

Jammu & Kashmir High Court

Ghani Bhat vs Yagoot Firdous And Ors. Etc. on 19 February, 1988

Equivalent citations: AIR 1989 J K 43

Author: Bhat

Bench: M Bhat, G Kuchhai

JUDGMENT Bhat, J.

1. These four appeals are being decided by a common judgment. Appellant in all these appeals is the pre-emptor. He brought four different suits on the basis of right of prior purchase in respect of four different sale deeds against four different vendees. The trial court directed the appellant to deposit the 1/5th of the probable value of the suit property in cash under Section 21 of the Right of Prior Purchase Act. This order was made in all the suits on 21-12-1984. The appellant, pre-emptor, however did not deposit the said amount. Instead he moved an application for permission to furnish security in lieu of 1/5th of the probable value. This application was dismissed in all the suits. Thereupon the appellant seems to have taken a revision to the High Court. The High Court directed the trial Court to pass a reasoned order and remanded that case back to it after setting aside the order under revision. All the suits were, later on transferred to the file of the District Judge.

2. The learned District Judge after giving the parties opportunity of placing their, submissions before it, disallowed the application of the pre-emptor and made a direction for the making of the deposit in cash. One month's time was granted by the District Judge to the pre-emptor from the date of passing of the order of depositing the amount. The pre-emptor seems to have filed another revision before the High Court against the order of the District Judge rejecting his prayer to furnish security. The said revision was dismissed. While dismissing the revision the High Court seems to have made an observation at the instance of the pre-emptor to the following effect:

"It is open to him (Plaintiff) to make such an application before the trial court. The trial court shall dispose of the application on merits uninfluenced by the dismissal of the petition."

From the impugned order it appears that pre-emptor had made an oral request during the course of hearing of the revision before the High Court for extension of period to enable him to make the deposit of 1/5th of the probable value in the trial court. The above observation was made by the High Court in that context. After the dismissal of the revision, the record was received by the trial court and the cases were listed before the trial court on 25-7-1985. On that date pre-emptor seems to have made an application for extension of time under Section 21(4) of the Right of Prior Purchase Act for making the deposit of the 1/5th probable value in cash. Mention of this application is made in the minutes of the trial court record dated 25-7-1985. Copy of this application was given to the other side for filing objections and the case was posted for 2-8-1985. On 2-8-1985 objections seem to have been filed by the vendees to these applications and the case was posted for consideration of these applications on 12-8-1985. Thereafter it was posted for 26-8-1985. In between 25-7-1985 and 12-8-1985, the appellant, pre-emptor was permitted to deposit 1/5th of the probable value in cash without prejudice to any right that might have accrued to the vendees. The pre-emptor seems to have made the deposit of 1/5th of the probable value on 8-8-1985. On 7-10-1985 vendees in all the four cases seem to have made an application before the trial court to the effect that the pre-emptor

has not deposited the 1/5th of the probable value in cash even after expiry of time, therefore plaint be rejected Mention of this application is made in all the four suits in its interim order dated 7-10-1985. The preemptor was asked to file objections to this application.

3. The trial court decided the application of the pre-emptor for grant of extension of time in making the deposit as also the application of the vendees for rejection of the plaint by one order. The trial court held that the plaintiff has failed to make out any ground for extension of the time for depositing 1/5th of the probable value. Therefore his application was dismissed which entailed in the rejection of the plaints. In these appeals legality of the order of the trial court rejecting the plaint by refusing to extend time in making the deposit is impugned.

4. We have heard learned counsel for the parties.

5. Mr. S. L. Kaul appearing for the respondents-vendees has strenuously argued that Section 148 CPC would not apply to suit under Right of Prior Purchase Act and plaintiff, pre-emptor had not shown sufficient cause which entitles him to seek extension of time in making the deposit It was argued that law of Prior Purchase recognised a very weak right and any omission on the part of the preemptor to perform any of the Act required to be performed by him for the trial of the suit will be fatal to the trial of the suit. The pre-emptor's conduct in making delay in the deposit of the cash was commented upon and it was sought to be shown that the preemptor is not interested in getting his right enforced, therefore he has intentionally and purposely failed to deposit the amount of 1/5th of the probable value in the court when he was directed to do so by various orders. He cannot make any delay in depositing the amount and filing of revision petition before the High Court which came to be dismissed would not be a sufficient cause to condone the lapse of the pre-emptor and his suit could not proceed further for want of deposit.

Therefore the order of the trial court was perfectly justified.

6. Mr. Kaul relied on Anand v. Kishan Chander AIR 1971 Punj & Har 411, Sudhir Chander Nag v. Nazir Mamud Sheikh AIR 1939 Cal 30, Jagjit Singh v. Sankatha Singh AIR 1950 All 675 (FB) and Raja Khan v. Mohd Khan AIR 1930 Lah 567. Before commenting on these authorities it will be useful to make mention of the provisions regarding deposit of 1/5th of the probable value. Section 21(1) of the Right of Prior Purchase Act reads as under : --

"Plaintiff may be called upon to make deposit or file security.-- (I) In every such suit the court shall, at, or at any time before, the time of settlement of issues, require the plaintiff to deposit in the court such sum as in the opinion of the court equals to one-fifth of the probable value of the land or property, or require the plaintiff to give security to the satisfaction of the Court for the payment of a sum not exceeding such probable value within such time as the Court may fix in such order."

Sub-section (2) of the said section vests the appellate court with the power to order deposit under Section 21(1). Sub-section (3) of Section 21 provides that sum deposited under Sub-section (1) or (2) shall be available for the discharge of costs. Sub-section (4) of Section 21 on which both sides have relied reads as under:--

"If the plaintiff fails within the time fixed by the court or within such further time as the court may fix to make the deposit or furnish the security under Sub-section (1) or (2), his plaint shall be rejected or his appeal dismissed, as the case may be."

In these appeals we are not concerned with Sub-sections (5) & (6). Sub-section (4) of Section 21 makes it possible for the Court to extend time for making the deposit or furnishing the security. It lays down that if the plaintiff fails within the time fixed by the court or within such further time as the Court may fix to make the deposit, then the consequences of rejection of plaint or dismissal of the appeal may follow. But it undoubtedly clothes the Court with power to grant further time for making the deposit of 1/5th of the probable value. So the grant of further time within which a pre-emptor is to deposit the 1/5th probable value is within the discretion of the court and such discretion is to be exercised on sound judicial principles.

7. The concept of judicial discretion, as stated by Lord Mansfield, imports a duty to be fair, candid and unprejudiced, not arbitrary, capricious or biased, much less warped by resentment or personal dislike. The judicial discretion of dispensing justice was expressed by Queen's Bench, to mean to act according to rules of reason and Justice, not according to the private opinion, according to law and not humour. The discretion of a Judge is not to be arbitrary, vague and fanciful, but legal and regular.

8. We have to examine the orders impugned in these appeals in the light of the principles which we have enumerated hereinabove. The pre-emptor is not required to show good cause or sufficient cause in his application which may have prevented him from making the deposit. The Judge granting further time for making the deposit has of course to take into consideration the totality of the circumstances involved in the case. It is true that an inactive or negligent pre-emptor is not entitled to get further time for making the deposit. But the tune is sought in the light of the observations made by the High Court, previous conduct of the pre-emptor pales into insignificance. The trial court itself has reproduced the observations of the High Court permitting the pre-emptor to make an application before the trial court for grant of further time to make the deposit and such application was to be considered un-influenced by the dismissal of the revision petition. The revision petition was grounded on the trial court's finding that pre-emptor could make the cash deposit and his prayer for furnishing security was rejected. The High Court upheld that order. The result was that the pre-emptor was bound to make the cash deposit. For making cash deposit he was entitled to seek further time in view of the observations made by the High Court in its revisional order and when the record was received back, the pre-emptor seems to have applied promptly for extension of time in making the deposit. The pre-emptor on the true interpretation of Section 21 (4) of the Right of Prior Purchase Act is not required to prove his bona fides for making the deposit. The time can be extended by the court on many considerations which are germane for securing the ends of justice.

9. In *Ahsan Ganni v. Gaffar Doom* reported in 1962 Kash LJ 133 : AIR 1966 J & K 87, it was held that even after settlement of issues court can make a direction for deposit of one-fifth of the probable value. In a preemption suit, one-fifth probable value was not deposited when the issues were settled and the trial had commenced. The Munsiff Kulgam rejected the application of the

defendant calling upon the plaintiff-pre-emptor to make the deposit because in its view it could not do so after the framing of issues. A revision was taken to the High Court which came to be decided by Nair J., as his Lordship then was. The provisions of Section 21 were held to be safeguard against frivolous vexatious or speculative preemption suits. The language of Section 21 (1) was held not to mean that court loses its jurisdiction and authority to require the plaintiff to deposit the money or furnish security. In fact it is the requirement of the court to enforce the statutory provisions embodied in the Right of Prior Purchase Act, and the court suo motu has to make a direction for making the deposit. In the present case such a direction was in fact made which was sought to be changed in the revision by the appellant. But on his failure to do so, the trial court, when approached for extension of time, seems to have taken a pedantic and technical view of law.

10. From the record it appears that appellant has been encouraged to move an application for extension of time by the observations made by the High Court in revision. So the dismissal of the revision petition was not to operate as a bar for the appellant to move an application for grant of extension of time. This was expressly remarked by the High Court in the revisional order. After that the appellant moved an application for grant of extension of time in terms of Section 21 (4) of the Right of Prior Purchase Act. This would show that when the order of the trial court refusing permission to the appellant to furnish security had become final, appellant intended to deposit the amount in cash as one fifth of the probable value. Before the application of the appellant was decided, appellant in fact had deposited the amount on 8-8-1985 in all the suits which was accepted by the trial court with a rider that the deposit will be without prejudice to the rights of the vendees, if any accrued to them. After the deposit was made by the appellant in all the suits before the impugned order came to be passed or before his application came to be considered, it appears to be unjust and arbitrary to non-suit the appellant, on the incorrect interpretation of Section 21 (4). Section 21 (4) has some consequences which entail, if the pre-emptor would fail to comply with the directions of the court and is not ready to make the deposit. Where the pre-emptor after having fought, unsuccessfully, in the High Court offers to make the deposit in cash and in fact deposits the cash of one-fifth probable value, the trial court's order of rejecting the plaint on the imaginary ground that the appellant had not complied with the provisions of law does not seem to be in accordance with the provisions of law and its intent. Mr. Nazki's contention that court was first to determine the probable value for purposes of making the deposit does not seem to be correct, because the consideration amount is not disputed by the pre-emptor in his plaint. Therefore, the probable value is to be determined from the amount which is mentioned in the sale deed as consideration of the land. No determination was required for finding out as to what was the probable value to be deposited by the appellant.

11. The authorities cited by the learned counsel for the respondent are distinguishable.

12. AIR 1971 Punj & Bar 411 (supra) deals with a case under the Punjab Preemption Act. A learned single Judge of the Punjab and Haryana High Court has held that power to extend time for depositing preemption money is discretionary. However, the conduct of the plaintiff in extending the time is relevant. This authority does not deny the power to the court to extend time, but extension of time is to be made on certain relevant considerations, one of which is plaintiff's conduct.

13. AIR 1939 Cal 30 (supra) deals with a case which arose under Bengal Tenancy Act. It is laid down that court has no power to extend time fixed by it for making deposit under Section 174 (5) of the Bengal Tenancy Act. The provisions of said Act are self contained and the scheme of making deposit was also governed by one of the provisions of the said Act which was held to be mandatory. It, therefore, would not be wise to apply the principle underlying Bengal Tenancy Act to a case which is being tried under the Right of Prior Purchase Act.

14. AIR 1950 All 675 (FB) (supra) has dealt with a case which arose under the U. P. Agriculturists Act. An order appears to have been made by which redemption of mortgage was allowed under Section 16 of the said Act. The mortgagor was to deposit a specific amount within the time fixed under Section 16 of the Act. A decree for redemption on this condition was passed. The deposit was not made within the time fixed. Thereupon, application for extension of time for making the deposit under Section 148, CPC was made. It was held that provisions of Section 148, CPC would not apply to the case. This authority would not apply to a case which arises out of the J & K Right of Prior Purchase Act for two reasons. The J & K Right of Prior Purchase Act has a provision in Section 21 (4) of the Act which empowers the court to grant further time for making the deposit of the one-fifth probable value and secondly Section 148 CPC would not apply to a case which had already been decided. It cannot be said that in the present case Section 148 CPC is altogether inapplicable. The lis is still pending and it has not been concluded. Provisions of Section 148 CPC would not be applicable to a case which has already been concluded and in which decree is passed. For instance if a final decree on the basis of Right of Prior Purchase is passed, a court has to make a direction under Order 20, Rule 14, CPC for making the deposit, within the specified period, of the consideration amount failing which the suit is to be dismissed. A condition is to be incorporated in the decree. On Pre-emptor's failing to comply with the terms of the decree in respect of making of deposit, Section 148, CPC would not be attracted nor can it be invoked. But in respect of a pending case, its application is not excluded. Moreover U. P. Agriculturists Act contains its own procedure. Therefore applying provisions of CPC to suits arising out of that Act appears not to have been approved by the Allahabad High Court.

15. AIR 1930 Lah 567 (supra) also deals with the provisions of Section 22 (4) of the Punjab Pre-emption Act. the pre-emptor instead of cash deposit filed security which was accepted by the court. It was held that the previous order regarding cash deposit was not varied by filing security in the court. It does not deal with the extension of time in making the deposit.

16. In the present case, the pre-emptor seems to have tried to file security for one-fifth probable value, but that request was turned down and order of making the deposit in cash stood confirmed. He could seek further time after his second revision failed in the High Court. High Court permitted him to seek extension and before his application was considered, he had already deposited the one-fifth of the probable value in cash. Therefore, it cannot be said that the conduct of the plaintiff was bad in any manner and he was only fighting a vexatious or a frivolous litigation. In our opinion the trial court has slipped into an error by refusing to accept cash deposit made by the appellant validly. It has taken a very technical and pedantic view of the whole matter which had resulted in the miscarriage of justice.

17. For the reasons recorded above, we are of the opinion that the order of the trial court rejecting the cash deposit and dismissing the suits as a failure of appellant's complying with the provisions of Section 21 of the Right of Prior Purchase Act, is bad and needs to be set aside. The deposit made by the plaintiff of the one-fifth probable value is to be accepted and treated to be valid.

18. Accordingly the appeal succeeds and the order of the trial court is set aside. It is, directed that the cash deposit made by the appellant in all suits is valid and is made in accordance with law. The suits are remitted back to the trial court for being tried in accordance with law.

G.A. Kuchhai, J.

19. I agree.