APPELLATE CIVIL

Before R. S. Narula, J.

NAZAR SINGH,—*Appellant.*
versus
MUNSHI SINGH,—*Respondent.*

Execution Second Appeal No. 518 of 1968

December 1, 1969

Code of Civil Procedure (V of 1908)—Order 20 Rule 14—Decree for pre-emption—Substantial compliance with the terms of the decree—Whether sufficient to reap the benefit thereof—Literal compliance—Whether necessary—Pre-emption money ordered to be deposited by appellate Court—"Court" in which the money is to be deposited—Whether the appellate or the trial Court—Mistake committed by a Court leading to non-compliance of a pre-emption decree—Pre-emptor—Whether to suffer for such non-compliance.

Held, that a pre-emptor is entitled to reap the fruits of the decree obtained by him if he substantially complies with the terms of the pre-emption decree imposed therein, under rule 14 of Order 20 of the Code of Civil Procedure. It cannot be laid down as a matter of law that it is absolutely literal compliance with every possible hypertechnical detail of the requirements of the decree that alone would entitle a pre-emptor to obtain possession of the pre-empted property. The mere fact that the pre-emption money has been paid directly to the vendees instead of being deposited in Court, or due to some *bona fide* error it has been deposited in a wrong Court in the same station or in the appellate Court instead of the original Court cannot by itself be held to nullify the decree. (Para 12)

Held, that the "Court" referred to in Order 20 Rule 14(1) of the Code is *prima facie* intended to refer to the Court which passed the decree in pursuance of which it has become necessary to make the requisite deposit. When an additional amount is directed to be deposited by an appellate Court by way of pre-emption money, or when in an appeal against the dismissal of a pre-emption suit an order is made for depositing the pre-emption money for the first time by the appellate Court, the Court which passes the decree for such deposit the appellate Court, and in the absence of a definite direction to the contrary in the appellate decree, the deposit made in the appellate Court would comply with the requirements of Order 20 Rule 14(1). (Para 6)

Held, that there is no higher principle for the guidance of the Court than the one that no act of Court should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of

the Court, he should be restored to the position he would have occupied but for that mistake. Hence where a mistake committed by a Court leads to the non-compliance of a pre-emption decree and the pre-emptor finds himself in a pit, it is the duty of the Court itself to bring the pre-emptor out of the pit. He should not be allowed to be harmed for the non-compliance of the decree particularly when the mistake and negligence of the Court has substantially contributed to such non-compliance. **(Para 15)**

Execution Second Appeal from the order of Shri Shanti Swarupa, Additional District Judge, Ferozepore, dated 8th November, 1967, affirming that of Shri K. K. Garg, Sub-Judge, III Class, Ferozepore, dated 24th June, 1967, holding that the decree holder has not complied with the terms of decree of the II Additional District Judge, Ferozepore for pre-emption as laid down in the decree of II Additional District Judge Ferozepore so his suit stands dismissed.

BALRAJ BAHL, ADVOCATE, for the appellant.

K. L. SACHDEVA, ADVOCATE, for the respondent.

JUDGMENT.

NARULA, J.—Two questions call for decision in this Execution Second Appeal, namely:—

(i) whether strictly literal compliance with the order of the Court passed under Order 20, Rule 14 of the Code of Civil Procedure is necessary to entitle a decree-holder to reap the benefits of a pre-emption decree passed in his favour or whether substantial compliance with the requirements of such an order is enough; and

(ii) whether on the facts found by the lower appellate Court in this case, the decree-holder appellant can or cannot be held to have substantially complied with the order of the first appellate Court, dated October 29, 1965, requiring him to deposit the additional sum of Rs. 1,050.

(2) The brief facts of the case are that on September 30, 1964, a pre-emption decree was passed in favour of the appellant by the trial Court conditional on the appellant depositing in that Court Rs. 2,950 on or before December 30, 1964, that the requisite deposit was made within time, that in defendant's appeal against the decree of the

trial Court, the pre-emption money to be deposited by the decree-holder was raised by the order of the first appellate Court, dated October 20, 1965, by an additional sum of Rs. 1,050 which was required to be deposited in the trial Court on or before January 15, 1966, failing which the suit of the appellate was to stand dismissed, that the decree-holder, made an application for depositing the requisite additional sum of Rs. 1,050 to the appellate Court and deposited the full required amount in that Court within the time allowed under the appellate decree, but did not deposit the same in the trial Court, that on an application of the vendee-defendant-judgment-debtor to withdraw the additional amount, the trial Court held on June 24, 1967, that the suit for pre-emption stood dismissed as the additional amount had not been deposited in the trial Court, and the same finding has been affirmed in the decree-holder's first appeal by the Court of Shri Shanti Swarupa, Additional District Judge, Ferozepore, on November 8, 1967.

(3) The executing Court wrote a detailed order wherein the operative portion of the pre-emption decree passed by the first appellate Court was quoted verbatim. It appears to be necessary to quote the same here:—

(1) "That Nazar Singh is now to further deposit Rs. 1,050 for payment to Munshi Singh in the Court of the Subordinate Judge, II Class, Ferozepore (i.e., the trial Court) on or before January 15, 1966;

(2) That if he (Nazar Singh) fails to deposit the said amount of Rs. 1,050 in the said Court on or before the said date as directed under (1) above, or that he had failed to deposit Rs. 2,950 in the Court on or before December 30, 1964, as already directed by the decree of the trial Court, the suit shall stand dismissed."

The executing Court had relied on a Single Bench judgment of Chevis, J., in *Kanhaya Lal* v. *Mohammad Shafi Khan* (1), and on the judgment of the Allahabad High Court in *Ajudhia Prasad* v. *Gobind Prasad* (2), in support of its decision, and had further held that in view of the fact that the law of pre-emption is a pratical law as held

(1) (1913) 18 I.C. 600.
(2) (1923) 71 of I.C. 1034=A.I.R. 1923 All. 250.

in *Surjan Singh and others* v. *Harcharan Singh* (3), an interpretation which restricts the operation of the law of pre-emption should be preferred in a case where two interpretations are possible. Inasmuch as the decree-holder had neither deposited the decretal amount in the trial Court as directed in the appellate decree, nor informed the trial Court or the judgment-debtor about the deposit having been made in the first appellate Court, the decree-holder had, according to the decision of the executing Court, failed to comply with the specific requirements of the decree, and so his suit stood dismissed in terms of the appellate decree.

(4) The decree-holder's execution first appeal against the above-said order of the trial Court has been dismissed by an extremely sketchy order of the learned Additional District Judge, Ferozepore. In ultimate analysis the first appellate Court has merely held that the appellant having failed to deposit the amount in question in accordance with the decree of the appellate Court, the suit had been rightly treated as dismissed by the trial Court.

(5) Mr. Balraj Bahl, the learned counsel for the decree-holder appellant has vehemently submitted:—

(i) that his client has substantially complied with the appellate pre-emption decree, that he has deposited the entire amount in question within the time allowed by the decree, that the amount has been deposited in the very Court which directed the deposit, that the appellate Court and the executing Court are at a stone's throw from each other in the same town;

(ii) that if the appellate Court had on the application of the decree-holder directed that the deposit could not be made there, but was to be made in the trial Court, the appellant would have complied with the direction to that effect, and that the appellant should not now be penalised for what was atleast partially a mistake of the office of the Additional District Judge in allowing and accepting the deposit of the enhanced pre-emption money.

(3) 1967 P.L.R. 325.

(6) Sub-rule (1) of rule 14 of Order 20 of the Code of Civil Procedure provides, *inter alia,* that where the purchase-money has not already been paid into the Court before the passing of a pre-emption decree, the Court shall specify in the decree a day on or before which the purchase-money shall be paid into Court, and that if the purchase-money and the costs, if any, awarded under the decree are not so paid, the suit shall be dismissed with costs. The contention of Mr. K. L. Sachdeva, the learned counsel for the respondent, was that even if no specific direction has been given in the appellate decree about the Court in which the balance of the pre-emption money had to be deposited, the decree-holder could enjoy the fruits of the decree only if he had made requisite deposit in the trial Court, and his suit would have been liable to be dismissed if he had made the deposit in the appellate Court. He seeks to derive strength for this proposition from the language of the opening part of sub-rule (1) of rule 14 wherein it is stated that "the purchase-money has not been paid into Court" and from the language employed in clause (b) of sub-rule (1) of rule 14 which requires that if the purchase-money and the costs (if any) "are not so paid" the suit shall be dismissed with costs. Counsel submits that "Court" in rule 14(1) means the trial Court, and "not so paid" implies that it is the non-payment of the amount in the trial Court that results in the dismissal of the suit. It is really not necessary to decide this point as the appellate Court had given a specific direction in its decree in the present case. I may, however, state that as at present advised, I am unable to agree with the contention of Mr. K. L. Sachdeva. The "Court" referred to in Order 20 Rule 14(1) is *prima facie* intended to refer to the Court which passed the decree in pursuance of which it has become necessary to make the requisite deposit. When an additional amount is directed to be deposited by an appellate Court by way of pre-emption money, or when in an appeal against the dismissal of a pre-emption suit an order is made for depositing the pre-emption money for the first time by the appellate Court, the Court which passes the decree for such deposit is the appellate Court, and in the absence of a definite direction to the contrary in the appellate decree, the deposit made in the appellate Court would, in my opinion, comply with the requirements of Order 20 Rule 14(1).

(7) Before deciding the direct questions which arise in this case, it appears to be appropriate to notice certain previous decisions to most of which reference has been made by the learned counsel for the

parties at the Bar. In *Balmukand* v. *Pancham* (4), the decree-holder withdrew the amount of costs awarded to him against the judgment debtor out of the pre-emption money deposited by him in Court within time. In an appeal against the decree of the trial Court, the pre-emption money was raised and the order for payment of costs was reversed. Within the time allowed by the appellate Court, the pre-emptor paid the net balance of the amount which was necessary to make up the total amount payable under the appellate decree. The contention of the vendee to the effect that the pre-emptor had failed to pay the full enhanced pre-emption money within the prescribed period was repelled and it was held that the requirements of the appellate decree had been satisfied. The facts of the case of *Bhagwana* v. *Goru and others* (5), were almost similar to those of *Balmukand's case* (4) (supra). The Division Bench of the Chief Court of Lahore followed the judgment of the Allahabad High Court in *Balmukand's case* (4), and held that the payment of the difference between the amount deposited under the decree of the lower Court and the amount due under the appellate decree within the time allowed without paying the costs which had already been realised by the decree-holder was a sufficient compliance with the decree of the appellate Court, and the vendee could separately recover his costs.

(8) The solitary reason why Johnstone, C.J., held payment of the pre-emption money to the decree-holders outside Court as being not sufficient to comply with the pre-emption decree in spite of the factum of the payment having been made within time having been admitted in *Abul Fatteh* v. *Fatteh Ali and others* (6), was that the payment to the judgment-debtors had not been certified to the Court by the fixed date. The observations of Johnstone, C.J., in *Abul Fatteh's case* (6), are no longer good law in view of the subsequent judgment of Harbans Singh, J., in *Bholu Ram and others* v. *Kanhya son of Mare and others* (7). *In Bholu Ram's case* (7), it has been held that if payment of pre-emption money is made out of Court, and such payment has been proved to have been made before the stipulated date, it should be treated as sufficient compliance with the pre-emption decree in which the direction given under Order 20 Rule 14(1) is to make the deposit in the Court. It was further held in that case

(4) I.L.R. 10 All. 400.
(5) 56 P.R. 1910.
(6) A.I.R. 1916 Lah. 249.
(7) A.I.R. 1963 Pb. 133.

that sub-rule (3) of rule 2 of Order 21 having been repealed in Punjab the non-certification of the payment to the Court makes no difference.

(9) The first case on which the trial Court placed reliance for deciding against the pre-emptor is the judgment of Chevis, J., in *Kanhaya Lal* v. *Mohammad Shafi Khan* (1). The question involved in that case was entirely different from the one which arises in the present litigation. The amount actually deposited by the decree-holder in that case was found to be one anna less than the amount required to be paid under the pre-emption decree. The plaintiff-decree-holder had admittedly not complied in full with the requirements of Order 20 Rule 14. In terms of the decree the suit had to be regarded to have been dismissed. The Divisional Judge had invoked section 151 of the Code of Civil Procedure in favour of the plaintiff. The High Court held that section 151 did not authorise the Court in execution proceedings to alter the terms of the decree under execution. In the present case there is no such dispute. The full amount has admittedly been deposited by the decree-holder within time. The judgment of the Punjab Chief Court in *Kanhaya Lal's case* (1), is, therefore, not relevant for deciding the instant dispute.

(10) Nor does the judgment of the Division Bench of the Allahabad High Court in *Ajodhia Prasad* v. *Gobind Prasad* (2), help in the decision of the issue before me. The compromise pre-emption decree in that case directed that the money had to be paid or tendered to the vendee, and it was only on the refusal of the vendee to accept it that it was to be deposited in Court within thirty days. It was found on facts that the decree-holder had never tendered the money to the vendee out of Court, but that he deposited it straightaway in Court within the period of thirty days. The trial Court, the first appellate Court, as well as the High Court held that the deposit in the Court, in the abovesaid circumstances, was not a sufficient compliance with the terms of the decree. The High Court further found that the vendee made an application to the Court that, the decree-holder was present with the money and should be required to pay it; that the Court Officer called for the decree-holder but he was not to be found and on the same day the decree-holder, instead of paying the money to the vendee, deposited it in Court. That appears to be a case in which the pre-emptor showed deliberate disregard to the terms of the decree. No right to reap the fruits of the decree by depositing

the money in Court could accrue to the pre-emptor in that case without the amount being first tendered to the vendee. No such thing has happened in this case.

(11) The next case on which Mr. K. L. Sachdeva relied was the judgment of Tek Chand, J., in *Kali Charan* v. *Ravi Datt and others* (8). On the facts of that case it was held that the pre-emptor did not have or tender the money in Court till the last day allowed by the decree and the mere fact that he presented an application to the Court for depositing the amount on the last day did not constitute a valid tender. It was observed that the law required the tenderer to have the money present and ready and to produce and actually offer it to the other party. To the same effect is the judgment of P. C. Pandit, J., in *Des Raj* v. *Des Raj and another* (9), on which the learned counsel for the respondent relied. Neither of these two cases is relevant for settling the present controversy as it is nobody's case that the appellant did not have the full money with him or did not tender the same. On the contrary it is the admitted case of both sides that the full requisite amount was actually deposited by the appellant in Court within time. In each of the above cases on which the respondent has relied either the full amount was not tendered within time at all or the amount deposited was deficient. A case which is comparatively nearer to the facts involved in the present litigation was decided by a Division Bench of the Allahabad High Court in *Sukhpal Singh* v. *Abdul Rahman and others* (10). In that case, the pre-emption decree directed the plaintiff to deposit the amount to the credit of the vendees within thirty days. Instead of paying the amount in Court, the decree-holder paid it to the vendees outside the Court and applied to the Court within time for certifying the payment. The Allahabad High Court held that the plaintiff having paid the full amount due to the vendees into the hands of the vendees out of Court, he had fully complied with the spirit as well as the letter of the decree. The learned Judges observed that it would be absurd to hold otherwise.

(12) A somewhat similar question arose before the Rajasthan High Court in *Surajmal* v. *Bheroolal and others* (11). In that case the decree specifically provided that the payment should be made in

(8) 1957 P.L.R. 204.
(9) 1968 P.L.R. 81.
(10) A.I.R. 1921 All. 159.
(11) A.I.R. 1958 Raj. 311.

written. Neither the office of the Court nor the learned Additional District Judge put any date on the order. The words "on the responsibility of the applicant" appear to have been added by the office of the Court, as only four days had been left and an argument might have been advanced in case of delay in actual payment in the treasury, about the order of the Court having been passed within time. Though it is impossible to conjecture as to what the Reader or the Ahlmad of the Court of the Second Additional District Judge meant by using that expression, the only other possible intention of the person who made that note that suggests itself to me is that the office of the Court was taking no responsibility for allowing the payment to be made. Judicial orders have to be passed with full sense of responsibility and it is not open to a judicial officer to say that, while passing the order, he leaves the responsibility for the correctness of the order to the litigant. It is on this account that I have presumed that when the Additional District Judge signed the above-said order, he could not have meant to shift the responsibility for the correctness of the order on the appellant. If the office of the lower appellate Court had done its duty properly, the record of the case would have been seen and the application had either to be rejected as no deposit was to be made in that Court or had to be returned with the endorsement that it may be presented to the trial Court. It is, therefore, patent from the above mentioned facts that the office of the lower appellate Court acted rather negligently in this matter and by such negligence substantially contributed to the mistake in the requisite deposit being made in the appellate Court in place of the trial Court.

(15) Detailed procedure is laid down in the Code for facilitating a fair and just trial of suits. It is not intended to create traps for the litigants into which they may be invited to fall by contributory acts of negligence or defaults of the Courts or their officials. In *Jagat Dhish Bhargava* v. *Jawahar Lal Bhargava and others* (13), it was held that a litigant deserves to be protected against the default committed or negligence shown by the Court or its officers in the discharge of their duties. Again in *Jang Singh* v. *Brij Lal and others* (14), the maxim *actus curiae neminem gravabit* was approved and it was held that the acts of a Court should do no harm to a litigant. *Jang Singh's case* (14), related to a suit for possession in exercise of

(13) A.I.R. 1961 S.C. 832.
(14) A.I.R. 1965 S.C. 1631.

rignt of pre-emption. The decree directed the pre-emptor to make the deposit by certain date. Though the deposit was made within time, it turned out to be less by one rupee. This deficiency was due to an error on the part of the officers of the Court in filling the challan on the basis of which the deposit had to be made. Hidayatullah, J., (now the learned Chief Justice of India), who prepared the judgment of the Court, held reversing the judgment of the Punjab High Court that it was no doubt true that a litigant must be vigilant and take care, but where a litigant goes to Court and asks for the assistance of the Court so that his obligation under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished to him. The learned Judge further observed that if the court in supplying the information asked for by a litigant makes a mistake, the responsibility of the litigant though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information, the Court cannot hold him responsible for a mistake which it itself caused. Hidayatullah, J., held that there is no higher principle for the guidance of the Court than the one that no act of Court should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court, he should be restored to the position he would have occupied but for that mistake. I think the observations of the Supreme Court in *Jang Singh's case* (14), have a direct and full impact on the present litigation. Only if the lower appellate Court had followed the normal procedure and had, after obtaining office report, rejected the application of the pre-emptor for making the deposit in that Court, and told him that the deposit was required to be made in the trial Court, the appellant, who had still four more days at his disposal, would not have fallen in the pit in which he finds himself. His fall being due to a mistake of the Court, it is the duty of the Court itself to bring the appellant out of the pit. This duty the lower appellate Court has not performed in the present case.

(16) From whatever angle the matter is looked at, it appears to me that this is not a case where the appellant should have been penalised for mere technical non-compliance with a direction of comparatively unimportant detail particularly when the negligence of the lower appellate Court substantially contributed to the non-compliance. I, therefore, allow this appeal with costs throughout, set aside the judgments and orders of the Courts below and hold that