

2011 Y L R 2857

[Lahore]

Before Muhammad Ameer Bhatti, J

MUHAMMAD RAMZAN---Petitioner

Versus

MUHAMMAD HUSSAIN and 2 others---Respondents

Writ Petition No.8635 of 2008, decided on 15th June, 2011.

Punjab Pre-emption Act (IX of 1991)---

---Ss. 6 & 24---Civil Procedure Code (V of 1908), Ss.151 & 152---Constitution of Pakistan, Art.199--- Constitutional petition--- Suit for pre-emption--Determination and deposit of decretal amount---Trial Court decreed the suit but did not mention anything about the deposit of decretal amount---On filing application by the plaintiff/decreed-holder under Ss.151/152, C.P.C. for the correction of the judgment and decree, Trial Court corrected same directing the decree-holder to deposit the amount which was deposited by the decree-holder accordingly--Defendant/judgment-debtor's petition against the order of the Trial Court, court directed the decree-holder for further deposit of amount which was deposited accordingly---Defendant/judgment-debtor filed constitutional petition contending that after passing the judgment and decree, the Trial Court had no jurisdiction to extend the time---Validity---Trial Court had cured the omission in accordance with law---Trial Court was to mention a specific amount with a specific date to be deposited, but since it was lacking in the relief granting para, plaintiff/decreed-holder could not be penalized; as act of the court would prejudice no one---In absence of any illegality, irregularity or jurisdictional defect in the orders of the courts below, same could not be interfered with by High Court in constitutional petition.

PLD 1991 SC 360 rel.

Muhammad Farooq Qureshi Chishti for Petitioner.

Muhammad Yousaf Inayat for Respondents.

ORDER

MUHAMMAD AMEER BHATTI, J.---Through this constitutional petition the petitioner has challenged the orders dated 3-12-2007 and 23-5-2008 passed by the learned Civil Judge and the Additional District Judge Sargodha respectively.

2. The brief facts of the case are that the pre-emption suit filed by respondent No.1 was decreed in his favour. However, the learned trial court while deciding of the Issue No.10 qua "relief" neither mentioned anything about the deposit of decretal amount nor any time was given for deposit of decretal amount. After obtaining copy of judgment and decree, the respondent No.1 filed an application under sections 151/152, C.P.C. for the correction of the judgment and decree which was accepted by admitting this error and direction was issued to respondent No.1/plaintiff to deposit the amount of Rs.1,84,500. This amount was deposited by the respondent No.1 pre-emptor according to the direction of the learned trial court. Another application was also moved. The revision petition was filed against the said order of the learned trial court. The learned revisional court vide its order dated 20-2-2007 pointed out that instead of Rs.1,84,5000 the amount required to be deposited was in fact Rs.1,93,000 and direction was issued to the learned trial court for necessary correction/rectification in the judgment. This correction was accordingly made by the learned trial court vide its order dated 3-12-2007 and direction was issued to the pre-emptor/respondent No.1 for further deposit of Rs.8,500 which was accordingly deposited. This order dated 3-12-2007 was challenged before respondent No.3 in revision petition which was dismissed on 23-5-2008, which led to filing of this constitutional petition.

3. Learned counsel for the petitioner contends that after passing the judgment and decree the court/respondent No.2 had no jurisdiction to extend the time. He further contends that everything is mentioned in the issues and it was duty of the plaintiff to deposit the amount accordingly by the plaintiff/pre-emptor as indicated in Issues Nos.1, 7 and 9 sp there was no occasion for the plaintiff/pre-emptor to wait for the correction of the judgment and decree. Since it was clearly mentioned in all the above mentioned issues so even if it was not mentioned in the issue regarding "relief", the same can be calculated from the judgment and accordingly it must have been deposited within time and the jurisdiction exercised and the permission granted by both the courts below was beyond their jurisdiction.

4. Conversely learned counsel appearing on behalf of respondent No.1 contends that unless the court will not direct to deposit a specific amount within a specific period the burden cannot be shifted on the pre-emptor/plaintiff to deposit the amount and it was the act of the court for which

the respondent/plaintiff shall not suffer. He has relied on PLD 1991 SC 360 wherein it has been held that court having failed to specify such date, the successful pre-emptor could not be penalized for no body had to suffer on account of act of the court. It is further held in this case that the court having not directed deposit of amount in terms of Order XX, Rule 14, C.P.C. suit could not be dismissed.

5. I have considered the arguments of the learned counsel for the parties and the case law referred to by the learned counsel for respondent No.1 and came to this conclusion that it was the duty of the learned trial court to mention a specific amount with a specific date to be deposited but since it was lacking in the relief granting para, hence the respondent/ plaintiff cannot be penalized as it is settled law that the act of the court would prejudice none. Since the trial court has cured the omission in accordance with law and revisional court has rightly not exercised the jurisdiction in favour of the writ petitioner/defendant keeping in view the rectification made by the learned trial court/respondent No.2 in accordance with law. This court is satisfied with the powers exercised by both respondents Nos.2 and 3 and did not find any illegality, irregularity or jurisdictional defect in the orders of respondents Nos.2 and 3.

6. For what has been discussed above, this petition does not merit interference in the orders passed by the learned revisional court and the same is dismissed accordingly.

H.B.T.JM-942/L

Petition dismissed.