

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Application No.409/2015

Ram Prasad and Others

-----Petitioners

Versus

Gadhiya alias Girdhari and Others

-----Respondents

For Petitioner(s) : Mr.A.K. Dubey.
Mr.Shyam Lal Sharma.

For Respondent(s) : Mr.Dev Krishna Purohit for
Mr.Prem Krishna Sharma

HON'BLE MR. JUSTICE ALOK SHARMA

Order

30/09/2019

The matter comes up on an application under Section 148 CPC for extension of time granted in the order dated 3.8.2015 passed by this Court in Civil Misc. Appeal No.4932/2009 titled **Ram Prasad & Others vs. Gadhiya @ Girdhari & Others,** for deposit of costs, as a condition for setting aside the ex-parte decree dated 25.4.2005, payable by the appellant-defendant-applicant (hereafter 'applicant') to the respondent—defendant-non-applicant (hereafter 'non-applicant').

Heard Mr.Shyam Lal Sharma appearing with Mr.A.K.

Dubey counsel for the applicant and Mr.Dev Krishna Purohit for

non-applicant. Perused the aforesaid order dated 3.8.2015

wherein it was interalia directed that as under :-

"Consequently, in the interest of justice and fact of suit pending at the instance of a co-defendant on its application under Order 9 Rule 13 CPC having been allowed, the appeal is allowed and the impugned judgment and decree dated 25-4-2005 is set aside on payment of exemplary costs of Rs.2 lacs. Rs. 1 lac be deposited with the Rajasthan State Legal Services Authority at Jaipur and the remainder Rs.1 lac be paid to the plaintiff. The defendants No.1, 3 & 4 shall pay the amount of costs as directed on or before 25th August, 2015, failing which this order shall stand recalled and the miscellaneous civil appeal under consideration shall stand dismissed."

The case of the applicant is that Rs.1 lakh towards costs as directed to be deposited with the Rajasthan State Legal

Services Authority at Jaipur was deposited on 18th August, 2015

well before 25th of August, 2015. Mr.Shyam Lal Sharma submitted

that the amount of Rs.1 lakh to be deposited towards costs as

payable to the non-applicant was deposited on 25.8.2015 before

the Additional District Judge No.17, Jaipur Metropolitan, Jaipur

(hereafter 'the ADJ No.17'). Vide order dated 25.8.2015 passed by the ADJ No.17, the Court on the report of the clerk indicating that the suit had been transferred on 26.10.2013 to the Additional District Judge No.19, Jaipur Metropolitan, Sanganer (hereafter 'the ADJ No.19'), did not accept the application along with the Demand Draft of Rs.1 lakh. Thereafter the said DD for the amount of Rs.1 lakh as costs payable to the non-applicant—plaintiff was submitted before the ADJ No.19 on 31.8.2015. Vide the impugned order dated 2.9.2015 passed by the ADJ No.19, the said application for taking the application alongwith the DD of Rs.1 lakh towards costs payable to the plaintiff on record was dismissed on count of the fact that under the Court's order dated 3.8.2015, it had been directed that costs be deposited on or before 25.8.2015 failing which its order would stand recalled and the civil

miscellaneous appeal under consideration would also stand dismissed.

Mr. Shyam Lal Sharma submitted that vide order dated 26.10.2015 in this misc. application, the Court directed that the draft of Rs.1 lakh towards costs stated to have been earlier drawn in the name of the plaintiff Gadiya be replaced by a draft for the equal amount in favour of the co-plaintiff Gopal to whom the suit land had been transferred during the pendency of the suit and be handed over to the said plaintiff's counsel within four days. It has been submitted that on 17.11.2015 it was brought to the notice of the Court (as recorded in the order sheet of the said date) the amount of Rs.1 lakh as costs by way of a demand draft was sent by registered post to Gopal but returned. Counsel pointed out that on the said date (as recorded in the order sheet) the Court required the draft of Rs.1 lakh to be handed over to Shri Ajeet

Bhandari counsel for the plaintiff – Gopal but he on instructions refused to accept it. (This is also recorded in the order of 17.11.2015). The court then directed that the demand draft towards costs of Rs.1 lakh to the plaintiff- non applicant be deposited with the Deputy Registrar (Judicial) Rajasthan High Court, Jaipur Bench within 15 days from the date of the Court's order. Counsel submitted that on 3.12.2015 on the matter being listed before the Court it was pointed out that albeit as directed on 17.11.2015, a DD bearing no.005919 dated 01.12.2015 drawn on ICICI Bank, University Marg Branch, Jaipur was sought to be deposited with the Deputy Registrar (Judicial) he did not accept it as he had no account with any bank for the purpose. The Court therefore then directed that the draft be drawn in favour of the Registrar (Administration), Rajasthan High Court, Jaipur Bench on or before 18.12.2015. It has been submitted that as directed vide

order dated 3.12.2015, the draft of Rs.1 lakh as costs payable to the plaintiff-non-applicant was deposited on 14.12.2015 with the Registrar (Administration), Rajasthan High Court, Jaipur Bench.

Mr. Shyam Lal Sharma submitted that, in the facts of the case recorded above, delay in depositing of amount of Rs.1 lakh as costs payable to the plaintiff- non-applicant vis-a-vis the time granted under the Court's order dated 3.8.2015 was wholly unintentional. The intent to comply with the Court's order dated 3.8.2015 to pay costs was always subsisting. It was submitted that the applicant's case is a bonafide one and the Court should therefore exercise its discretion under Section 148 of CPC in the interest of justice for extending the time for payment of costs to the plaintiff- non applicant till the date of deposit of DD of Rs.1 lakh on 14.12.2015 with the Registrar (Admn.), Rajasthan High

Court, Jaipur Bench towards costs payable to the plaintiff-non applicant.

Counsel for the plaintiff-non applicant submitted that the application is not bonafide and be dismissed. The amount payable as costs to plaintiff- non applicant were not paid within time, as directed by this Court on several occasions. It was submitted that in fact the ADJ No.17 returned the DD of Rs.1 lakh to the applicant's counsel on 25.8.2015. The aforesaid DD should have been filed before the ADJ No.19 on the same date. However it was filed after an unexplained delay of 6 days only on 31.8.2015. It has been submitted that thereafter on the matter coming up before this Court on 26.10.2015, the Court directed that fresh Demand Draft in the name of Gopal, the contesting plaintiff to whom the said land has been transferred by Godiya on the basis of which he was impleaded as co-plaintiff be furnished to

his counsel on the next date. It was however not so done before this Court when the matter was listed on 31.10.2015. Yet further time was granted on 17.11.2015 to the applicant for depositing the demand draft of Rs.1 lakh payable as costs to the plaintiff—Gopal within 15 days with the Deputy Registrar (Judicial), Jaipur Bench, Jaipur. It has been further submitted that thereafter order dated 3.12.2015 passed by this Court allowed time for deposit of costs in issue upto 18.12.2015 and only then costs were deposited. To now accordingly extend the time for depositing costs of Rs.1 lakh payable to the plaintiff non-applicant at this stage by resort to Section 148 CPC would entail review of the court's order dated 3.12.2015. Counsel finally submitted that in an application under Section 148 of CPC, time can only be extended upto 30 days from the period fixed by the Court for any purpose. In the instant case the costs payable to the plaintiff- non applicant under

the Court's order dated 3.8.2015 were to be deposited by 25.8.2015 and hence time could be extended only upto 24.9.2015 while in the instant case the DD towards costs was deposited on the Court's direction towards payment of costs to the plaintiff non-applicant only on 14.12.2015. Such deposit cannot be regularized by the Court by extending time under Section 148 CPC.

Heard. Considered.

Admittedly pursuant to the court's order dated 3.8.2015 the appeal arising from the application under Order 9 Rule 13 CPC was allowed and appellant-defendant visited with costs of Rs.2 lakh out of which Rs.1 lakh was to be deposited with the Rajasthan State Legal Services Authority at Jaipur and remainder Rs.1 lakh to be paid to the plaintiff- non applicant. The costs were to be deposited/ paid by 25.8.2015. Admittedly costs of Rs.1 lakh to be paid to Rajasthan State Legal Services Authority

at Jaipur was paid on 18.8.2015 showing the clear intent of the applicant to comply with the court's order as to costs. The remainder costs of Rs.1 lakh payable by 25.8.2015 was also deposited on 25.8.2015 in the name of the plaintiff- Gadiya albeit before the ADJ No.17 overlooking that on 26.10.2013 the suit had been transferred to ADJ No.19, Sanganer and that plaintiff- Gadiya had sold his rights in the suit property to one Gopal- a co-plaintiff in the meantime. Be as it may, the aforesaid facts- particularly the preparation of the draft of Rs.1 lakh for payment of costs to the plaintiff- Gadhiya shows intent to pay even though action was careless. Thereafter the demand draft of Rs.1 lakh payable as costs with a proper application was filed before the ADJ No.19 for taking it on record in terms of the court's order dated 3.8.2015. That was not surprisingly rejected vide impugned order dated 2.9.2015 with the court noticing that costs required by the court

in its order of 3.8.2015 were to be deposited by 25.8.2015 failing which the order in appeal was to stand recall and appeal dismissed.

The Court's discretionary power under Section 148 of CPC is to be exercised in the interest of justice and when warranted with the aid of Section 151 CPC. The Apex Court in the case of **Nashik Municipal Corporation vs. R.M. Bhandari (M/s.) & Another [(2016) DNJ (SC) 246]** approved its earlier decision in the case of **Salem Advocates Bar Association, T. N. vs. Union of India [(2005) 6 SCC 344]** wherein para 41 it was held as under

41."The amendment made in Section 148 affects the power of the Court to enlarge time that may have been fixed or granted by the Court for the doing of any act prescribed or allowed by the Code. The amendment provides that the period shall not exceed 30 days in total. Before amendment, there was no such restriction of time. Whether the Court has no inherent power to extend the time beyond 30 days is the question. We have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the Court to pass orders as may be necessary for the

ends of justice or to prevent abuse of process of the Court. The rigid operation of the section would lead to absurdity. Section 151 has, therefore, to be allowed to operate fully. Extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for the reasons beyond the control of the party. We are not dealing with a case where time for doing an act has been prescribed under the provisions of the Limitation Act which cannot be extended either under Section 148 or Section 151. We are dealing with a case where the time is fixed or granted by the Court for performance of an act prescribed or allowed by the Court.”

In **[(2010)8 SCC 546]** ***D.V. Paul vs. Manisha***

Lalwani the Court held in paras 28 and 31/32, as under:-

28. To the same effect is the decision of this Court in Chinnamarkathian v. Ayyavoo [(1982)1 SCC 159], where this Court declared that the scope and exercise of the jurisdiction to grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. The Court also called in the principle of equity when circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the Court retains to itself the jurisdiction to re-examine the alteration or modification which may necessitate extension of time.

31. In Salem Advocates Bar Association, T.N. v. Union of India (supra), this Court had an occasion to examine whether the restriction placed by the amendment of Section 148 on the power of the Court to grant extension of time beyond 30 days was reasonable. This Court held that a power that is inherent in the Court to pass orders

that it considers necessary for meeting the ends of justice and preventing abuse of the process of the Court cannot be taken away by putting an upper limit on the period for which an extension can be granted. Extension beyond the maximum period of 30 days was accordingly held permissible in the following words:

41. "The amendment made in Section 148 affects the power of the Court to enlarge time that may have been fixed or granted by the Court for the doing of any act prescribed or allowed by the Code. The amendment provides that the period shall not exceed 30 days in total. Before amendment, there was no such restriction of time. Whether the Court has no inherent power to extend the time beyond 30 days is the question. We have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the Court to pass orders as may be necessary for the ends of justice or to prevent abuse of process of the Court. The rigid operation of the section would lead to absurdity. Section 151 has, therefore, to be allowed to operate fully. Extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for the reasons beyond the control of the party. We are not dealing with a case where time for doing an act has been prescribed under the provisions of the Limitation Act which cannot be extended either under Section 148 or Section 151. We are dealing with a case where the time is fixed or granted by the Court for performance of an act prescribed or allowed by the Court."

32. It is not in the light of the above decisions open to the respondent to argue that a Court can fix time for the doing of an act like making of a deposit, in the instant case, but has no jurisdiction to extend the said period even when a case for such extension is clearly made out. The power to fix the time for doing of an act must in our opinion carry with it the power to extend

such period, depending upon whether the party in default makes out a case to the satisfaction of the Court who has fixed the time. There is nothing in Section 148 CPC or in any other provision of the Code to suggest that such a power of extension of time cannot be exercised in a case like the one at hand. The argument that the power to extend time cannot be exercised where the act in question is stipulated in a conditional decree has not impressed us. We see no reason to draw a distinction depending on whether the prayer for extension is in regard to a conditional order or a conditional decree. The heart of the matter is that where the Court has the power to fix time and that power is not regulated by any statutory limits, it has in appropriate cases the power to extend the time fixed by it. It is common ground that neither CPC nor the provisions of M.P. Accommodation Control Act places any limitation on the power of the Court in case like the one in hand.

In the facts of the case recorded hereinabove, it is apparent that Rs.1 lakh as costs payable to Rajasthan State Legal Services Authority, Jaipur was deposited on 18.8.2015 well before 25.8.2015 as directed by the Court in its order dated 3.8.2015 and the remaining amount of Rs.1 lakh to be paid as costs to the plaintiff non-applicant on or before 25.8.2015 was also sought to be deposited by a DD on 25.8.2015 but erroneously before the ADJ No.17 when it ought to have been with ADJ No.19, Sanganer.

Thereafter as recorded above not very efficiently but consistently the applicant has made attempts to deposit the costs payable to the plaintiff- non applicant but in some measure was stalled by the non-applicant himself including by his counsel refusing to accept the costs on his instruction when they were sought to be paid to him in Court on 17.11.2015. Thereafter in any event the costs of Rs.1 lakh have following the Court's direction been deposited with the Registrar (Administration), Rajasthan High Court at Jaipur Bench on 14.12.2015.

As far as the argument that the extension of time to deposit costs would entail review of the Court's order dated 3.8.2015, I am of the view that the Apex Court's observation in D.V. Paul (supra) that "the argument that the power to extend time cannot be exercised where the act in question is stipulated in a conditional decree has not impressed us. We see no reason to

draw a distinction depending on whether the prayer for extension is in regard to a conditional order or a conditional decree" would suffice. The argument stands fully negated and has no force.

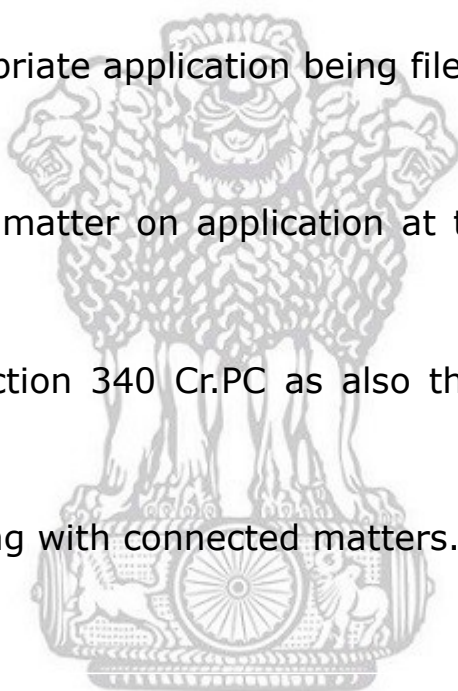
I, in the facts of the case, would therefore, in the interest of justice, be inclined to invoke the Court's power under Section 148 of CPC read with Section 151 CPC, as held, was available, by the Apex Court in the case of Salem Advocates Bar Association (supra).

Consequently, the application under Section 148 of CPC for extending the time limit in the court's order dated 3.8.2015 passed in Civil Misc. Appeal No.4932/2009 with the aid of Section 151 CPC stands allowed accordingly. The order dated 2.9.2015 passed by the ADJ No.19 is quashed and set aside. The time for deposit of costs payable to the plaintiff non-applicant under the Court's order dated 3.8.2015 is extended upto 14.12.2015 when

the costs in issue on the Courts direction were deposited with the Registrar (Administration), Rajasthan High Court Jaipur Bench.

The non-applicant- plaintiff shall be free to move an application before the Registrar (Administration), for withdrawal of the said amounts i.e. Rs.1 lakh. The Registrar (Administration) is directed to make over the said amounts of Rs.1 lakh to the applicant within 7 days of the appropriate application being filed.

List, the matter on application at the instance of non-applicant under Section 340 Cr.PC as also the other applications on 15.10.2019, along with connected matters.



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(ALOK SHARMA), J

Himanshu Soni /375/347