(2000) 05 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 284 of 1999

Punjab National Bank APPELLANT

Vs

Shamsher Singh and another RESPONDENT

Date of Decision : 11-05-2000

Acts Referred:

Citation : (2000) 05 P&H CK 0101

Hon'ble Judges : R.L.Anand, J

Advocate : Mr. H.R. Bansal, Advocate., Advocates for appearing Parties

Judgement

R.L. Anand, J.—This is a civil revision and has been directed against the order dated 26.9.1998 passed by Civil Judge (Junior Division), Kurukshetra, who dismissed the application of the Punjab National Bank (hereinafter called `the Bank'') under Order 34 Rule 5 C.P.C. and also did not allow the application of the Bank under Section 5 of the Limitation Act.

2. Some facts of the case can be noticed in the following manner :

A preliminary decree was passed in favour of the Bank in Civil Suit No. 735 of 1986 on 12.10.1987. The plaintiffBank did not adopt any remedy for the preparation of final decree. Rather, it filed the execution petition on 25.4.1988. This execution application remained pending upto 1.5.1997 when it was realised by the Bank that execution application only on the basis of preliminary decree was not legally maintainable. The Bank withdrew that application and filed an application under Order 34 Rule 5 C.P.C. on the same very day. The Bank also filed an application under Section 5 of the Limitation Act on 24.9.1997.

The notice of the execution application was given to the judgmentdebtors, who filed the reply and resisted the execution application on the ground that the application under Order 34 Rule 5 C.P.C. was beyond limitation and was hopelessly barred by time. It was also objected to by the judgmentdebtors that even the application under Section 5 of the Limitation Act has been filed on 24.9.1997 and it was not accompanying the main application under Order 34

Rule 5 C.P.C.

3. The learned executing Court vide impugned order dated 26.9.1998 dismissed the execution application under Order 34 Rule 5 C.P.C. as well as the application under Section 5 of the Limitation Act and the grounds of dismissal are contained in paras No. 5 to 9 of the impugned order, which reads as follows :

"5. The decreeholder filed the execution petition/application on 25.4.1988 and thereafter at the time of arguments in the said execution petition/application after it was revealed that the decree in question was in fact preliminary decree, learned counsel for decreeholder/plaintiff/applicant on 1.5.1987 gave a statement withdrawing the execution petition with prayer for permission to move an application for passing the final decree and vide order dated 1.5.1987, learned counsel for decreeholder was allowed to withdraw the execution petition with permission to file an application for passing the final decree. As per learned counsel for decree holder/plaintiff/applicant, the execution petition was filed under bona fide mistake of fact that a final decree has been passed and when it came to the knowledge of the decreeholder, that the final decree has not been passed, the execution petition was withdrawn with the permission of Court to file application for passing final decree and after granting the said permission the plaintiff/applicant/decreeholder was allowed to withdraw the execution petition. Also it has been argued by the learned counsel for plaintiff/applicant/ decreeholder that even if there is delay in filing the application for passing final decree on 1.5.1997, there is sufficient cause for condoning the delay under Section 5 of the Indian Limitation Act and in view of Section 14 of the Limitation Act, the period during which the decree holder/applicant/plaintiff has been prosecuting the execution petition should be excluded. Besides that learned counsel for decreeholder has placed reliance on following authorities of law titled Surjan Singh and others v. Amarjit Singh and others, 1993 (Suppl.) CCC 198 : 1993(1) RRR 521 (P&H), Bhagat and another v. Ujagar Singh and others, 1993 PLR 790, Collector Land Acquisition, Anantnag and others v. Mst. Katiji and others, 1987 AIR Supreme Court 1353, Central Bank of India v. Devdutt Shukla, 1995 ISJ (Banking) 430 and Tarlok Singh v. Gurmit Singh and others, 19891 PLR 331.

6. On the other hand it has been argued by the learned counsel for defendant/ respondents/JD that the decreeholder had the knowledge of the fact that the preliminary decree has been passed from the date when the said decree was passed and from the date of filing of execution and as per him the present application for passing the final decree is time barred. Also in support of his contentions, he has placed reliance on following authorities of law titled Punjab Suryanarayana v. Union Bank of India, 1991 CCC 839 and K. Parameswaran Pillai v. K. Sumathi alias Jesis Jessie Jacquiline, 1994(2) All India Land Laws Reporter 283 : 1994(1) RRR 462 (SC).

7. Section 5 of the Indian Limitation Act provides for extension of limitation period in certain cases, in case the applicant appellant has sufficient cause for

not preferring the appeal or making the application within limitation period. It has been held by the Hon''ble Supreme Court in authority of law titled Ajit Singh Thakur Singh v. State of Gujarat, AIR 1981 SC 733, that the sufficient cause is to arise within limitation. When a party allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstances arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. Though it has been held by Hon''ble Supreme Court in Dinabandhu Sahu v. Jadumoni Mangaraj, AIR 1954 S.C. 411 that the "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant." But at the same time, no Court will be capable of finding, for itself, the grounds for giving relief unless sufficient reasons are disclosed in the application establishing sufficient cause for admitting an application or an appeal after the expiry of the period of limitation prescribed for filing it.

8. In the application for condonation of delay moved by applicant/decree holder in the application under Order 34 Rule 5 C.P.C., it has been merely mentioned that the delay was not intentional but bona fide one but the said bona fide has not been explained by the applicant/decreeholder. Though it has been contended by the learned counsel for the applicant/decreeholder that the application for passing final decree was filed after permission was granted by the Court for moving the said application in view of order dated 1.5.1997 but in this regard it can be stated that the applicant/decreeholder had a right to file the application for passing final decree after preliminary decree was passed but whether any such application is maintainable or not, can only be decided later on, on merits. Hence merely because vide order dated 1.5.1997, the applicant/decreeholder was allowed to file the application in hand, it does not mean that the applicant/decreeholder is also entitled to the relief claimed in the said application neither in the order dated 1.5.1997, vide which the applicant/decreeholder was allowed to file the application in hand, the applicant/decreeholder was granted condonation of delay for filing the said application.

9. As has been mentioned earlier, the learned counsel for applicant/decree holder has placed reliance on various authorities of law but none of the said authority is found applicable to the facts and circumstances of the present application as in authority of law titled Sital Parshad and another v. Kishori Lal, 19001990(1) B.L.C. S.C. 223, a final decree was passed while an appeal regarding the preliminary decree was pending. Whereas in authorities of law titled Central Bank of India v. Devdutt Shukla and Tarlok Singh v. Gurmit Singh and others (supra) the delay was condoned due to the honest mistake of calculation committed by Advocate and due to the wrong advise of the Advocate respectively. However in the present case, there is no such cause for condonation of delay. Similarly in authority of law titled Surjan Singh v. Amarjit Singh (supra) the delay was condoned after the party it was pursuing their remedy in a Court of law under a

bona fide belief that they have been granted permission to file the fresh suit on the same cause of action but in the present case, also there is no such cause for condonation of delay."

4. In this manner, the present civil revision.

5. I have heard Mr. H.R. Bansal, Advocate on behalf of the petitioner, Mr. Pritam Saini, Advocate on behalf of the respondents and with their assistance have gone through the records of this case.

6. The learned counsel for the petitioner submitted that there was a bona fide mistake on the part of the Bank when it could not file the application under Order 34 Rule 5 C.P.C. for the preparation of the final decree after the passing of the preliminary decree. When the petitioner was advised by its lawyer, it did not lose any time to realise the public amount and there is no mala fide discernible on the part of the Bank when it filed the application under Order 34 Rule 5 C.P.C. It was also submitted by the learned counsel for the petitioner that the application under Section 5 of the Limitation Act should not have been dismissed by the executing Court for the same reasons. In support of his contention, the learned counsel relies upon N. Balakrishnan v. M. Krishnamurthy, 1999 ISJ (Banking) 1 : 1999(1) PLR 462 : 1999(2) RCR(Civil) 578 (SC) wherein it was held as follows :

"Held, that it must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then Court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant, the Court shall compensate the opposite party for his loss."

It was further observed by the Hon''ble Supreme Court that words "sufficient cause" should receive a liberal construction so as to advance substantial justice and once the Court accepts the explanation as sufficient, it is the result of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.

7. As against this, the learned counsel for the respondents submitted that the conduct on the part of the Bank was deliberate. Each and every day''s delay has to be explained by the Bank. The delay cannot be condoned on the mere asking of a litigant. In support of his contentions Mr. Saini relies upon N.D.M.C. v. M/s. Airtech (P) Ltd., 1998(3) RCR (Civil) 69 and Ram Narain Singh v. Smt. Gurinder Kaur and another, 1997(4) R.C.R.(Civil) 301 : 1997(2) PLR 1, where it was

observed by this Court that if the period of limitation expires each day''s delay has to be explained.

8. I have considered the rival contentions of the parties and am of the opinion that the present revision is liable to be accepted. The proved facts in this case are that the petitionerBank was always vigilant in prosecuting the present lis. Preliminary decree was passed in favour of the Bank on 12.10.1987 and the judgmentdebtor was given time to comply with the preliminary decree upto 15.4.1988. The judgmentdebtor did not comply with the decree and the Bank filled the execution application 25.4.1988 just after 10 days. The Bank did not file the application under Order 34 Rule 5 C.P.C., because it was not advised to do so. The execution application remained pending upto 1.5.1997 when it was advised to the Bank that execution could not advance because there is no order in favour of the Bank under Order 34 Rule 5 C.P.C. The Bank did not lose time and filed the application on the same day. It is true that the application under Section 5 of the Limitation Act was not filed along with the application on 1.5.1997, but this itself does not mean that the Bank did not want to realise the amount from the judgmentdebtor.

9. With regard to the "sufficient cause", now the consistent view of the Hon''ble Supreme Court is that this term "sufficient cause" should receive a liberal approach of the Courts so as to advance substantial justice. Every case has to be determined on its own facts. In these circumstances, I am of the opinion that the case law being relied upon by the learned counsel for the respondents cannot be helpful to him in the set of peculiar circumstances of this case, which I have just highlighted above, and due to these peculiar reasons this Court is not inclined to follow the stand of the Hon''ble Supreme Court in P.K. Ramachandran v. State of Kerala and another, 1998(3) PLR 605 : 1997(4) RCR(Civil) 242 (SC) where it was held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. This judgment has been given in the light of peculiar circumstances of that case where the State was negligent and did not file the application and there was a delay of 565 days in the filing of appeal. The reasons which were given by the State on their face were found to be absurd by the Hon''ble Judges of the Supreme Court. As I have just stated above every case has its own facts. The public money cannot be allowed to be wasted on the ground of limitation. The respondents can be reasonably compensated with costs.

10. In these circumstances, I allow the present revision, set aside the impugned order subject to payment of Rs. 5,000/ as costs and give the directions to the executing Court to proceed with the application under Order 34 Rule 5 C.P.C. and pass the order according to law.

The parties through their counsel are directed to appear before the executing Court on 6.6.2000.

Revision allowed.