

CALCUTTA HIGH COURT

Lakshmi Bala Chanak

Vs.

Brojendra Nath Pain

Civil Revn. No. 770 of 1966

(Amiya Kumar Mookerji, J.)

20.11.1970

ORDER

Amiya Kumar Mookerji, J.

1. This Rule was obtained by the plaintiff and it is directed against an order of the learned Munsif dismissing the petitioner's application under Section 151, Civil Procedure Code, praying for extending the time to make the deposit in terms of a decree for specific performance of a contract under certain circumstances.

2. The facts that lie in a short compass may be stated as follows:-

3. On March 2, 1928 by a registered Kobala, the petitioner purchased from her mother with her "Stridhan" 28 decimal of land in Dag No. 801, appertaining to Khatian No. 422 of Mouza Benai within the Midnapore Collectorate, in the name of her husband. On or about 1st December, 1959, the petitioner took a loan of Rs. 800/- from the opposite party No. 1, on executing a sale deed in respect of the above land in favor of the said opposite party No. 1, who executed an agreement of reconveyance of the said property in favor of the petitioner, on condition, that the said sum of Rs. 800/- was to be paid back to the said opposite party No. 1 within 1370 B.S. It is the case of the petitioner, that, she tendered the money within the stipulated time with a request to execute the deed of reconveyance but the opposite party No. 1 refused to comply with the said request. Accordingly, the petitioner brought a suit for specific performance of the contract in the Court of the 1st Munsif at Ghatal. The suit was eventually decreed in favor of the petitioner on the following terms:-

"That the suit will be decreed on contest with costs against defendant No. 1 and ex parte against the rest without costs, if the plaintiff deposits in Court a sum of Rs. 800/- to the credit of the defendant No. 1 by 6-8-65 and on her so depositing, the defendant No. 1 shall execute and register a deed of reconveyance in respect of the suit land in favor of the plaintiff at her costs. In default of the deposit of the amount by the date fixed, the suit shall stand dismissed with costs."

4. It appears that the petitioner could not make the deposit within the time. It is alleged that for her medical treatment she was staying in Calcutta. She was completely unaware of the terms of the decree. Her lawyer did not inform the result of the suit. Thereafter on or about the 18th of August 1965, the petitioner having returned back to her village, came to know about the directions embodied in the decree and filed an application under Section 151, Civil Procedure Code, praying for extending the time to make the deposit, stating the circumstances which prevented her to put in the money within the time. The learned Munsif, after hearing the parties, rejected the said application, upon the view, following Single Bench decision of this Court reported in AIR 1965 Calcutta 354, that if the payment was not made before the expiry of the fixed date, the Court had no jurisdiction under Section 148, Civil Procedure Code, to condone the delay and enlarge the time. The petitioner, being aggrieved by the above order, moved this Court and obtained the present Rule.

5. Mr. Pal, learned Advocate appearing for the petitioner in support of the Rule submitted that the learned Munsif had failed to exercise jurisdiction in holding that no enlargement of time could be made under Section 148, Civil Procedure Code.

6. There is no doubt that as a result of the non-deposit of the money within the time fixed, the petitioner is going to lose a valuable right of enforcing a contract because she has been guilty in not depositing the money as directed by the Court in time. The petitioner states that she was not aware of the provisions in the decree until the time for payment had passed and if that is so, there were good reasons for her in not making the deposit in time. So the only point that remains for consideration is whether the Court has power under Section 148, Civil Procedure Code to extend time after the time fixed by the Court in the decree had expired.

7. Different High Courts, from time to time, have expressed different opinions regarding the powers of Courts to extend time fixed by decrees or orders. In *Abdul Shaker Sahib v. Abdul Rahiman Sahib*¹, a Division Bench of the Madras High Court held, that, a decree for specific performance of a contract fixing a period for payment of sale consideration, is in the nature of a preliminary decree and therefore, the delay in depositing the amount can be condoned. The Court has power in such a case to allow extension of time and condone delay in depositing the amount. The above case was followed in *Ram Bhatlu v. Annayya Bhatlu*², The Allahabad High Court in *Someshwar Dayal v. Widow of Lalman Saha*³, followed the same principle as of the Madras High Court. A Division Bench of this Court in *Bhutnath v. Sahadeb*⁴, did not accept the view of the Madras High Court and held that, after the expiry of the time limited by the decree, the Court loses seisin over the matter and cannot extend time. But after the pronouncement of the Supreme Court in *Mahanth Ramdas v. Ganga Das*⁵, the law seems to have been altered. In that case, the application for extension of time was made before the time fixed by the Patna High Court for payment of deficit court-fees. The said application, however, came up for hearing after the period had expired. Hidayatullah, J. (as he then was) observed, that Section 148 of the Code in terms, allowed extension of time, even if the original period fixed had expired. The Supreme Court has expressly laid down that the Court has power to condone the delay and extend the time fixed under Section 148, Civil Procedure Code, even if the original time fixed by the Court had expired. This material passage in the judgment of the Supreme Court seems to have been overlooked in the Single Bench

² AIR 1926 Mad144

⁴66 Cal WN 645 AIR 1962 Cal 485

decision of this Court AIR 1965 Calcutta 354, relied upon by the trial Judge. It is true, that, in the case before the Supreme Court, the directions were made in the order and not in the decree, but I think that the same principle can be applied in case of decree also.

8. In view of the decision of the Supreme Court as referred to above, in my opinion, the Court has power to extend time under Section 148 of the Civil Procedure Code, even after the time fixed by the Court in the decree had expired.

9. In the result, I make the Rule absolute, set aside the impugned order of the Court below and direct that the petitioner's application under Section 151, Civil Procedure Code be considered afresh and be dealt with and disposed of by the Court below in accordance with law and in the light of the observations made hereinbefore, as quickly as possible.

10. In the facts and circumstances, however, the petitioner must pay the costs of this Rule, hearing fee being assessed at 2 Gold Mohurs to the opposite party No. 1.

11. Let the records go down as quickly as possible.
Order accordingly.