SUPREME COURT OF INDIA **REPORTABLE**

Bench: Justices Rajesh Bindal and Prasanna Bhalachandra Varale

Date of Decision: 3rd May 2024

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3990 OF 2011

KANIHYA @ KANHI (DEAD) THROUGH LRS. …APPELLANT(S)

VERSUS

SUKHI RAM & ORS. …RESPONDENT(S)

Legislation:

No specific statutes cited directly, matter revolves around judicial directions and inherent jurisdiction under the principles of Indian civil procedure.

Subject: Appeal against High Court's decision in a pre-emption suit involving a dispute over the correct deposit amount for the property, focusing on whether a trivial short deposit due to a calculation error can lead to dismissal of a suit.

Headnotes:

Procedural History – Initial decree in favor of appellants required deposit of ₹ 9,214 minus 1/5th already deposited; appellants deposited ₹ 7,600 due to a clerical error, resulting in a shortfall of ₹ 14 – High Court's earlier revision allowing deposit rectification was reviewed and recalled, leading to dismissal of the case – Current appeal challenges this dismissal [Paras 3, 4, 14].

Calculation Error – Court's role in facilitating justice by correcting trivial errors; reliance on precedents like Johri Singh v. Sukh Pal Singh and Others, and Jang Singh v. Brij Lal and Others, highlighting courts' ability to remedy minor

mistakes to prevent miscarriage of justice – Errors in calculation by courts and parties should be correctable under judicial discretion [Paras 16, 20-21].

Judgment – Supreme Court allows the appeal, sets aside previous High Court and lower court orders – Appellants allowed to deposit the deficit ₹ 14 and pay costs of ₹ 1,00,000 to respondents for extended litigation [Paras 18-19].

Referred Cases:

Johri Singh v. Sukh Pal Singh and Others (Specific citation not provided)

Jang Singh v. Brij Lal and Others (Specific citation not provided)

J U D G M E N T

Rajesh Bindal, J.

1. The case in hand is an example of a party suffering on account of total casualness in dealing with the matter. An avoidable litigation.

2. The challenge is to the order[1] passed by the High Court[2] in Review Application[3]. By the said order the Review Application filed by the respondents was allowed. As a result, the earlier order[4] passed by the High Court in revision[5] was recalled. By the said order, the revision filed by the present appellants was allowed, permitting them to make good the deficit of ₹14/-.

3. The facts as available on record are that part of land comprising of 1/4th share land in Khewat No.236 and Khatoni No.258 situated in Village Samchana, District Rohtak, Haryana, was sold by Jai Singh, Jai Kishan, Randhir, Shamsher Singh sons of Balbir Singh son of Dariyav Singh to Sukhi Ram, Ram Pal, Hari Om, Mahabir Singh (respondents-defendants). The predecessor in-interest of the appellants

[1] Dated 26.10.2009
[2] High Court of Punjab & Haryana at Chandigarh
[3] R.A. No.2-C-II of 2009
[4] Dated 04.12.2008
[5] Civil Revision No.1645 of 1992

filed a suit for pre-emption. The same was decreed by the Trial Court on 11.08.1988. The predecessor in-interest of the appellants/plaintiffs was required to deposit a sum of ₹ 9,214/- minus 1/5th of the pre-emption amount already deposited, on or before 10.10.1988, failing which the suit shall stand dismissed.

3.1 Predecessor in-interest of the appellants filed an application on 19.09.1988 along with Treasury Challan in triplicate, seeking permission to deposit the amount as directed by the Trial Court. On the application the Trial Court passed the order for deposit of ₹ 7,600/-. It was claimed that the application and the challans were handed over in original to the appellant(s). The amount was deposited on the same day i.e. 19.09.1988.

3.2 On 06.12.1988, an application was moved by the judgmentdebtor (defendant-respondent) seeking permission to withdraw the amount deposited by the appellant-plaintiff on which a report was submitted by the office on the same day. It was found that the amount deposited by the appellant-plaintiff was less by ₹ 14/-.

3.3 On 23.02.1989 the judgment-debtor (defendant-respondent) filed an application seeking dismissal of the suit on account of non-compliance of the direction given in the judgment and decree of the Trial Court, as there was failure on behalf of the appellant-plaintiff to deposit full amount within the time granted by the Trial Court. While the aforesaid application was pending, the appellant-plaintiff filed an application on 05.03.1991 seeking permission of the court to deposit deficit amount of ₹ 14/-. Subsequent to the filing of the aforesaid application, an application dated 25.05.1991 was also filed by the appellant-plaintiff seeking condonation of delay in filing the application seeking permission to make good the deficiency in deposit of the amount as per the decree of the Trial Court.

3.4 *Vide* order dated 09.01.1992, the application filed by the appellant seeking permission to deposit ₹ 14/- was dismissed by the Trial Court. Aggrieved against the same, the appellants preferred Revision Petition before the High Court which was initially allowed on 04.12.2008. However, on a Review Application filed by the respondents, the order passed by the High Court on 04.12.2008, was recalled and Civil Revision

No.1645 of 1992 was dismissed *vide* order dated 26.10.2009. It is the aforesaid order which is under challenge in the present appeal.

4. Impugning the aforesaid order, the learned counsel for the appellants submitted that the appellants are illiterate. In the case in hand, decree was passed in favour of the predecessor in-interest of the appellants on 11.08.1988 and the time was granted for deposit of the balance amount upto 10.10.1998 after reducing 1/5th of the amount already deposited in court. Accordingly, an application was moved seeking permission of the court to deposit the balance amount. On that application, order was passed by the court directing deposit of ₹ 7,600/- and the Treasury Challan was also annexed with the application. Immediately, the amount was deposited. It was found that there was an error in the calculation of the amount. As a result of which the deposit was short by ₹ 14/-. It was not intentional but due to a calculation error. Appellants cannot be said to be at default as even the court also directed for deposit of ₹ 7,600/- instead of ₹ 7,614/-.

4.1 An application was filed by the judgment-debtor (respondent-defendant) for dismissal of the suit on account of the nondeposit of the amount as per the decree within the time granted by the court.

4.2 The Trial Court, without appreciating the facts and circumstances of the case wrongly rejected the application moved by the appellant-plaintiff seeking permission of the Court to deposit the deficit amount of ₹ 14/-. The aforesaid order was challenged before the High Court. Initially, the Revision Petition was allowed *vide* order dated 04.12.2008. However, in the Review Application filed by the respondent, the order passed in the Revision Petition was recalled and the same was dismissed *vide* order dated 26.10.2009.

4.3 The Trial Court as well as the High Court have failed to appreciate the issue that the court is empowered to extend the time for deposit of the amount in case there was any error. In the case in hand there was a *bona fide* error. The parties should not be made to suffer on account of any error in the judicial proceedings. The amount was too meagre. In support of the arguments, reliance was placed on the judgments of this

Court in **Johri Singh v. Sukh Pal Singh and Others**[6] and **Jang Singh v. Brij Lal and Others**[7].

5. On the other hand, learned counsel for the respondents submitted that the appellants having failed to comply with the terms of the decree passed in their favour, do not deserve any relief from this Court. The appellant-plaintiff had purchased the property by paying the full market price. A suit for pre-emption was filed by the appellantplaintiff which was decreed. The decreetal amount was to be deposited by 10.10.1988. The appellant-plaintiff moved an application before the Trial Court along with pre-filled Treasury Challan seeking permission to deposit ₹ 7,600/-. It was on that application moved by the appellantplaintiff, the court ordered for depositing of ₹ 7,600/-, which was deposited by the appellant-plaintiff. The amount as such was not calculated by the court as it was the duty of the appellant-plaintiff to deposit the correct amount in terms of the decree, which was explicit.

5.1 On an application moved by the respondent-defendant for withdrawal of the amount of ₹ 9,214/- in terms of the decree, the office reported on 06.12.1988 that the amount deposited was merely ₹ 9,200/-. Immediately, thereafter an application was filed on 23.02.1989 by the respondent-defendant for dismissal of the suit on account of the non-compliance of the terms of the decree by the appellant-plaintiff. More than two years thereafter, the appellantplaintiff moved an application seeking permission to deposit the balance amount of ₹ 14/- without explaining any reason for moving such an application at a belated stage. More than two months thereafter, an application was filed seeking condonation of delay in deposit of the amount. Even that also did not contain any reason.

5.2 *Vide* order dated 09.01.1992, the Trial Court dismissed the application filed by the appellant-plaintiff seeking leave to deposit ₹ 14/- on account of non-deposit of the whole amount within the time permitted. The order passed by the Trial Court was challenged by the appellants before the High Court. Initially, on a wrong premise the High Court allowed the revision petition and set aside the order of the Trial Court. However, there being error apparent on the record, the Review

[6] (1989) 4 SCC 403 : 1989 INSC 265
[7] (1964) 2 SCR 145 : AIR 1966 SC 1631: 1963 INSC 42

Application filed by the respondents was allowed and after recalling the earlier order passed in the Revision Petition, the High Court dismissed the same.

5.3 There is no error in the order passed by the High Court. Even if the time granted by the court for deposit of the amount can be extended but there has to be sufficient reason for the same. In the case in hand, there is no reason, what to talk about sufficient reason. There was no fault of the Trial Court as the order for deposit was passed on the same line as was prayed for by the appellants.

6. We have heard learned counsel for the parties and perused the paper book.

7. The respondents purchased the property in dispute from Jai Singh, Jai Kishan, Randhir and Shamsher Singh sons of Balbir Singh son of Dariyav Singh *vide* registered sale deed dated 06.08.1985. The appellants filed a suit for possession by way of preemption claiming that they being the co-sharers in the Joint Khewat had preferential right to purchase the property. The suit was filed on 11.08.1986. The suit was decreed on 11.08.1988. The appellants were directed to deposit a sum of ₹ 9,214/- minus 1/5th preemption amount already deposited, on or before 10.10.1988 failing which the suit was to be dismissed with costs.

8. The appellants moved an application dated 19.09.1988 before the court seeking permission to deposit the sum due as per the direction of the court. It was specifically mentioned in the application that as per the decree the appellants were required to deposit a sum of ₹ 9,214/- less 1/5th already deposited along with the application.

Treasury Challan was also annexed mentioning the amount to be deposited by the appellants, i.e. ₹ 7,600/-. The court *vide* endorsement in the application itself on 19.09.1988 permitted the appellants to deposit ₹ 7,600/-. The amount was deposited by the appellants in the bank on the same day.

9. The respondents moved an application seeking permission to withdraw the amount deposited by the appellants in terms of the decree. The report dt. 06.12.1988 was submitted by the registry, that initially a sum of ₹ 1,600/- was deposited by the appellants on 09.09.1986 and subsequently after passing of a decree a sum of ₹ 7,600/- was deposited on

19.09.1988. Immediately thereafter the respondents moved an application dated 23.02.1989 before the court for passing further order and for dismissal of the suit as the appellants had failed to comply with the terms of the decree. The same was directed to be put up on 20.03.1989, 07.04.1989, 19.04.1989 and thereafter on 26.04.1989 for consideration. From the record, nothing is available as to what happened to this aforesaid application after the aforesaid date. Nothing is clearly evident regarding that from the records.

10. Thereafter, at page 75 of the original record, there is another application filed by the respondents with similar prayer. It was directed by the court *vide* order dated 23.04.1990 to be put up on 25.04.1990, then on 30.04.1990. On that date, notice was directed to be issued to the other side for 12.05.1990. On the next date, the learned counsel appearing for the non-applicant/appellants sought time to file reply to the application. After seeking adjournment, reply was filed on 02.06.1990 taking the stand that the remaining amount was deposited after obtaining prior permission of the court and whatever direction was issued by the court the same was complied with. It was stated that whatever amount was payable was deposited, however, if there is any deficiency the appellants are ready to make the same good.

11. After filing of reply by the appellants the matter remained under consideration before the court.

12. On 05.03.1991, the appellants filed an application before the court seeking permission to deposit the balance sum of ₹ 14/- in which notice was issued to the other side for 23.03.1991. While the aforesaid application was pending, another application was filed by the appellants on 25.05.1991 seeking condonation of delay in depositing of ₹ 14/-. It was pleaded in the application that ₹ 14/- remained unpaid due to clerical mistake. The mistake was not intentional. Hence, delay be condoned.

13. Finally, the application was taken up for consideration by the court and *vide* order dated 09.01.1992 the same was rejected.

14. Against the aforesaid order, the appellants preferred Revision Petition before the High Court, which was initially allowed *vide* order dated 04.12.2008. The High Court noticed the argument raised by learned counsel for the respondents therein namely the respondents herein that in preemption matter the court cannot extend the time for deposit of money. However, the Court went on to invoke its inherent

jurisdiction for correction of error of the court. The revision was allowed. The appellants were granted time to deposit the balance sum of ₹ 14/-. The respondents filed the Review Application against the order of the High Court. The same was allowed and *vide* impugned order dated 26.10.2009, the earlier order passed by the High Court on 04.12.2008 was recalled and the revision was dismissed.

15. As far as the position of law and the question whether the court can extend the time for deposit of money in a pre-emption suit is concerned, this court in **Johri Singh's** case (supra) considered a similar issue. In that case, the deposit was less by ₹ 100/-. The application filed by the decree holder therein seeking permission to deposit to make the deficiency good, after expiry of the time granted by the court, was allowed. The order was upheld by this court. In para 21, this court opined that the Trial Court in the decree only mentioned a sum to be deposited by the decree holder minus the amount of "zarepanjum". The amount was not specified in the judgment. Error in calculation occurred, as a result of which ₹ 100/- was deposited less. The application filed by the decree holder therein with challan annexed was allowed by the court without pointing out the error. After deposit of the amount though little deficient, even the possession of the property was delivered to the decree-holder. Relevant paras 20, 21, 25 and 26 are extracted below:

"20. In the third category of cases, namely, nondeposit of only a relatively small fraction of the purchase money due to inadvertent mistake whether or not caused by any action of the court, the court has the discretion under Section 148 CPC to extend the time even though the time fixed has already expired provided it is satisfied that the mistake is bona fide and was not indicative of negligence or inaction as was the case in Jogdhayan [(1983) 1 SCC 26 : (1983) 1 SCR 844] . The court will extend the time when it finds that the mistake was the result of, or induced by, an action of the court applying the maxim "actus curiae neminem gravabit" — an act of the court shall prejudice no man, as was the case in Jang Singh [AIR 1966 SC 1631 : (1964) 2 SCR 145] . While it would be necessary to consider the facts of the case to determine whether the inadvertent mistake was due to any action of the court it would be appropriate to find that the ultimate permission to deposit the challaned amount is that of the court.

21. Proceeding as above, in the instant case we find that the decree did not quantify the purchase money having only said “Rs 41,082 less the amount of ‘zare panjum’ ”. Of course, ‘certum est quod certum reddi potest’— that is certain which can be rendered certain. The amount of ‘zare-panjum’ was not specified. Parties do not controvert that it was one fifth. But the amount was not calculated by the court itself. Inadvertent error crept in arithmetical calculation. The deficit of Rs 100 was a very small fraction of the total payable amount of Rs 33,682 which was paid very much within the fixed time, and there was no reason, except for the mistake, as to why he would not have paid this Rs 100 also within time. The appellants' application with the challan annexed was allowed by court officials without pointing out the mistake. The amount was deposited and even possession of the property was delivered to the appellant. The Senior Subordinate Judge allowed the application made by appellant in exercise of the discretion vested in him apparently on the view that sufficient cause had been out for non-deposit of Rs 100. This order, however, as seen above, was set aside by the High Court in a civil revision under Section 115 CPC.

xx xx xx

25. In this view of the matter there seems to be no manner of doubt that the Senior Subordinate Judge had jurisdiction to extend the time under Section 148 CPC on sufficient cause being made out. The first condition precedent to enable the High Court to exercise its revisional jurisdiction under Section 115 CPC was, therefore, lacking. Likewise, nothing has been brought to our notice on the basis of which it could be said that the discretion exercised by the Senior Subordinate Judge was in breach of any provision of law or that he committed any error of procedure which was material and may have affected the ultimate decision. That being so, the High Court had no power to interfere with the order of the Senior Subordinate Judge, however profoundly it may have differed from the conclusions of that Judge on questions of fact or law.

26. On the facts and circumstances of the case we feel justified in allowing this appeal, setting aside the impugned judgment of the High Court, and in restoring that of the Senior Subordinate Judge allowing 10 days' time to deposit the balance of Rs 100 exercising power under Section 148 CPC on facts of the case. If the amount has not already been

deposited, it shall be deposited within 30 days from today and the respondents shall withdraw the same according to law. The appeal is accordingly allowed, but under the facts and circumstances of the case, without any order as to costs."

16. The facts of the case in hand are identical. In the instant case as well the balance amount to be deposited by the appellant was not specified in the decree. The deficiency was only ₹ 14/-. The appellants had already deposited ₹ 9,200/- including the preemption amount already deposited. When the application was filed seeking permission to deposit the amount along with the Treasury Challan, the error was not noticed by the Court. At the very first stage, in response to the application filed by the respondents to pass appropriate order on account of deficiency by the appellants to deposit the amount as directed by the court, the appellants stated that in case there is any deficiency, they are ready to make it good. The court could have considered the same and passed appropriate orders. However, the matter remained pending for this.

17. It is the pleaded case of the appellants in the application filed for permission to deposit the deficit balance of ₹ 14/- dated 05.03.1991, that the applicant (late Kanihya, predecessor in-interest of the appellants) is in possession of the property and mutation has already been entered in his name in the revenue record.

18. In view of the aforesaid discussions, the present appeal deserves to be allowed. Ordered accordingly. The impugned order passed by the High Court and the court below are set aside. The appellants are permitted to deposit a sum of ₹ 14/- to the court below on or before 20.05.2024. The respondents shall be entitled to withdraw the entire amount deposited in court, if not already done.

19. Though, we are allowing the appeal but on account of error on part of the appellants, the respondents were made to litigate for decades together upto this Court. We deem it appropriate to compensate them. Hence, we direct the appellants to pay a cost of ₹ 1,00,000/- to the respondents. The amount shall be deposited in the Trial Court within the time granted above, with liberty to the respondents to withdraw the same.