

RAJAJSTHAN HIGH COURT

Darshan Singh

Vs.

Kewal Krishan

Civil Revn. Petn. No. 203 of 2002

(B.S. Chauhan, J.)

26.08.2002

ORDER

B. S. Chauhan, J.

1. This revision has been filed against the order dated 8- 11-2001, by which the trial Court refused to take the amended plaint on record for the reason that it had been filed after expiry of fourteen days from the date of the order allowing the amendment by the Court.

2. The facts and circumstances giving rise that this case are that the petitioner-plaintiff had filed a suit on 13-10-1998 against the respondent- defendant for eviction from the suit premises on various grounds including the default in payment of rent, material alteration, sub-letting as well as personal necessity and also for recovery of arrears of rent. At a later stage, an application under Order 6, Rule 17 of the Civil Procedure Code, 1908 (for short, "the Code") was filed stating that the petitioner stood retired from service during pendency of the suit and regarding commencement of business by him along with his son in the suit premises. The said application was allowed by the learned trial Court vide order dated 31-3-2001 at the cost of Rs. 300/-. The Court did not fix any time for filing the amended plaint. On 10-7- 2001, another application under Section 148 read with Section 151 of the Code was filed for extension of time to file amended plaint in pursuance of the order dated 31-3-2001, which has been rejected by the Court below on the ground that the Court has no competence to extend the time if the amended plaint had not been filed within fourteen days from the date of order, for the reason that the Court had not fixed the time for filing the amended plaint. Hence this revision.

3. Facts are not in dispute. The only question involved herein is as to whether the Court has competence to extend the period for filing the amended pleadings where no time is fixed by the Court and the party is to file the same within fourteen days of the date of order allowing the amendment application under Order 6, Rule 17 of the Code. The provisions of Order 6, Rule 18 of the Code provide that party, whose application for amendment of the pleadings has been allowed, shall not be permitted to amend after expiration of such limited time (as granted by the Court) or of such fourteen days, as the case may be, unless the time is extended by the Court.

4. In view of the above, it has been submitted by Mr. Singhal, learned counsel for the petitioner, that the language of the provision itself is crystal clear and confers the competence upon the Court to extend the time. The only embargo put by the said provision is that unless the time is extended, the amended pleadings cannot be taken on record. Moreso, these provisions have to be read along with the provisions of Section 148 of the Code, which empowers the Court to extend the time. Procedural law should not be enforced in a manner as it may obstruct the course of justice.

5. On the other hand, Mr. Jain, learned counsel for non-petitioners, has submitted that the Court has competence to extend the period only in case it had granted the time but where the Code fixes the time, the Court does not have the power to extend it. Moreso, as the provisions of Section 148; Order 6 Rules 17 and 18 of the Code have been amended, the Court must also examine the scope of the amendment as applicable in the instant case.

6. I have considered the rival submissions made by the learned counsel for the parties and perused the record.

7. In *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon*,¹ the Hon'ble SC observed as under (para 5) :-

"Rules of procedure are intended to be handmaid to the administration of justice. A party cannot be refused to just relief merely because of some mistake, negligence, inadvertence or even infraction of the Rules or procedure."

Similarly, in *M/s. Ganesh Trading Co. v. Moji Ram*,² the Hon'ble SC held that "procedural law is intended to facilitate and not to obstruct the course of substantive

justice." Similar view has been reiterated in *Harcharan v. State of Haryana*,³

8. There is no dispute that the Court does not have the power to extend the period fixed by the statute. However, these are the instances like the Law of Limitation or cases under Order 21, Rule 85 of the Code, which fix a statutory period for compliance of the order for the reason that Order 21, Rule 86 of the Code provides for a procedure in default of payment etc. (Vide *Jagdish v. Sankatha*,⁴ *Nand Lal v. Mt. Siddiquan*,⁵ *Kathyee Cotton Mills v. R. Padmanabha Pillai*,⁶ *Thayyan Padayachi v. Veluswami*,⁷ and *Shahjahan v. Mrs. Kamla Narayanan*,⁸

9. The provisions of Order 6 Rules 17 and 18 have to be read along with the provisions of Section 148 of the Code, which empowers the Court to extend the time fixed by the Court or allowed by the Code itself.

10. In *Mahanth Ram Das v. Ganga Das*⁹ the Hon'ble SC considered the scope of the provisions of Sections 148, 149 and 151 of the Code observing as under (para 5) :-

"Section 148 of the Code, in terms, allows extension of time, even if the original period fixed had expired, Section 149 was equally liberal. A fortiori, those sections could be invoked by the applicant, when the time had not actually expired..... How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out, often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of the events and circumstances which happen within the time fixed....."

11. The Apex Court further observed that in an appropriate case when applicant shows sufficient cause, the Court must exercise its power under Sections 148 and 149 of the Code and extend the time considering the application sympathetically. While deciding the said case, the Court placed reliance upon the judgment in *Lachmi Narain Marwari v. Balmukund Marwari*,¹⁰

12. In *Chinnamarkathian alias Muthu Gounder v. Ayyavoo alias Periana Gounder*,¹¹

the Hon'ble SC observed as under (para 14) :-

"An analogous provision may be noticed. It is well accepted principle statutorily recognised in Section 148 of Civil P.C. that where period is fixed or granted by the Court for doing any act prescribed or allowed by the Code, the Court may, in its discretion, from time to time, enlarge such period even though the period originally fixed or granted may expire. If a Court in exercise of the jurisdiction can 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. Passing a composite order would be acting in disregard of the jurisdiction in that while granting time simultaneously the Court denies to itself the jurisdiction to extend time. The principle of equity is that when some 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 of circumstances which may necessitate extension of time. If the Court by its own act denies itself the jurisdiction to do so, it would be denying to itself the jurisdiction which in absence of a negative provision, it undoubtedly enjoys."

13. Similar view has been reiterated by the Hon'ble Apex Court in *Jogdhyan v. Babu Ram*,¹² and *Smt. Periyakkal v. Smt. Dakshyani*,¹³

14. This Court has considered this issue time and again. In *Abdul Gaffar v. Shahid Hussain*,¹⁴ a Full Bench of this Court considered the scope of Section 148 of the Code and held that if the Court had passed a peremptory order and it has not been complied with within the stipulated period, the Court has ample power to extend the period under Sections 148 and 151 of the Code by condoning the delay.

15. In *Mohammed Yousuf v. Bharat Singh*,¹⁵ this Court considered the issue of extension of time even when application for extension of time had not been made. The Court observed that the scope of Section 148 of the Code is wide enough and the powers conferred upon the Court are so wide that even filing of application for extension of time is not necessary. Moreso, in such a case, the Court must examine the serious gravity of lapses on the part of a party concerned for non-compliance of Court's order. While deciding the said case, the Court placed reliance upon its earlier

judgment in *Bool Chand v. Ayodhyalal*¹⁶, wherein the Court held as under (at p. 186 of AIR) :-

".....the Acts and Rules of procedure regulating their conduct are intended for the broad purpose of facilitating justice and not for impeding it. If there is any technical defect, it should be rectified by the Court under Section 148 or 151 of the Civil Procedure Code. Section 148, Civil Procedure Code empowers the Court to enlarge the period even if the period originally fixed might have expired. I feel that omission and lapse arising out of non-compliance of the Court's order was not of such a serious gravity so as to close the door of the Court for the respondents by dismissing the suit. It is a fit case for exercising the discretion in favour of the plaintiff-respondent. Even if the trial Court had no authority to extend the time, this Court, undoubtedly, has the power to grant an extension of time and, to extend the time and, thus remove the defect which was there."

16. In *Dandapani Gouda v. Khetrabasi Gouda*, a Division Bench of Orissa High Court considered the scope of Order 6, Rule 18 of the Code observing as under :-

".....The first part refers to carrying out amendment of plaint after obtaining leave for the same within time specified in the order granting leave to amend or, if no such time has been fixed then within fourteen days from the date of the order. The second part imposes a penalty upon the party who has obtained the leave to amend the plaint but has failed to do so within the time specified in the rule, by debarring him from amending the plaint unless time is further extended for the purpose by the Court."

17. Similarly, in *Pahali Raut v. Khulana Bewa*,¹⁸ the Court observed as under (at p. 167 of AIR) :-

".....It is the obligation on party to carry out the amendment where leave to amend has been granted within the time specified by the order or within fourteen days from the date of the order where time is not so specified, lest the party by indifference or rest on his oars the embargo is put that unless the amendment is carried out aforesaid, the party shall be debarred from amending his pleadings. But the harassment of the provision is mellowed by clothing the

Court with jurisdiction to extend time in fit cases. Even otherwise, there is a saving provision in Section 151 of the Civil Procedure Code. However, extension should not be a matter of course but would depend upon facts and circumstances."

18. In *B. Channabyre Gowda v. State of Mysore*,¹⁹ it was held that in absence of the order of the Court extending the time for filing the amended plaint, amended pleadings cannot be taken on record and cannot be considered.

19. In *Nareshchandra Chinubhai Patel v. The State of Gujarat*,²⁰ the Court held that in both categories of the cases, viz. where a party has not amended within the time granted by the Court in the order or a period where no such time is limited in the order itself, has not done it within fourteen days from the date of the order, the party is not permitted to amend either after expiration of such limited time as aforesaid, or such fourteen days, as the case may be, unless the time is extended by the Court. The Court while explaining the scope of Section 148 of the Code, made it clear that the language of the provision is so clear and unambiguous that Court has a power to extend the period in both the eventualities.

20. From the above, a clear picture emerges that in both the eventualities, i.e. where the Court has fixed a time for filing the amended pleadings and where no time has been fixed and a party is to file it within fourteen days from the date of the order, the Court has been clothed with the competence to extend the time. However, the time is not to be extended in a routine manner. The Court has to examine the facts and circumstances and if it comes to the conclusion that there was "sufficient cause" or "good cause" or "sufficient grounds", on which the party could not file the amended pleadings, the period may be extended.

21. Section 148 of the Code empowers the Court to enlarge the time allowed by the Court or prescribed by the Code. However, by the Civil Procedure Code (Amendment) Act, 1999 (for short, "the Act, 1999"), the said provision stood amended to the effect that the period can be extended by the Court not exceeding thirty days in total. Section 32 of the Amendment Act, 1999, providing for repeal and saving, does not save anything so far as Section 148 of the Code is concerned. Therefore, being procedural law, it may be held that the Court may have the power to extend the period but not beyond the period of thirty days in total from the date of expiry of the period.

22. The provisions of Order 6 Rules 17 and 18 of the Code were sought to be repealed by the provisions of Section 16 of the Act, 1999, but by virtue of the provisions of Section 7 of the Civil Procedure Code (Amendment) Act, 2002 (for short, "the Act, 2002"), they have been substituted and in language, there is not much substantial difference which may have any bearing on the instant case. Clause (b) to sub-section (2) of Section 16 of the Act, 2002, which provides for repeal and savings, provides that the amendment shall not apply in respect of pleadings filed before commencement of the Amendment Acts, 1999 and 2002, i.e. 1-7-2002. Thus, the case is not affected by the said amendment at all.

23. In view of the amendment under Section 148 of the Code w.e.f. 1-7-2002, the Court can extend the period maximum to thirty days in total and as the old proceedings have not been saved in the repeal and savings clauses, it is evident that the Court has no power even in the old cases to extend the period beyond thirty days. Thus, in the instant case, even if the revision is allowed, no useful purpose would be served for the reason that the application for extension of time under Section 148 of the Code had been filed after expiry of more than three months.

24. The Court has no competence to issue a direction contrary to law. (Vide *Union of India v. Kirloskar Pneumatic Co. Ltd.*²¹ *State of U. P. v. Harish Chandra*,²² and *Vice-Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra*,²³

25. In *State of Punjab v. Renuka Singla*²⁴ dealing with a similar situation, the Hon'ble Apex Court observed as under (para 8) :-

"We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations."

26. Similarly, in *Karnataka State Road Transport Corporation v. Ashrafulla Khan*,²⁵ the Hon'ble Apex Court has held as under (para 26) :-

"The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injected by law."

27. Even otherwise, in the instant case, the order allowing the application under Order 6, Rule 17 was passed on 31-3-2001. No time was fixed by the Court to present the amended plaint. Therefore, in view of the provisions of Order 6, Rule 18 of the Code, the amended plaint could be filed only upto 14-4-2001 but the same was not filed. An application was filed under section 148 to extend the time on 10-7-2001, i.e. after expiry of about three months of the period prescribed by the Code. The explanation for not filing the amended plaint within fourteen days of the date of the order had been that petitioner had also filed an application under Order 13, Rule 2 prior to filing the application under Order 6, Rule 17 and that application was fixed for hearing on 7-5-2001 vide order dated 31-3-2001 the date on which the application under Order 6, Rule 17 had been allowed and thus, the petitioner's counsel remained under the impression that the amended plaint was to be filed on 7-5-2001, i.e. the date fixed for hearing the other application. Though the learned trial Court has not gone into this issue and examined whether there was a "sufficient cause" or not, but in order to avoid further delay, this Court can examine the issue as to whether there was a "sufficient cause" for the petitioner for not presenting the amended pleadings.

"Sufficient cause" is an expression which is used in large number of Statutes. Its ordinary dictionary meaning is 'adequate' or 'enough', 'any justifiable reason' for which the party could not act. It means the party should not be negligent or want of *bona fide* cannot be imputed in view of the facts and circumstances of a case or party cannot be alleged 'not acting diligently' or 'remaining inactive'. Facts and circumstances of each case must afford sufficient ground to enable the Court to exercise discretion for the reason that when Court exercises discretion, it has to be exercised judiciously. (Vide *Ramlal Motilal v. Rewa Coal Fields Ltd.*, ²⁶ *Sarpanch, Lonand Gram Panchayat v. Ramgiri Gosavi*, ²⁷ and *Surinder Singh Sibia v. Vijay Kumar Sood*), ²⁸

28. In *Banarsi Das v. Dalmia Dadri Cement Co. Ltd.*, ²⁹ the Court held that the word "sufficient" means; 'adequate', 'enough', as much as may be necessary to answer the purposes intended. It embraces no more than that which provides a plantitude which when done suffice to accomplish the purpose intended in the light of the existing circumstances and when viewed from reasonable standard of practical and cautious-men.

29. In *Arjun Singh v. Mahendra Kumar*, ³⁰ the Hon'ble SC considered as what

constitutes "sufficient cause" and observed that there must be sufficiency in reasons and held that there was no material difference between the facts to be established for satisfying the true test of good cause and sufficient cause. The good cause may mean a lesser degree of proof than that of sufficient cause.

30. In *Madan Lal v. Shyam Lal*,³¹ the Hon'ble SC considered the meaning of "good cause" while interpreting the provisions of Order 13, Rule 2 of the Code and held that while examining as to whether there was a good cause or not, the power should be exercised liberally realizing that "good cause" requires lesser degree of proof than that of "sufficient cause".

31. In *Ram Nath Sao v. Goverdhan Sao*,³² the Hon'ble SC examined the meaning of "sufficient cause" within the meaning of Order 22, Rule 9 of the Code and held that whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no strait-jacket formula is possible. The Court held that "sufficient cause" in such circumstances must have a liberal interpretation than that of Section 5 of the Limitation Act as to advance substantial justice and while deciding the said case, the Court placed reliance upon its earlier judgment in *Shakuntala Devi Jain v. Kuntal Kumari*,³³ and *State of West Bengal v. Administrator, Howrah Municipality*,³⁴

32. In *Brij Indar Singh v. Lal Kanshi Ram*,³⁵ it has been held that reasonable diligence is the test of "sufficient cause."

33. The only explanation furnished for the delay in the application has been that the petitioner's counsel was under the impression that he had to file the amended pleadings on the date when his other application under Order 13, Rule 2 of the Code was to be heard. The question does arise whether such an impression can constitute "sufficient ground". The question does further arise as to whether the impression was based on his legal acumen or knowledge of statutory provision or his action was *bona fide* or whether it can be held to be inevitable cause for which he could, in no way, be held responsible. The mistaken advice or ignorance of law may be a "sufficient cause" depending upon the facts and circumstances of a particular case.

34. In *Matadeen v. A. Narayanan*,³⁶ the Hon'ble SC considered a case wherein, on the basis of the legal advice, an appeal had been filed in a wrong Forum. The Court held that it was based on mistaken advice of the counsel and there was no tainted or *mala fide* motive of the counsel and it constituted a "sufficient cause" for condoning the

delay.

35. In *M/s. Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi*,³⁸ the Hon'ble SC held that mistake of the counsel in calculating the period of limitation can be a "sufficient cause".

36. In *State of West Bengal v. Administrator, Howrah Municipality* (AIR 1972 SC 749) (supra), the Apex Court held that if a party had acted in a particular manner on a legal advice given by his legal advisor, he cannot be held guilty of negligence so as to disentitle the party to plead "sufficient cause" under Section 5 of the Limitation Act. While deciding the said case, the Hon'ble SC placed reliance upon the judgment in *Kunwar Rajendra Singh v. Rai Rajeshwar Bali*,³⁸

37. Thus, in view of the above, it may be held that in such a circumstance, the mistake of a counsel may be taken into account and considered as a "sufficient cause", but there can be no general proposition that mistake of counsel, by itself, is always a "sufficient cause". Prima facie, I am of the view that such an impression of the counsel does not constitute sufficient ground. But even if it is so, no relief can be granted at this stage because of the amendment in Section 148 of the Code, as explained above.

38. Thus, in view of the above, the reasoning given by the learned trial Court cannot be sustained in the eye of law that the Court does not have the power to extend the period fixed by the Code. But in the facts and circumstances of the case, the application was liable to be rejected as it did not furnish "sufficient cause".

39. In view of the above, the petition stands dismissed. There shall be no order as to costs.

Petition dismissed.

Cases Referred.

1. AIR 1969 SC 1267
2. AIR 1978 SC 484
3. AIR 1983 SC 43
4. AIR 1950 All 675

5. AIR 1957 All 558
6. AIR 1958 Ker 88
7. AIR 1961 Mad 407
8. AIR 1997 Ker 203
9. AIR 1961 SC 882
10. AIR 1924 PC 198
11. AIR 1982 SC 137
12. AIR 1983 SC 57
13. (1983) 2 SCC 127
14. (1991) 2 Raj LW 1
15. AIR 1999 Raj 185
16. AIR 1987 Raj 36
17. (1972) 2 Cut WR 1428
18. AIR 1985 Orissa 165
19. AIR 1974 Kar 136
20. AIR 1977 Guj 109
21. (1996) 4 SCC 453
22. (1996) 9 SCC 309
23. (1997) 10 SCC 264)
24. (1994) 1 SCC 175
25. (2002) 2 JT (SC) 113
26. AIR 1962 SC 361
27. AIR 1968 SC 222
28. AIR 1992 SC 1540
29. AIR 1959 Punjab 232
30. AIR 1964 SC 993
31. (2002) 1 SCC 535
32. (2002) 3 SCC 195
33. AIR 1969 SC 575
34. AIR 1972 SC 749
35. AIR 1917 PC 156
36. AIR 1970 SC 1953
37. AIR 1979 SC 1666
38. AIR 1937 PC 276