

NOTES ON THE PROVISIONS OF SECTION 148 OF THE CODE OF CIVIL
PROCEDURE, 1908.

By

Sri S.M. Deka

Director

North Eastern Judicial Officers'

Training Institute (NEJOTI)

1. INTRODUCTION

During the year 2010 two Judgments of the Supreme Court dealing with the provisions of Section 148 of the Code of Civil Procedure, 1908 (CPC hereinafter) had been reported in the All India Reporter. They are MONOHAR SINGH -VS- D.S. SHARMA & ORS., AIR 2010 S.C. 508 dated 13.11.2009 and D.V. PAUL -VS- MANISHA LALWANI, AIR 2010 S.C. 3356 dated 18.08.2010. The first Judgment relates not so much to Section 148 CPC as to Section 35-B thereof. The Judgment simply lays down that the provisions of Section 35-B CPC "will not come in the way of the Court in its discretion extending the time for such payment, in exercise of its general power to extend time under section 148 of CPC." The second Judgment which shall be referred hereinafter as D.V. PAUL, however raises a few points of complexity. Indeed, it is D.V. PAUL which has prompted these notes on the provisions of Section 148 CPC.

2. THE LEGISLATIVE HISTORY

The first Code of Civil Procedure was enacted by Act 8 of 1859 as the Code of Civil Procedure, 1859. Several amendments, during the years from 1860 to 1872, later the code of civil Procedure 1859 was replaced by the Code of Civil Procedure 1877, which in turn was superseded by the Code of Civil Procedure 1882. Eventually came the CPC with effect from the 1st of January 1909. Sections 148 to 151 in Part XI of CPC were brought into the Statute book only, with effect from 01.01.1909. These Sections, more importantly for the present purpose Section 148 CPC, were not there in the Codes of Civil Procedure 1859, 1877 and 1882. Section 148 CPC reads thus :-

"148 Enlargement of time – 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 even though the period originally fixed or granted may have expired"

With effect from 01.07.2002 through the Code of Civil Procedure (Amendment) Act 1999 the group of words "not exceeding thirty days in total" have been inserted between the words "such period" and the word "even" in the above text of the provision.

3. D.V. PAUL, 18TH AUGUST 2010.

Smti. Manisha Lalwani, the landlord instituted a Suit for eviction of D.V. Paul, the tenant on the ground of default in payment of rent, damage caused to the premises and alteration to the accommodation to the detriment of the Landlord's interest contrary to three clauses of Section 12 of the M.P. Accommodation Control Act, 1961. The Suit was dismissed on contest by the tenant Sri D.V. Paul. On appeal by the Landlord Smti. Lalwani the High Court modified the decree of dismissal passed by the Trial Court and passed a conditional decree to the effect that the tenant (D.V. Paul) “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/landlord was to stand dismissed.” (underlining supplied).

Through inadvertence the tenant sent the amount of Rs.10,000/- directly to the Landlord by a Bank draft instead of depositing the amount in Court in terms of the conditional decree of the High Court. A spate of legal approaches to the Trial Court, the High Court and even to the Supreme Court followed because of this mistake of the tenant gleefully taken advantage of by the Landlord. Out of this legal imbroglio the question of law that fell for decision by the Supreme Court in D.V. PAUL is whether the High Court could have legally granted extension of time to make the deposit directed by the conditional decree quoted above passed by the High Court. It hardly needs mention that upon being rebuffed by the High Court the tenant reached the Supreme Court to get rid of the decree for eviction passed by the Trial Court and to dismiss the suit on acceptance of the sum of Rs.10,000/-.

In D.V. PAUL the Supreme Court straightaway answered the question by pointing to Section 148 CPC as the repository of the power to extend the time for making the deposit directed by the conditional decree. For this answer heavy reliance was placed on two three Judge Bench decisions of the Supreme Court namely, MAHANTH RAM DAS – VS- GANGA DAS, AIR 1961 S.C. 882 and CHINNAMARKATHIAN –VS- AYYAVOO, AIR 1982 S.C. 137. A passage each from the above two decisions have even been extracted in D.V. PAUL. Without going into the facts of the two three Judge Bench decisions in detail even from the two extracts it is apparent that the above two decisions did not deal with conditional decrees but were in respect of conditional procedural orders. Indeed MAHANTHA RAMDAS (Supra) takes particular care to except conditional decrees by specifically saying “(conditional decrees apart)” in the extract. (underlining supplied). Similarly even in the extract from CHINNAMARKATHIAN (Supra) one can read the following:

“, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction. (underlining supplied).

It is to be noted that this was said in relation to a conditional order. A specific provision “denying” the jurisdiction under Section 148 CPC relating to judgment and decree can be read in Order XX Rule 3 read with Order XX Rule 6 of the CPC. Alteration of the period of time and also the mode of payment will amount to alteration of the decree itself which can only be done in the manner provided by the CPC and not in exercise of the discretionary jurisdiction under Section 148 CPC or under 151 CPC. The two three Judge Bench decision not to speak of lending support to the statement of law in D.V. PAUL are contrary to that statement of Law.

In para 19(AIR Report) of D.V. PAUL three more Supreme Court decisions have been referred to in support. They are SHRI JOG DHYAN VS BABU RAM AND OTHERS, 1983(1) SCC 26, AIR 1983 SC 37; JOHRI SINGH VS SUKH PAL SINGH AND OTHERS, AIR 1989 S.C. 2073, (1989)4 SCC 403 AND GANESH PRASAD SAH KESARI VS LAKSHMI NARAYAN GUPTA, AIR 1985 S.C. 964, 1985(3) SCC 53. JOGDHYAN (Supra) again is a three Judge Bench decision and the other two are Two Judge Bench decisions.

Taking up GANESH PRASAD (Supra) first, one finds that the decision relates only to determining whether the word “shall” in Section 11-A of the Bihar Building (Lease, Rent and Eviction) Control Act 1947 makes the provision mandatory leaving no power in the Court not to strike off the defence of the tenant on non deposit of the amount within the time frame mandated in the Section. This decision also deals with order and not with decrees . That apart only in para 10 (SCC Report) of the Judgment Section 148 CPC finds only mention by way of “additional reason” to read the word “shall” in the Section as “may”. This can hardly be elevated to the rank of a precedent on section 148 CPC. The other two decisions mentioned above are the only decisions dealing with full fledged conditional decrees in Suits relating to pre-emption under Order XX Rule 14 CPC. These two, therefore need closer look. They are taken up together in the next section.

In JOHRI SINGH (Supra) a Two Judge Bench of the Supreme Court held that “Section 148 CPC, as seen above, conferred ample jurisdiction on a trial court to extend the time for payment of the purchase money fixed by the decree under Order XX Rule 14(1) CPC as also to condone the delay in such payment.” To reach the above conclusion the Supreme Court referred to (1). NAGUBA APPA VS NAMDEV, AIR 1954 S.C. 50; (2). JANG SINGH VS BRIJ LAL AND OTHERS, AIR 1966 S.C. 1631; (3). DATTATRAYA VS SHAIKH MAHABOOB SHAIKH ALI AND ANOTHER, AIR 1970 S.C. 750; (4) SULLEH SINGH AND OTHERS VS SOHAN LAL AND ANOTHER, (1975)2 SCC 505; (5) SHRI JOGDHYAN VS BABU RAM AND OTHER (1983)1 SCC 26, all Three Judge Bench decisions of the Supreme Court

as also a Full Bench decision of the Punjab and Haryana High Court namely LABH SINGH AND ANOTHER -VS- HARDAYAL AND ANOTHER, AIR 1977 P&H 294. Apart from the above cases the Full Bench decision of the Allahabad High Court namely GOBARDHAN SINGH -VS- BARSATI, AIR 1972 ALL 246 (FB) AND GANESH PRASAD SAH KESARI -VS- LAKSHMI NARAYAN GUPTA (1985)3 SCC 53 of the Supreme Court apparently lent assurance to the conclusion on the scope of Section 148 C.P.C. in JOHRI SINGH (Supra).

A close perusal of the facts and the law involved in the first four three Judge Bench decisions listed above shows that the provisions of Section 148 CPC are not at all relevant in those cases so much so that they even do not at all mention the said provision of law. JANG SINGH (Supra) listed at Sl. No.2 above entirely proceeded on the basis of the maxim "Actus Curiae Neminem Gravabit". The highlight of the reasoning may be extracted thus :-

"We may point out, however, that we are not deciding the question whether a Court after passing a decree for pre-emption can extend the time originally fixed for deposit of the decretal amount. That question does not arise here. In view of the mistake of the Court which need to be righted the parties are relegated to the position they occupied on January 6, 1958 when the error was committed by the Court which error is being rectified by us nunc pro tunc" (underlining supplied).

All the four Three Judge Bench decisions of the Supreme Court referred to in JOHRI SINGH (Supra) emphasize the mandatory nature of the provisions of Order XX Rule 14(1) CPC as also the requirement of strict compliance of the terms of the decree as regards payment of purchase money and the time for payment. They do not appear to support the view that section 148 C.P.C. enables Courts to extend time fixed by the decree in a suit for pre-emption.

JOGDHYAN (Supra) at Sl.5 is, the only Supreme Court decision referred to in JOHRI SINGH (Supra) which makes explicit mention of the provisions of Section 148 CPC at paragraph 7, 8 and 13 (SCC Report). The first two references to Section 148 CPC are in connection with the failure of the High Court to condone the delay in filing the Execution second appeal. The High Court dismissed the second appeal as time barred. At para 13 the reference to Section 148 CPC is limited to the following sentence :-

"This was pre-eminently a case in which the first execution appellate Court ought to have exercised its discretionary powers under Section 148, CPC and accepted the delayed deposit of 25 paise, as was done by the original executing Court."

It does not appear from the Judgment that the original court relied on Section 148 CPC. The original court went by “bonafide mistake” in not depositing such a paltry amount as 25 paise. No Lawyer seems to have argued about applicability of the provision of Section 148, CPC in extending the time and condoning the delay in depositing the full amount of purchase money in terms of order XX Rule 14(1) C.P.C. The sentence quoted above from the judgment, in these circumstances has to be categorised as a casual observation/assumption of the Supreme Court and cannot be elevated to the status of a consideration of “the provisions of Section 148 CPC qua Order XX Rule 14 CPC” as has been done in para 16 (SCC Report) of JOHRI SINGH (Supra). The casual mention of the provisions of 148 CPC, indicated above, cannot be read as a precedent on the interpretation of Section 148 CPC. JOGDHYAN (Supra) suffers from triple infirmity if it is to be considered as a precedent on the interpretation of Section 148 CPC. Firstly it does not notice the binding precedents on 148 CPC like MAHANTHA RAM DAS (Supra) and CHINNAMARKATHIAN (Supra). Secondly, it does not notice the provisions of Order XX Rule 3 read with 6 of C.P.C Thirdly, it attracts circumstance No.6 at page 153 of SALMOND ON JURISPRUDENCE, 12th Edition, Chapter 5 on PRECEDENTS because the point casually mentioned at para 13 of the judgment was not argued by any Counsel.

LABH SINGH (Supra) does not say anything to throw light on the conclusion on Section 148 CPC made in JOHRI SINGH. BARSATI PRASAD (Supra) deals with a conditional order not a decree. Therefore, these two decisions of the High Court cannot advance the conclusion on Section made in JOHRI SINGH (Supra).

3. A. D.V. PAUL

It is almost customary in an essay like this containing critical analysis of a Judgment of the High Court or the Supreme Court to soften the criticism by laying the blame at the door of the counsels for the infirmities highlighted in the essay. The inclination to do the same cannot be indulged because D.V. PAUL does not record in detail what, if any, submissions were made by the learned counsels of the parties on Section 148 CPC. A sort of summary of the statement of law in D.V. PAUL is extracted from para 21 of the Judgment :-

“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.”

As shown above this statement will fly in the face of the Three Judge decision in MAHANTHA RAM DAS (Supra) binding on the Two Judge Bench in D.V. PAUL as also the provisions of Order XX Rule 3 read with Rule 6 of the CPC. The statement of law as above is per incuriam.

4. THE COMMENTARIES ON CPC

(I) The well known commentaries on the CPC like that of MULLA, SARKAR, CHITALEY & RAO and C.K. THAKKER respectively dealt with the provisions of Section 148 CPC. Views recorded relating to application of the provision to act directed or allowed by a decree can be read in synopsis 11 of Section 148 CPC at page 1564 of 17th Edition of MULLA, Vol.1, at page 797/798 of SARKAR, Vol. 1, 11th Edition under Synopsis 8 with the headings “conditional decrees.”, at page 1743-1748 under synopsis 2, 7th Edition of AIR COMMENTARIES by CHITALLY & RAO and in C.K. THAKKER at page 855 of Vol.II in synopsis 16 on Section 148 CPC with the heading “conditional decrees”. These commentaries exhibit near unanimity in enunciating the law that Section 148 CPC cannot be applied to alter the time fixed and other conditions attached to a decree. AIR commentaries highlight the role of the provisions of Order XX Rule 3 CPC as the reason for such a view. A lot of cases from the High Courts have been digested in these relevant synopsis apart from MAHANTHA RAM DAS (Supra). Before taking a closer look at one or two of the Judgments from the High Court it would be useful to look at the question from another angle.

(II) It has already been indicated that the first Code of Civil Procedure was of 1859 vintage and that neither the first Code nor the second and the third Code respectively of 1877 and 1882 contained Section 148 or any similar provisions. But right from the first Code itself the provisions of Order XX Rule 3 and Rule 6 in one from or other is there in all the codes of Civil Procedure 1859, 1877, 1882 and 1908. There is no question that the provisions of Section 148 CPC is a general provision and those of Order XX Rule 3 and 6 are special provisions. No principles of interpretation would countenance a position that a pre-existing special provision is derogated or nullified by a later general provision. The well known maxim “Generalia Specialibus non derogant” (general things do not derogate from special things) and “Genberalibus Specialia derogant” (special things derogate from general things) easily come to mind in this connection.

5. THE HIGH COURTS ON SECTION 148 CPC

Section 148 CPC came into the statute book for the first time with effect from the 1st January, 1909. On the 24th of October, 1913 a Three Judge Bench of the Allahabad High Court delivered a Judgment dealing with the provisions of Section 148 CPC. The Judgment is SURANJAN SINGH AND ANR –VS- RAM BAHAL LAL AND ORS., (1913)

ILR 35 All 582. The matter of extension of time for the payment of the purchase money under a decree in a Suit for pre-emption reached the Letters Patent Bench of three Judges after having passed through the hands of the Munsiff, the District Judge and the Single Judge of the High Court. The Munsiff extended the time for payment acting under Section 148 CPC. Laying down the law on the point the Three Judge Bench in para 7 of the Judgment said thus :-

“7. It is contended on behalf of the appellant that Order XX, Rule 14 “prescribes” or “allows” the payment into court of the purchase money by the successful preemptor. On reading Order XX, Rule 14, it will at once appear that all that is “prescribed” by the Code is the form which the decree in a pre-emption suit is to take where the plaintiff is successful and has not paid the money into court before the decree. It nowhere prescribes or allows the payment into court of the purchase money. Such payment is in reality an incident of the claim for pre-emption. All that the order provides for is uniformity in the form of the decree which the courts make. We agree with the view taken by the learned Judge of this court that Section 148 does not entitle the court to extend the time fixed by the decree for the payment of the purchase money in pre-emption suits.” (*underlining supplied*).

Next decision is of 20th of March 1920. In HIMMUN -VS- FAUJA, AIR 1921 Lahore 6 a Full Bench of the Lahore High Court had an occasion to speak about the provision of Section 148 CPC. In the order of reference to the Full Bench the Division Bench said thus :-

“We are of opinion that the Section was never intended to allow a court to alter a decree. A decree can be altered by review, on appeal or on revision, but we do not think that either Section 148 or 151 can be utilized for the purpose of altering a decree. And in support of this we cite Suranjan Singh v. Ram Bahal Lal.” (35 All 582)

The Division Bench of Calcutta High Court in KSHETRA MOHAN GHOSE -VS- GOUR MOHAN KAPALI, AIR 1934 Calcutta 21 followed the Law laid down in SURANJAN SINGH (Supra). At least two other Division Bench Judgments namely BHUTNATH DAS -VS- SAHADEB CHANDRA PANJA, AIR 1962 Calcutta 485 and BOKARO & RAMGUR LTD.- VS- STATE OF BIHAR, AIR 1965 Calcutta 808 reiterate the same Law as regards conditional decrees. In CHTURHUJ KISHENLAL AND OTHERS -VS- SYEDUR RAHMAN AND ANOTHER, AIR 1968, A&N 32 a Division Bench of the Gauhati High Court expressed similar views. Single Benches of the Rajasthan High Court in

DR. RAM KUMAR -VS- MAHADEO LAL AND ANOTHER, AIR 1962, Rajasthan 54, of the Madras High Court in P.K. SUKUMARAN -VS- SULAIMAN KHAN, AIR 1971 Mad 454, of the Kerala High Court in S. MAHALINGA BHATTA -VS- ASSANARE BEARY, AIR 1973 Ker 185, of the Bombay High Court in BHUJANGA RAO GANAPATI -VS- SHEKHARAO RAJARAM, AIR 1974 Bombay 104, of the Punjab & Haryana High Court in PARAMESHRI -VS- NAURATA, AIR 1984, P&H 342 and of the Delhi High Court in PIONEER ENGINEERING CO. -VS- D.H. MACHINE TOOLS, AIR 1986 Delhi 165, interpreted the provision of section 148 CPC similarly.

6. THE SUPREME COURT ON THE USE OF PRECEDENTS.

The Supreme Court has had a number of occasion to rule on the use of precedents in deciding cases. Out of the heap the following four decisions seem very useful. (1) The Five Judge Constitution Bench Judgment of STATE OF ORISSA -VS- SUDHANSHU SEKHAR MISRA, AIR 1968, S.C. 647 in para 12 thereof ; (2)The Three Judge Bench decision in HARYANA FINANCIAL CORPORATION -VS- JAGADAMBA OIL MILLS, (2002) 3 SCC 496 in paras 19 and 21 thereof; (3) BHAVAN AGAR UNIVERSITY -VS- PALI TANA SUGAR MILLS (P) LTD, (2003)3 SCC 495 in para 59 thereof and (4) ISPAT INDUSTRIES LTD -VS- COMMISSIONER OF CUSTOMS, MUMBAI, (2006)12 SCC 583 in paras 47 to 50 thereof lay down the principles of correct way to read, understand and use a precedent in deciding cases. The precedents used to support the statement of law in D.V. PAUL have been attempted to be understood and read in the manner laid down by the Supreme Court in the selection cited above. It appears to the writer that the method mandated by the Supreme Court itself has not been followed in D.V. PAUL. Though conclusion in D.V. PAUL on facts cannot be faulted but alot can be said against the law laid down and has been said in this writing.

7. HARD CASES MAKE BAD LAW

In BLACK'S LAW DICTIONARY, 8th Edition at page 734 there is an entry reading "hard case". The entry reads thus :

"Hard case- A law suit involving equities that tempt a Judge to stretch or even disregard a principle of law at issue-hence the expression, "Hard cases make bad law".

In P. RAMNATH AIYAR'S ADVANCED LAW LEXICON, 3rd Edition, Reprint 2007, Book 2 at page 2085 a Hard case has been described thus :

" A phrase used to indicate decisions which to meet a case of hardship to a party, are not entirely consonant with the true principle of law, It is said, Hard cases make bad law". (see BOUVIER 71 AME DEC 409)

D.V. PAUL and its predecessors JOGDHYAN (Supra) and JOHRI SINGH (Supra) are undoubtedly hard cases. Had the Supreme Court simply given the same relief without seeking to base the relief on Section 148 CPC or by even mentioning Article 142 of the Constitution as the basis no legal confusion would have been created and these three Judgments would have shed the bad law tag attracted by hard cases.

8. CONCLUSION

In view of what has been narrated above D.V. PAUL needs to be read only as a decision on its own peculiar facts and may not be read as a precedent laying down the law on Section 148 C.P.C. JOGDHYAN (Supra) and JOHRI SINGH (Supra) also attract the same limitation.