues of limitation for considering the relief. The application for amendment was brought within time before the relief for specific performance could have been lost by law of limitation. If the court had condoned the delay in payment of court fee and allowed for carrying out the amendment, it ought to be taken that the order itself became effective from the original order allowing the amendment on 12.9.2007. Consequently, the court fee payable would only be under the Court Fees Act applicable on that day and not the scales of court fee as were introduced by a subsequent amendment.

2. The order passed by the court below is set aside and the civil revision is allowed.