

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****117****RSA-2433-2025(O&M)****Date of decision: 18.07.2025****Jatinder Singh****...Appellant(s)****Vs.****Gora Lal****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Anupam Singla, Advocate
for the appellant.

*********NIDHI GUPTA, J.**

Present 2nd appeal has been filed by the defendant against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the sole plaintiff/respondent herein, for possession of the suit property, by way of redemption of mortgage executed in favour of the appellant/defendant for a sum of Rs.30,000/- vide registered Mortgage Deed No.4123 dated 30.01.2001, has been decreed by both the Courts below.

2. It is submitted by learned counsel for the appellant that the findings of both the Courts below are based on conjectures and surmises and therefore, cannot stand the test of judicial scrutiny. It is submitted that the plaintiff was required to deposit ad valorem court fee as required under Section 7 of the Court Fee Act, 1870. However, that was not done. Thus, the



learned lower Appellate Court vide the impugned order dated 14.5.2025 has not only illegally exercised its review jurisdiction in granting time to the respondent to deposit the deficiency of court fee but has also revived and re-listed the appeal to its original number, which is alien to Law.

3. It is further submitted that under the provisions of Order 34 Rule 7 CPC in a suit for redemption at the first instance, a preliminary decree was required to be passed. However, these facts have been overlooked while passing the impugned order dated 14.5.2025. It is also submitted by learned counsel for the appellant that the plaintiff had sought the review of only the order dated 22.12.2023 and not the order dated 15.12.2023. As such, learned lower Appellate Court could not have restored the civil appeal. It is accordingly prayed that the present second appeal be allowed and the judgment and decree dated 29.4.2023 passed by the learned Civil Judge,Division, Nabha; as well as order dated 14.5.2025, and the judgment and decree dated 21.5.2025 passed by the learned Additional District Judge, Patiala, be set aside.

4. No other argument is made on behalf of the appellant.

5. I have heard learned counsel and perused the case file in great detail. I find no merit in the submission made on behalf of the appellant.

6. The chronological sequence of facts may be noticed briefly: –



6.2.2019: The respondent/plaintiff filed a suit for possession by way of redemption of registered Mortgage dated 30.01.2001 of the suit property/shop, as described in the head note of the plaint.

29.4.2023: The said suit was decreed by the learned trial Court vide judgment and decree dated 29.04.2023.

15.12.2023: The appellant/defendant filed an appeal against the above said decree, before the learned lower Appellate Court. In the said Appeal, the Ld. Lower Appellate Court passed a judgment and decree dated 15.12.2023 (Annexure A1), whereby the plaintiff was directed to make good deficiency of court fee of ₹ 475/- within 7 days and the case was ordered to be listed on 21.12.2023.

22.12.2023: On 21.12.2023, the presiding officer of the Ld. Lower Appellate Court was on leave and therefore, the matter was taken up for hearing on 22.12.2023. On the said date, vide order dated 22.12.2023 (Annexure A2) the appeal filed by the appellant/defendant was allowed due to non-depositing of the court fee by the respondent/plaintiff.

2.1.2024: On 02.01.2024 (Annexure A3), the respondent/plaintiff filed a review petition under Order 47 CPC read with Section 151 and 152 of CPC against the order dated 22.12.2023 (Annexure A-3) on the ground that:-

A) The respondent/plaintiff was suffering from heart disease and was in emergency condition, due to which he could not deposit the requisite court fee within the stipulated period.



B) Copy of the order dated 15.12.2023 was downloaded from e-courts app on 21.12.2023 and therefore, the court fee could not have been deposited within seven days.

C) From 23.12.2023, the winter vacation starts and therefore, the court fee could not be deposited.

D) Respondent/plaintiff had handed over ₹ 500/- to his earlier counsel on 21.12.2023, but he did not appear and deposit the court fee on 22.12.2023.

NIL : The appellant filed its reply dated NIL (Annexure A-4), to the review application stating therein that the plaintiff did not deposit the court fee within the time stipulated, therefore, the order cannot be reviewed.

14.5.2025: The review application came up for final hearing before the Ld. Lower Appellate Court on 14.05.2025. The Ld. Lower Appellate Court, vide impugned order dated 14.05.2025 (Annexure A5), granted seven more days time to the plaintiff to deposit the deficient court fee of ₹ 475/- and the appeal was revived and restored to its original number.

21.5.2025: As the respondent/plaintiff had deposited the deficient Court fee as per the order dated 14.05.2025 (Annexure A-5) the appeal filed by the defendant was re-heard on 21.05.2025 and dismissed on the ground that the directions given in the judgement and decree 15.12.2023 (Annexure A-1) had been complied with.

7. The suit of the plaintiff was decreed by the learned trial court vide judgment and decree dated 29.04.2023, taking into account the fact that



the defendant has admitted the execution of Mortgage Deed (Ex.P2) by the plaintiff in favour of the defendant for sum of Rs.30,000/-. As the defendant has admitted the execution of the Mortgage Deed (Ex.P2), hence contention of learned counsel for the defendant that original Mortgage Deed has not been produced on file and certified copy of same has not been proved as secondary evidence was not tenable and was accordingly declined.

8. It is also necessary to note that the present defendant had previously filed a Suit for permanent injunction (Ex.P5) against the present plaintiff. In the said plaint (Ex.P5), defendant had nowhere pleaded that in the year 2004, Mortgage Deed executed between the parties was converted into rent agreement and he started paying rent of Rs.3,000/- per month to plaintiff. Moreover, the defendant neither placed on file copy of any rent agreement nor any receipt regarding payment of rent by defendant to plaintiff. Clearly, therefore, the defendant had concocted the story about Rent Deed to save his possession over suit property.

9. In Appeal, the Learned lower Appellate Court, set aside only the findings in respect of Issue No.4 viz "*Whether the suit is properly valued for the purposes of court fees and jurisdiction? OPP*"; and respondent was directed to make good deficiency of Court fees of Rs.475/- within 7 days of receipt of copy of judgment. It is admitted by learned counsel for the appellant that now the plaintiff has deposited the Court fee.



10. The appellant is presently aggrieved of the order dated 14.05.2025 (Annexure A5), whereby review application of the plaintiff has been accepted and the order dated 22.12.2023 allowing the civil appeal of the appellant on the ground that the respondent-plaintiff failed to deposit the court fee in the stipulated time, has been set aside. Relevant extract of the impugned order dated 14.05.2025 passed by the learned Additional District Judge, Patiala read as follows: -

*“7. The applicant has specifically averred that he had handed over ₹500/- to his earlier counsel for the purpose of depositing the deficient court fee. However, despite receiving the said amount, the counsel failed to do so. This explanation cannot be disregarded lightly, particularly considering the nominal amount involved. It is a well- established principle that procedural technicalities should not be allowed to defeat the ends of substantive justice. In **Gurdial Singh vs. Surjit Singh (Doc #88021)**, Hon'ble Punjab and Haryana High Court held that rejection of a plaint solely due to a minor deficiency in court fee especially when the requisite amount had already been entrusted to the counsel by the litigant was unjustified where the lapse was on the part of the counsel. The same principle applies squarely to the present case. Accordingly, the present situation warrants a liberal and equitable interpretation in favour of the applicant to avoid miscarriage of justice.*

8. In the instant case, the amount involved is only ₹475/-, and the applicant has convincingly demonstrated that the failure to deposit the same within time was not deliberate but due to a combination of bona fide factors namely, a medical emergency,



delayed receipt of the judgment (on 21.12.2023 via the e-Courts App) and the lapse of counsel. The interest of justice demands that the applicant be given a fair opportunity to comply with the direction, especially when the applicant is ready and willing to deposit the court fee now and no prejudice shall be caused to the opposite party by allowing the review to this limited extent. In view of the above circumstances, the Review Petition is allowed. The order disposing of the appeal dated 22.12.2023 is hereby recalled to the extent it relates to dismissal for non-payment of court fee. The applicant is granted 7 days' time from today to deposit the deficient court fee of ₹475/-, Original file of appeal be restored to its original number. Thereafter, the appeal be listed 21.05.2025 for further proceedings in accordance with law."

11. Thus, keeping in view the totality of the above-noted facts and circumstances of the case, I find no ground is made out to interfere in the impugned orders/judgments and decrees. Accordingly, the present appeal is hereby **dismissed**.

12. Pending application(s) if any also stand(s) disposed of.

18.07.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No