

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, MULTAN BENCH,
MULTAN.
JUDICIAL DEPARTMENT**

Civil Revision No. 598-D of 2017

Muhammad Tufail. Versus **Mst. Akhtar Begum.**

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Date of hearing.	03.08.2017
Petitioner by	Mian Muhammad Akram, Advocate.
Respondents by	<u>Mr. Waqi Hassan, Advocate.</u>

JUDGMENT.

Abdul Rahman Aurangzeb, J.

Judgments & decree dated 01.10.2015 and 10.03.2017 passed by learned Civil Judge and learned Additional District Judge respectively, have been assailed through this civil revision filed by Muhammad Tufail, plaintiff (hereinafter to be called as petitioner) against Mst. Akhtari Begum, the defendant (hereinafter to be called as respondent), whereby on account of non-deposit of Zar-e-Soam, petitioner's suit and appeal were concurrently dismissed.

2. Precisely, the relevant facts are that the petitioner filed a suit for possession through pre-emption against the sale in favour of the respondent through Mutation No.854 dated 16.09.2014. He pleaded knowledge of sale on 12.11.2014 at 5.00 p.m. in the presence of Muhammad Siddique and Khawar Ali, at his Dera when he instantly exclaimed by intention of pre-empting the sale being equipped with superior pre-emption right qua the respondent. The petitioner pleaded that he being a

co-sharer was “Shafi Shaeek”, whereas respondent was not having any such qualification.

3. The petitioner filed his suit on 04.12.2014 and the learned trial Court on the same day, directed the petitioner under Section 24 of the Pre-emption Act, 1991 to deposit “Zare-Soam” till 05.01.2015 and as such the petitioner deposited the “Zare-Soam” on the said date. The said order in verbatim is reproduced here for further ready reference:-

04.12.2014 کونسل مدعی حاضر

دعویٰ جدید ہے۔ درج رجسٹر ہووے۔ سمن بنام مدعا علیہ باخذ لفافہ رجسٹرڈ اے/ڈی بتقرر 05.1.2015 کے لیے جاری ہووے۔ کونسل مدعی کو ہدایت کی جاتی ہے کہ زر سوئم مبلغ --/133334 روپے تاریخ مقررہ تک داخل ہووے۔

سنایا گیا۔

سول جج

4. The respondent being defendant in the suit filed an application for dismissal of the suit due to non-deposit of “Zare-Soam” within time. The application was responded by the petitioner. However, the learned trial Court vide his order dated 01.10.2015 dismissed the suit of the petitioner. The petitioner being aggrieved, preferred an appeal before the learned appellate Court, while assailing the impugned order which has also met the same fate by the learned Addl: District Judge vide judgment & decree dated 10.03.2017. Hence, the instant civil revision.

5. The learned counsel for the petitioner has argued that the impugned judgments & decree rendered by learned Courts below are illegal which have been passed against the spirit of

law; that for the calculation of 30-days, the day on which the order was passed for depositing “*Zar-e-Soam*” should be excluded. He further argued that on the criteria of above referred calculation, the limitation would end on 03.01.2015 (Saturday) and commonly the banks were closed on Saturday, therefore, the deposit of “*Zar-e-Soam*” on 05.01.2015 (Monday) is well within time. He has placed reliance on *I. M. Lall. Vs. Gopal Singh and another* (AIR 1963 Punjab 378, V-50-C-105 at Dehli).

6. In rebuttal the learned counsel for the respondent supported the impugned order/judgment & decree of learned lower Courts. For controverting the stance of learned counsel for the petitioner, he placed a copy of Circular letter No.ROM.RH/433 dated 18.10.2011 issued by the Regional Head, Chest Branch National Bank of Pakistan showing that the selected Branches of Multan was working even on Saturday. He requested to uphold the order/judgment & decree of lower Courts.

7. I have heard anxiously the learned counsel for the parties and have examined the record appended herewith.

8. Undoubtedly, the time for the deposit of one third pre-emption money, has been fixed by the statute itself viz Section 24 of the Punjab Pre-emption Act (IX of 1991, which is reproduced as under:-

Section 24:

“Plaintiff to deposit sale price of the property.”

(1) In every suit for pre-emption the Court shall require the plaintiff to deposit in such Court one-third of the sale price of the property in cash within such period as the Court may fix;

Provided that such period shall not extend beyond thirty days of the filing of the suit:

Provided further that if no sale price is mentioned in the sale deed or in the mutation, or the price so mentioned appears to be inflated, the Court shall require deposit of one-third of the probable value of the property.

(2) Where the plaintiff fails to make a deposit under sub-section (1) within the period fixed by the Court or withdraws the sum so deposited by him, his suit shall be dismissed.

(3) Every sum deposited under sub-section (1) shall be available for the discharge of costs.

(4) The probable value fixed under sub-section (1) shall not effect the final determination of the price payable by the pre-emptor.”

According to the above reproduced provision of law, it is an obligatory duty of the learned trial Court to inquire the plaintiff to deposit one third amount of sale price of the property in cash within such period, the trial Court may fix, but the same cannot be extended beyond 30-days from the date of filing of the suit. The petitioner filed suit on 04.12.2014 and on the same day, the learned trial Judge directed the petitioner to deposit one third of the sale price mentioned therein under Pre-emption i.e. **Rs.1,33,334/-** till the next date fixed by the Court i.e. 05.01.2015. The petitioner deposited the required amount on 05.01.2015 (Monday) beyond thirty days of filing of the suit.

9. The question, which hinged for the determination is as to whether the trial Court was competent to fix the date beyond

30-days. Certainly, the answer is in negative, because the statute contained the powers of Court for fixation of time for the deposit of "*Zar-e-Soam*", hence, even if by misconception, or for any other reason fixed the date beyond the period of 30-days, it would not be the reason for the extension of limitation in the situation. As the provision regarding the deposit of one third amount of sale price is mandatory and not directory.

10. The point agitated by the learned counsel for the petitioner boils down for determination in the case is whether the amount deposited by the petitioner on 05.01.2015 was within time or it was beyond 30-days as calculated by the petitioner. The learned counsel for the petitioner while referring citation "*I. M. Lall Vs. Gopal Singh & another*" (AIR 1963 Punjab 378 (V-50 C-105) emphasized that when an act is required by law to be done within a number of days before an event the day on which the particular event occurs has to be excluded. In the above referred judgment, while computing the issue of limitation, the date of election was excluded and the date of nomination of papers was included. **Tek Chand Judge** while interpreting his view with regard to limitation "Not less than ten days" and "not more than twenty one days" and "before date of election" held that a period not less than twenty one clear days means, exclusion of the day of the service of the notice and the day on which the meeting is to be held.

11. From bare reading of the provisions of Section 24 of *ibid* Act, it is manifestly clear that **30-days** shall be counted from

filing of the suit. It would mean that it is the duty of the plaintiff/pre-emptor to deposit one third of sale price as soon as he institutes the suit in the Court and the thirty days would be from the day of filing of the suit. Thus, from the clear calculation the period of 30-days completed on 02.01.2015 (Thursday). Hence, the petitioner was under obligation to deposit the requisite amount till 02.01.2015 (Thursday), rather till the misconcepted date of 05.01.2015 (Monday).

12. Yet there is another supporting view in favour of the respondent is that if the trial Court mis-calculated the period for the deposit of one third of sale price as in the case in hand, where the learned trial Court traveled beyond its jurisdiction conferred by the statute by providing the time of deposit till 05.01.2015 (Monday). But on the application of the respondent/defendant when it was noticed that it was not the power of the trial Court to fix the period beyond 30-days, that is why the learned trial Court accepted the application for the dismissal of the suit. The effect of discretion of the Court in such like matter, has already been examined cautiously by the Apex Court. In the dictum cited in “*Hasnain Nawaz Khan.Vs. Ghulam Akbar and another*” (PLD 2013 S.C. 489) where the cardinal principle settled as under:-

“From the clear language of section ibid there can be no doubt that the provisions of subsection (1) of section 24 are mandatory in nature, inasmuch as, the trial Court is obliged and duty bound to require the plaintiff-Pre-emptor to deposit with the Court, 1/3rd of the sale price of the property pre-empted; the period, however,

within which such amount can be ordered to be deposited is left to the discretion of the Court, which (discretion) is not unbridled, rather is circumscribed by a span of 30-days from the date of institution/filing of the suit, meaning thereby that if a suit, for example, is instituted on 1st of January, the Court may direct the plaintiff of the case to deposit the amount of Zar-e-Soam either the very next day or any other day till 31st of January and the plaintiff-pre-emptor is obliged to do so, otherwise he shall have to face the consequences as are envisaged by subsection (2) of section 24. It may, however, be pertinent to mention here that in ordinary course the Court should provide adequate time (within 30-days) to the plaintiff to make the deposit. But the Court under no circumstances has any discretion to allow the plaintiff or require/direct him to make the deposit beyond the period of 30-days from the filing of the suit, as a clog in this behalf has been placed by the first proviso to the section, and thirty days time, for all intents and purposes, is the upper and the maximum limit. It is settled law that where the time has been fixed by the statute, the Courts have no empowerment and the discretion at all, to enlarge/extend such time, unless otherwise provided and it is so permissible by or under the law, however there can be no bar on the Courts, in appropriate cases, to extend the time which has been fixed by it in its discretionary power i.e. within 30-days. It may further be relevant to mention here, that as the deposit within thirty days is the clear command of the law, therefore, even where the Court, on account of omission or the lapse, has failed to specify the time in this behalf, it shall be deemed that full 30-days period has been allowed by the Court to the plaintiff to make the payment and notwithstanding such omission (lapse), it shall be the duty of the pre-emptor himself to make the deposit within a period of 30-days from the institution of the suit, otherwise he shall have to face the consequences of section 24(2) ibid. This is the true purport and the spirit of subsection (1) when read with first proviso thereto.” (emphasis provided)

13. As it is obvious that on 02.01.2015 (Thursday) the banks were open and if the day of filing of suit is excluded from computing of period of 30-days, even then it would be end on 03.01.2015 (Friday). Therefore, again no question of Bank holiday remains in the field. As per contention of learned counsel for the petitioner that both days i.e. starting and ending day of thirty days period would be excluded and on the basis of this calculation, he wants to bring his case in the ambit of Bank holiday, which is by no stretch of imagination is applicable.

14. For better appreciation of word “beyond” the simple meaning of word “beyond” is expressed in the Chamber’s Law Dictionary 12th edition as under:-

“On the farther side of; farther on in comparison with; Out of reach of; above, superior to, better than, apart from, in addition to”.

Thus, it is clear from simple reading that beyond 30-days means that the total days counted for tendering of “**Zar-e-Soam**” cannot be exceeded from the clear 30-days.

15. The last submission of the learned counsel for the petitioner is based upon the phrase “Act of Court”. He argued that as the Court itself granted the period of deposit of “**Zar-e-Soam**” till 05.01.2015, therefore, the penal provision of Section 24(2) of ibid Act is not attracted. He relied upon the case law titled “Liaqat Ali. Vs. Aitzaz Ahmad.” (2015 Y. L. R. 709 Lahore), “Muhammad Ilyas and 4-others. Vs. Munshi Khan” (2003 C. L. C. 1815), “Khalid Mehmood. Vs. Abdur Rasheed and another” (2000 Y.L.R. 1249) and “Mian Muhammad Lutfi. Vs. Mian Muhammad

Talha Adil.” (NLR 2000 Civil 422). This contention of learned counsel for the petitioner has also no force in presence of settled dictum supra “Hasnain Nawaz Khan’s case” The intent of Section 24 of the ibid Act provided that the pre-emptor is bound to deposit “Zar-e-Soam” within a maximum period of **30-days**. The said provision of law is mandatory in nature. The ignorance of law cannot be an excuse in performance of an act which is mandatory under the law.

16. The cardinal principle is “*A communi observantia non est recedendum*” that when a thing is to be done in a particular manner, it must be done in that way and not otherwise, has also full force of applicability in the preposition raised in the lis. Reliance may be placed upon “Muhammad Jahangir. Vs. Muhammad Abbas and 2-others.” (2004 CLC, Lahore 538) and “Raja HAMAYUN SARFRAZ KHAN and others versus NOOR MUHAMMAD”(2007 SCMR 307). As a natural consequence, failing to deposit “Zar-e-Soam” of the pre-empted amount as required by the mandatory provision of law, the suit of the petitioner has rightly been dismissed and no scope was also left with the appellate Court to warrant interference, who has also eminently dismissed the appeal filed by the petitioner.

In view of the principle laid down by the Apex Court, the Courts below have passed valid orders concurrently and this Court in exercise of its revisional jurisdiction cannot interfere

in the same. For the foregoing reasons, the instant Civil Revision being devoid of any force is hereby **dismissed**.

(Abdul Rahman Aurangzeb)
Judge.

Approved for reporting.

JUDGE.

*R.Yousaf**