REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICITION

CIVIL APPEAL NOS. 6734-6735 OF 2010
(Arising out of S.L.P. (Civil) Nos. 19478-19479 of 2009

D.V. Paul …Appellant

Versus

Manisha Lalwani …Respondent

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted.

2. This appeals arise out of orders dated 17th June, 2009 and 30th July, 2009 passed by the High Court of Madhya Pradesh at Jabalpur whereby an application seeking

extension of time for deposit of a sum of Rs.10,000/- by the appellant in terms of a judgment and decree dated 4th May, 2006 passed by the High Court in FA No.108/2003 has been dismissed.

3. The respondent Smt. Manisha Lalwani filed a suit for eviction of the appellant under the M.P. Accommodation Control Act, 1961 before the Additional District Judge, Fast Track Katni, alleging nuisance within the meaning of Section 12(1)(c) of the Act, for default in payment of rent contrary to Section 12(1)(a), damage to the premises contrary to Section 12(1)(k) and material alteration of the accommodation to the detriment of the landlord's interest diminishing the value of the property contrary to Section 12(1)(m) of the M.P. Accommodation Control Act, 1961 as grounds for eviction. The suit was contested by the appellant and eventually dismissed by the Trial Court holding that none of the allegations made by the respondent had been proved by her. Aggrieved by the said dismissal, the respondent appealed to the High Court of Judicature at

Jabalpur. The High Court passed an order dated 4th May, 2006 holding that the appellant was not in default of payment of rent so as to justify an order of his eviction under Section 12(1)(a) of the Act. The Court further held that the respondent had failed to prove that the appellant had caused any nuisance or that he had caused substantial damage to the premises owned by the landlord as envisaged under Section 12(1)(a) of the Act. In so far as construction of a wall by the tenant contrary to Section 12(1)(m) was concerned, the High Court held that the additional construction raised by the tenant did not provide any cause of action for his eviction. The Court further held that in order to warrant eviction the construction must be of such as materially alters the accommodation. The Court found that the construction made in the instant case was of a temporary character and that such construction could be removed at any time without causing any damage to the building. As regards demolition of a wall by the appellant-tenant, the same was found to be detrimental to the interest

of the landlord as it diminished the value of the accommodation substantially. Relying upon Section 12(10) of the Act the Court held that it was lawful to determine and direct payment of compensation to the landlord for the damage could by him. The Court accordingly determined the damage at Rs.10,000/- and modified the decree passed by the Trial Court to the effect that the appellant shall deposit a sum of Rs.10,000/- by way of compensation in the Trial Court within four months from the date of the judgment of the High Court for payment to the landlord. In case the appellant failed to deposit the amount so determined, the Trial Court was directed to pass a decree for eviction of the tenant under Section 12(1)(m) of the Act. In case, however, the deposit was made within the specified period, the suit filed by the respondent-landlady was to stand dismissed.

4. The appellant's case is that aforementioned order of the High Court was communicated to him by his lawyer on telephone followed subsequently by the receipt of a copy of

the said order. The appellant's further case is that due to inadvertence he did not notice that the amount of Rs.10,000/- had to be deposited before the Trial Court. The result was that instead of depositing the sum of Rs.10,000/- before the Trial Court, the appellant got a demand draft prepared in the name of the respondent from the Bank of Baroda at Katni Branch on 24th August, 2006. A copy of the deposit slip has been produced by the appellant in support of his version that a demand draft was indeed prepared in the name of the respondent for a sum of Rs.10,000/- from the Bank aforementioned. The appellant's further case is that the demand draft was then sent by Registered Post A.D. No.6868 through the Katni Branch Post Office to the address of the respondent at Jabalpur. The registered envelop was received at the respondent's house by her maid servant Durga who made an endorsement on the receiving slip, a true copy whereof has also been enclosed as Annexure P3 to the petition. According to the appellant even in the past he had sent demand drafts to the respondent for payment of

rent due to her which drafts were received by her maid servant.

5. The appellant alleges that although the respondent had received the bank draft sent to her, the same was not encashed nor any acknowledgement sent to the appellant. He did not even receive any communication from the landlady pointing out that the amount had to be deposited in the Trial Court and not to be paid directly to her. The silence and inaction on the part of the respondent was according to the appellant deliberate and under the advice of her husband who is a practicing lawyer and also the power of attorney holder of the respondent.

6. Four months after the demand draft was sent the respondent filed an application before the Trial Court praying for a decree under Section 12(1)(m) of the Act stating that the deposit of Rs.10,000/- directed by the High Court had not been made by the appellant. The error in the making of the deposit thus came to the knowledge of the appellant

only when he received a copy of the application moved by the respondent.

7. In the meantime, the respondent had challenged the order passed by the High Court in FA No.108 of 2003 before this Court by way of Special Leave Petition which was dismissed by this Court on 16th March, 2007. Realising his mistake the appellant appears to have addressed a communication to the Post Master, Jabalpur for verification whether letter sent by him under Registered A.D. No.6868, had been delivered to the respondent. A communication was also addressed to the Branch Manager, Bank of Baroda, Katni, for a certificate to the effect that bank draft No.VG220839 dated 24th August, 2006 was issued by the said bank in favour of the respondent and whether or not the said draft had been encashed. Yet another communication was addressed to the Bank Manager, Bank of Baroda Napier Town, Jabalpur, demanding a certificate whether the demand draft in question had been encashed. Simultaneously, an application was moved before the III,

Additional District Judge, Katni, praying for deposit of a fresh draft for an amount of Rs.10,000/- in the CCD account of the Court in terms of the order of the High Court. A fresh bank draft was also enclosed with the said application. Not only that the appellant also moved MCC 1876 of 2007 under Section 151 Code of Civil Procedure before the High Court at Jabalpur setting out in detail the facts leading to the delay in submission of the demand draft before the Trial Court and steps that the appellant had taken in compliance with the order passed in appeal. In the said application the High Court passed an order on 6th December, 2007 in which it noticed the denial of the respondent as to the receipt of the bank draft by her. The reply of the respondent, however, was silent as to whether any maid servant by the name Durga was employed by her and whether Durga had received the bank draft in question. The Court in that view considered it necessary to direct an inquiry in to the matter particularly whether the maid servant of the respondent had received the bank draft on behalf of the decree holder and

whether the draft is being retained by the decree holder. The Executing Court was directed to record evidence to be led by the parties within a period of six weeks.

8. The above order was challenged by the respondent before this Court in C.A. Nos.3234-35 of 2009 which were disposed of by order dated 5th May, 2009. This Court held that execution of the decree passed by the Trial Court need not be held up only because of the inquiry which the High Court had directed into the question of deposit of the amount by the appellant. This Court felt that since no deposit had been made in terms of the decree passed by the High Court, the Executing Court could proceed with the execution of decree passed on 4th May, 2006. At the same time this Court left it open to the Executing Court to proceed with the inquiry as directed by the High Court. The operative portion of the order passed by this Court reads as under:

> "We have heard Mr. Ravindra Shrivastava, learned senior counsel appearing on behalf of the appellant-decree holder and Mr. Rohit Arya, learned senior counsel for the

> respondent and have also considered the conditional decree and the application for extension of time and other materials on record. In our view, for the purpose of executing the decree, whether money has been deposited or not, it was not necessary to hold an inquiry whether in fact Smt. Durga had received the bank draft or not because in the conditional decree of the High Court, it was made clear that such amount must be deposited in the trial Court which was not done by the respondent. In this view of the matter, we are of the view that there is no reason why the Executing Court shall not proceed with execution of the decree passed on 4th May, 2006, and accordingly, we direct the Executing Court to proceed with the execution case passed on 4th May, 2006. However, it would be open to the Executing Court to proceed with the inquiry as directed by the High Court.
>
> With these observations and/or modification, these appeals are disposed of. There will be no order as to costs."

9. When MCC No.1876 of 2007 came up for orders before the High Court the same was disposed of by the order impugned in this appeal holding that since an inquiry into the question whether the bank draft sent by the appellant has been received by the respondent through her maid servant has been declared to be unnecessary by this Court

and since this Court has directed the Executing Court to proceed with the execution case, no further action or direction was necessary in the said application. What is noteworthy is that the High Court did not examine the question whether the prayer made by the appellant for extension of time for making the deposit could be considered and granted. It simply disposed of the application seeking extension of time only because this Court had not favoured the conduct of an inquiry into the question whether the bank draft had been sent to the respondent and had been received by her through her maid servant.

10. When the matter was taken up for hearing before the Executing Court two applications came up for consideration, one filed by the appellant and the other by the respondent. The application made by the appellant, sought an inquiry into the question whether the bank draft sent by the appellant had been received by the respondent. The decree holder's application on the other had pointed out that since the High Court had disposed of MCC No.1876 of 2007 by its

order dated 17th June, 2009, there was no need for conducting any inquiry. Both these applications were disposed of by the Executing Court on 7th July, 2009. The Executing Court held that since there was no need for any inquiry for the execution of the decree, it was unnecessary to go on with any such inquiry especially when the decree holder was no longer demanding any such inquiry. All the applications filed before the Executing Court were accordingly disposed of.

11. Aggrieved by the above order, the appellant preferred MCC No.7148 of 2009, which was dismissed by the High Court on 30th July, 2009, relying upon the order passed by this Court on 5th May, 2009 and that passed by the High Court on 17th June, 2009. The present appeals assail the correctness of the said two orders.

12. We have heard learned counsel for the parties at length and perused the record. An inadvertent mistake in the deposit of the amount directed by the High Court has turned

out to be a fertile ground for time consuming and expensive litigation before this Court and the Courts below. The essence of the matter is that the High Court had directed deposit of Rs.10,000/- towards compensation payable to the respondent landlady for the damages caused to the premises in the occupation of the tenant-appellant. The appellant's case was that instead of the deposit of the said amount before the Trial Court as directed by the High Court, he had committed a bonafide mistake in getting the bank draft for the said amount prepared in the name of the respondent and sending the same to her under Registered A.D. In support of that submission, the appellant had produced material to show that a bank draft had indeed been prepared in the name of the respondent and dispatched to her at her Jabalpur address.

13. Since the respondent denied the receipt of such a draft, the question whether or not the draft had been sent and if so received by the respondent through her maid servant fell in issue for purposes of determining whether the

appellant had complied with the directions contained in the decree. The High Court directed an inquiry into the matter by its interim order dated 6th December, 2007. This Court in appeal against the said order considered such an inquiry to be unnecessary. This Court proceeded on the basis that since the deposit was directed to be made in the Trial Court, any other form of deposit would necessarily stand excluded including a direct payment to the landlady by way of a draft. This Court held that since the deposit had not been made, the execution could go on without waiting for the result of the inquiry, as a condition precedent. Those observations made by this Court were understood by the High Court to mean as though the question whether time for making of the deposit could be extended stood foreclosed that was not in our opinion a correct appreciation of the order passed by this Court. MCC No.1876 of 2007 made a prayer for extension of time for making of the deposit. Even assuming that an inquiry into the making of the payment by the appellant directly to the respondent was not necessary, the

question that was still required to be answered was whether time for deposit of the amount in accordance with the directions issued by the High Court could be extended. Unfortunately, the High Court did not advert to that question. It appears to have proceeded on the assumption that since an inquiry into the payment of the amount directly to the respondent was not favoured by this Court and the Executing Court was directed to go on with the execution, nothing really survived for consideration in MCC No.7148 of 2007. That was, in our opinion, not wholly correct. This Court was only dealing with the interim order passed in MCC 7148 of 2007 on 30th July, 2007. Even if the said order was set aside, the question whether the appellant was entitled to extension of time for making of the deposit would have continued to remain relevant and had to be answered by the High Court on its own merits. The High Court failed to do so while disposing of MCC No.1876 of 2007, which was not correct.

14. The Trial Court was, however, correct in holding that it could not extend time for making the deposit as the same had been stipulated by the High Court nor could the Executing Court go behind the decree. Holding of an inquiry into the question whether the appellant had made the payment directly to the respondent was also correctly found to be unnecessary by the Trial Court, no matter this Court had left the conduct of such an inquiry open to the Executing Court. The fact of the matter was that the appellant had not made the deposit in the manner required in the decree. Whether or not the alternative mode for payment was equally good, may not have called for any consideration, if the parties had agreed to accept the alternative mode, as a satisfactory compliance with the decree to give quietus to the controversy. Where alternative mode is not accepted as a satisfactory solution by the parties, as in the present case the only remedy left to the party required to do an act like making of a deposit was to do so in accordance with the terms of the decree and in case there was a delay in the

doing of the act, seek extension of time on grounds that would justify such extension. Since the High Court has failed to consider the request made by the appellant on merits we would have in the ordinary course remitted the matter to the High Court for consideration of the application afresh and for appropriate orders. We, however, feel that multiple rounds of litigation on the subject, not only in the Courts below but in this Court have already proved expensive, time consuming and cumbersome for the parties. We, therefore, consider it unnecessary to remit the matter back to the High Court only for consideration of the application for extension of time. In the peculiar facts and circumstances of the case, we are ourselves inclined to intervene and pass suitable orders on the subject.

15. Two aspects need to be examined on the question of extension of time. The first is whether extension can be legally granted in a case like the one at hand where non making of the deposit would result in a civil consequence like a decree of eviction against the appellant. The second is

whether in the facts and circumstances of the case, extension of time is justified for making of the deposit, and if so, on what terms.

16. In so far as the first aspect is concerned Section 148 of the CPC, in our opinion, clearly reserves in favour of the Court the power to enlarge the time required for doing an act prescribed or allowed by the Code of Civil Procedure. Section 148 of the Code may at this stage be extracted:-

> "148. **Enlargement of time**.
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> Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period [not exceeding thirty days in total], even though the period originally fixed or granted may have expired."

17. A plain reading of the above would show that when any period or time is granted by the Court for doing any act, the Court has the discretion from time to time to enlarge such period even if the time originally fixed or granted by the Court has expired. It is evident from the language employed

in the provision that the power given to the Court is discretionary and intended to be exercised only to meet the ends of justice. Several decisions of this Court have explained the ambit and scope of the powers exercisable under Section 148 of the CPC. In **Mahanth Ram Das** v. **Ganga Das**, 1961 (3) SCR 763, this Court observed:

> "Section 148 of the Code, in terms, allows extension of time, even if the original period fixed has expired, and Section 149 is equally liberal. A fortiori, those sections could be invoked by the applicant, when the time had not actually expired. That the application was filed in the vacation when a Division Bench was not sitting should have been considered in dealing with it even on 13.7.1954, when it was actually heard. The order, though passed after the expiry of the time fixed by the original judgment, would have operated from 8.7.1954. 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 events and circumstances

> which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but set upon and robbed by thieves the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians. Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed."

18. 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 itself the jurisdiction to re-examine the alteration or modification which may necessitate

extension of time. The following passage from the decision is apposite:

> "It is well accepted principle statutorily recognized in Section 148 of the Code of Civil Procedure that where a 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 the absence of a negative provision, it undoubtedly enjoys."

19. Reference may also be made to the decisions of this Court in **Jogdhayan** v. **Babu Ram**, 1983 (1) SCC 26, **Johri Singh** v. **Sukh Pal Singh**, 1989 (4) SCC 403 and **Ganesh Prasad Sah Kesari** v. **Lakshmi Narayan Gupta**, 1985 (3) SCC 53.

20. In **Salem Advocate Bar Association, T.N.** v. **Union of India**, 2005 (6) SCC 344, 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:

> "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 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."

21. 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 of the CPC or in any other provisions 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 the 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.

22. Coming then to the second aspect, namely, whether the appellant has made out a case for extension, our answer is in the affirmative. That the appellant had misunderstood the order of the High Court leading to the preparation of the bank draft of Rs.10,000/- in the name of the respondent and its dispatch under Registered AD cover to the respondent has not been seriously disputed before us. We are satisfied that the appellant did get a bank draft prepared and dispatched to the address of the respondent. This may not have been a strict compliance with the direction issued by the High Court regarding the deposit before the Trial Court but this certainly establishes the bonafides of the appellant, which is a weighty consideration while examining the request for extension of time. It is true that the respondent denied the receipt of the bank draft but that is not of much significance. What is important is whether the appellant has made out a case for extension based on what he had done in discharge of his obligation - no matter on an erroneous understanding of the direction of the Court.

23. That apart the fact that the appellant had offered to deposit the amount of Rs.10,000/- afresh also shows that there was no deliberate inaction on his part so as to disentitle him to the relief of extension of time.

24. In the totality of the circumstances, therefore, we consider it to be a fit case where extension of time for making of the deposit by the Trial Court ought to be granted. We accordingly allow the prayer for extension of time to make the deposit of Rs.10,000/- by eight weeks from today. The extension is, however, subject to payment of cost of Rs.10,000/-. We make is clear, that in case the appellant deposits a total sum of Rs.20,000/- within two months from today the suit filed by the respondent shall stand dismissed as directed by the High Court in the appeal mentioned above failing which the decree passed by the Trial Court shall revive and be executed in accordance with law.

25. These appeals are, with the above direction, disposed of.

.....J.
(AFTAB ALAM)

.....J.
(T.S. THAKUR)

New Delhi
August 18, 2010