
(2012) 06 SHI CK 0046
In the High Court Of Himachal Pradesh
Case No : CWP. No. 4109 of 2010

Dhani Ram and Sh. Roop Lal	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 11, Order 20 Rule 3, 151, 152, 153A
Constitution of India, 1950 — Article 137, 145

Citation : (2012) 06 SHI CK 0046

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant; P.K. Sharma, Addl. A.G. with Ms. Shubh Mahajan, Dy. A.G. for Respondents 1-5 and Mr. Tarun K. Shama, Advocate For respondent-6, for the Respondent

Final Decision : Allowed

Judgement

Dev Darshan Sud, J.—The petitioner herein challenges the order passed by the respondent No. 3 dated 29.6.2010 refusing to entertain the appeal preferred by the petitioner u/s 56 of the H.P. Lands (Consolidation and Fragmentation Act) 1971 (hereinafter referred to as the "Act") against the order passed by the Consolidation Officer on an application having been filed by respondent No. 6 pointing out some alleged discrepancies during consolidation proceedings which have since been de-notified. I am not entering into the factual aspect of the case as it is the powers of the officer under the "Act" which require to be considered. Section 56 of the "Act" provides:

56 Correction of clerical errors--Clerical or arithmetical mistakes in a scheme made, or an order passed by any officer, under this Act arising from any accidental slip or omission may at any time be corrected by the authority concerned either of its own motion or on the application of any of the parties.

2. At the outset I may observe that the Divisional Commissioner was wrong in

rejecting the appeal in the manner in which he has done. If the Commissioner holds and rightly so that the land has been de-notified from Consolidation proceedings on 30.12.2005 as noted by him in his order, he could not let the order of the Consolidation Officer stand on the record. That order had to go if the Commissioner had no appellate jurisdiction, surely the Consolidation Officer could not exercise any jurisdiction. In these circumstances, both the orders are quashed and set aside.

3. Section 56 provides that clerical or arithmetical mistakes in orders arising from any accidental slip or omission may at any time be corrected by the authority. The words "may at any time" also find mention in Section 54 of the "Act" which are the powers of the State Government to call for the record of proceedings. So far as Section 54 is concerned, it is beyond doubt that such powers have to be exercised under certain conditions and within a reasonable period of time which has been considered by this Court to be three years in a number of decisions following and relying upon the decisions of the Supreme Court.

4. Section 56, however, contemplates a different situation and that is only correction of any accidental slip or omission and no more. The power is akin to that vested in courts u/s 152 of the CPC (herein after "CPC" for short) which provides that clerical or arithmetical mistakes in judgments, decrees and orders or errors arising therein from accidental slip or omission etc. may be rectified by the Court.

5. Adverting to these provisions, the Supreme Court has laid down the parameters within which such powers can be exercised. In *Jayalakshmi Coelho Vs. Oswald Joseph Coelho*, considering the ambit of Section 152 C.P.C., the Supreme Court holds:

13. So far legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 C.P.C., any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the court. The principle behind the provision is that no party should suffer due to mistake of the court and whatever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice. A reference to the following cases on the point may be made:

The basis of the provision u/s 152 C.P.C. is found on the maxim *Actus Curiae Neminem Gravabit* i.e. an act of Court shall prejudice no man (*Jenk Cent-118*) as observed in a case reported in *The Assam Tea Corporation Ltd. Vs. Narayan Singh and Another*, . Hence, an unintentional mistake of the Court which may prejudice cause of any party must be rectified. In another case reported in *L. Janakirama Iyer and Others Vs. P.M. Nilakanta Iyer and Others*, it was found that by mistake word net profit was written in the decree in place of mesne profit. This mistake was found to be clear by looking to the earlier part of the judgment.

The mistake was held to be inadvertent. In *Bhikhi Lal and Others Vs. Tribeni and Others*, it was held that a decree which was in conformity with the judgment was not liable to be corrected. In another case reported in *Master Construction Co. (P) Ltd. Vs. State of Orissa and Another*, it has been observed that arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the Court liable to be corrected. To illustrate the point, it has been indicated as an example that in a case where the order may contain something which is not mentioned in the decree would be a case of unintentional omission or mistake. Such omissions are attributable to the Court who may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits are required for such rectification of mistake. In a case reported in *Dwaraka Das Vs. State of Madhya Pradesh and Another*, this Court has held that the correction in the order or decree should be of the mistake or omission which is accidental and not intentional without going into the merits of the case. It is further observed that the provisions cannot be invoked to modify, alter or add to the terms of the original decree so as to in effect pass an effective judicial order after the judgment in the case. The trial court had not granted the interest *pendente lite* though such a prayer was made in the plaint but on an application moved u/s 152 C.P.C. the interest *pendente lite* was awarded by correcting the judgment and the decree on the ground that non-awarding of the interest *pendente lite* was an accidental omission. It was held that the High Court was right in setting aside the order. Liberal use of the provisions u/s 152 C.P.C. by the Courts beyond its scope has been deprecated. While taking the above view this Court had approved the judgment of the Madras High Court in *Thirugnanavalli Ammal Vs. P. Venugopala Pillai and Others*, and relied on AIR 1937 191 (Oudh). Similar view is found to have been taken by this Court in a case reported in *State of Bihar and Another Vs. Nilmani Sahu and Another*, 8 *State of Bihar and another versus Nilmani Sahu and another* where the Court in the guise of arithmetical mistake on re-consideration of the matter came to a fresh conclusion as to the number of trees and the valuations thereof in the matter which had already been finally decided. Similarly in the case of *Bai Shakriben (dead) By Bai Shakriben (dead) by Natwar Melsingh and Others Vs. Special Land Acquisition Officer and Another*, this Court found omission of award of additional amount u/s 23 (1-A), enhanced interest u/s 28 and solatium etc. could not be treated as clerical or arithmetical error in the order. The application for amendment of the decree in awarding of the amount as indicated above was held to be bad in law.

14. As a matter of fact such inherent powers would generally be available to all courts and authorities irrespective of the fact whether the provisions contained u/s 152 C.P.C. may or may not strictly apply to any particular proceeding. In a matter where it is clear that something which the Court intended to do but the same was accidentally slipped or any mistake creeps in due to clerical or arithmetical mistake it would only advance the ends of justice to enable the

Court to rectify such mistake. But before exercise of such power the Court must be legally satisfied and arrive at a valid finding that the order or the decree contains or omits some thing which was intended to be otherwise that is to say while passing the decree the court must have in its mind that the order or the decree should be passed in a particular manner but that intention is not translated into the decree or order due to clerical, arithmetical error or accidental slip. The facts and circumstances may provide clue to the fact as to what was intended by the court but unintentionally the same does not find mention in the order or the judgment or something which was not intended to be there stands added to it. The power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to find that a better order or decree could or should be passed. There should not be re-consideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought court may find that it may have committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification in exercise of Courts inherent powers as contained u/s 152 C.P.C. It is to be confined to something initially intended but left out or added against such intention.

15. So far the legal proposition relied upon by the learned Single Judge and the Hon"ble Division Bench deciding the matter in its LPA jurisdiction, we are totally in agreement with the same i.e. an unintentional mistake which occurred due to accidental slip has to be rectified. The question however which requires consideration is as to whether on the facts of the present case and the principles indicated above, it could be said that there was any clerical or arithmetical error or accidental slip on the part of the Court or not.

(Pp. 188, 189, 190 & 191)

6. The Supreme Court has extended these principles applicable to all other adjudicatory authorities. In the case before me, I have to deal with the clear mandate of the "Act". It is not every error which can be corrected but only clerical or arithmetical mistakes arising from any accidental slip or omission. These very words have been considered by the Supreme Court and by the other High Courts in number of decisions as these words occur in Section 152 C.P.C.

7. Adverting to the question of rectification of mistakes u/s 152 C.P.C., in Dwaraka Das Vs. State of Madhya Pradesh and Another, the Court holds:

6 Section 152 C.P.C. provides for correction of clerical arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the

judgments, decrees and orders earlier passed. The correction contemplated are of correcting only accidental omission or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the Section cannot be pressed into service to correct an omission which is intentional, how erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the province of Sections 151 and 152 of the CPC even after passing of effective order in the Us pending before them. No Court can under the cover of the aforesaid sections modify, alter or add to the terms of its original judgment, decree or order. In the instant case, the trial court had specifically held the respondents-State liable to pay future interest only despite the prayer of the appellant for grant of interest with effect from the date of alleged breach which impliedly meant that the court had rejected the claim of the appellant in so far as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake as was wrongly done by the trial court vide order dated 30th November, 1973. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State.

(P.504)

8. Similarly in K. Rajamouli Vs. A.V.K.N. Swamy, , the Court lays down the principle:

6. Section 152 provides that a clerical or arithmetical mistake in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. The question, therefore, arises is whether omission of pendente lite interest to the decree by the trial Court was an accidental or clerical error. In the case of Dwaraka Das Vs. State of Madhya Pradesh and Another, it was held that the omission in not granting the pendente lite interest could not be held to be accidental omission or mistake and therefore, neither the trial Court nor the appellate Court has power to award pendente lite interest u/s 152 of the Code of Civil Procedure. This decision is squarely applicable to the present case. In the present case, neither the arbitrators nor the trial court awarded pendente lite interest to the decree holder. The executing court also refused to grant pendente lite interest to the decree holder and the same was upheld by the High Court in the revision petition filed against the order of the executing court. However, the position would be different where the judgment of a court provides for pendente lite interest and decree omits to mention such interest. Such a mistake could be corrected u/s 152 CPC, The correct position of law is that a decree cannot add or subtract any relief except what has been provided in the judgment. But this is not the case here, Mr. B. Kanta Rao, learned counsel appearing for the respondent then relied upon a

decision of this Court in L. Janakirama Iyer and Others Vs. P.M. Nilakanta Iyer and Others, . In this case, the trial Court awarded mesne profit, however, in the decree it was written as net profit. On an application filed by the plaintiff for correction of the decree u/s 152 of the Code of Civil Procedure, the word "net" was substituted by "mesne 1. This was the case of typographical mistake and, therefore, not applicable to the present case.

(Pp. 41 & 42)

9. In Master Construction Co. (P) Ltd. Vs. State of Orissa and Another, , the Supreme Court while interpreting Rule 83 of the Orissa Civil Tax Rules, 1947 which granted jurisdiction to the Commissioner to correct arithmetical and clerical mistakes etc., held:-

7. The material part of r. 83 of the said Rules reads:

The Commissioner of Sales Tax..... may at any time correct any arithmetical or clerical mistakes or any error apparent on the face of the record arising or occurring from accidental slip or omission in an order passed by him, or it.

Rule 83 provides a summary remedy within a narrow compass. The jurisdiction of the Commissioner under this rule is limited and is confined only to the correction of mistakes or omissions mentioned therein. An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission unintentionally made. There is another qualification namely, such an error, shall be apparent on the face of the record, that is to say, it is not an error which depends for its discovery, on elaborate arguments on questions of fact or law. The accidental slip or omission is an accidental slip or omission made by the court. The obvious instance is a slip or omission to embody in the order something which the court in fact ordered to be done. This is sometimes described as a decretal order not being in accordance with the judgment. "But the slip or omission may be attributed 103 to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This "is described as a slip or omission in the judgment itself. The cause for such a slip or omission may be the Judge's inadvertence or the, advocate's mistake. But, however wide the said expressions are construed, they cannot countenance a re-argument on merits on questions of fact or law, or permit a party to raise new arguments which he has not advanced at the first instance. If that, was the scope of R. 83, the question is, whether the Commissioners order is within its scope.

(emphasis supplied)

(P. 1049)

10. In Samarendra Nath Sinha and Another Vs. Krishna Kumar Nag, the Supreme Court considered the powers of the Court under Sections 151 and 152 C.P.C. in juxtaposition to Order 20 Rule 3 C.P.C. The Court held.

11... It is true that under O. 20 r. 3 of the Code once a judgment is signed by the Judge it cannot be altered or added to but the rule expressly provides that a correction can be made u/s 152. The Rule does not also affect the court's inherent power u/s 151 u/s 152, clerical or arithmetical mistakes in Judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either on its own motion or on an application by any of the parties. It is thus manifest that errors arising from an accidental slip can be corrected subsequently not only in a decree drawn up by a ministerial officer of the court but even in a judgment pronounced and signed by the court.

(P.1443)

11. Calcutta High Court in *National Rubber Works Vs. Smt. Daisy Mantosh*, AIR 2003 Calcutta 284, holds that:

6. Reference has been made to a decision reported in *State of Gujarat Vs. Sardarabegum and Others*, . In this case Hon"ble Apex Court observed that the patent error which was perhaps due to inadvertence-could and should have been suo motu corrected by the High Court in the exercise of its inherent jurisdiction even after the expiry of the ordinary period of limitation, if any, prescribed for a review application.

7. Reliance has also been placed in another decision of the Apex Court reported in 1993 (Supp) 4 SCC 596. In its paragraph 19 of this decision the Hon"ble Apex Court observed:

Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the Courts culled out such power to avoid abuse of process or miscarriage of justice. In AIR 1941 1 (Federal Court) the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Siongh* (1836 (1) Moo PC 117) that an order made by the Court was final and could not be altered.

...nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have to rectifying the mistakes which have crept in.....The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes

introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.

Basis for exercise of the power was stated in the same decision as under:

It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.

8. Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution makers who had the practical wisdom to visualize the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XI, had been framed empowering this Court to review an order of civil proceedings on grounds analogous to Orders XL, VII, Rule 1 of the Civil Procedure Code. The expression, for any other sufficient reason" in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL, Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.

(at pp 285-286)

12. The High Court of Andhra Pradesh in State Bank of Hyderabad Vs. B. Rangaswamy (died) per LR. and Others, while interpreting the provisions of Section 152, holds:

6...the expression "accidental" means, any happening by chance or unexpectedly taking place not according to the usual course of things, unintentional, something unforeseen and unexpected and casual. Further an effect is said to be accidental when the act by which it is caused is not done with intention or causing it and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done to take reasonable precautions against it. Therefore, the expression "accidental" cannot be equated to the expression "negligence" or "willful negligence" on the part of a party. In the circumstances, it is to be seen that the mistake, which occurred in this case is purely that of the office and the

petitioner cannot be denied any such relief. Merely because of delay and laches, as long as there is not prescribed period of limitation to file an application u/s 152 C. P.C., it cannot be said that the application can be dismissed by attributing delay and laches. In the circumstances, it has to be held that the application as has been filed is to be allowed. Accordingly, I.A. No. 525 of 1998 in O.S. No. 13 of 1985 on the file of the Senior Civil Judge, Wanaparthy is allowed. The Court below is directed to draft a fresh decree in the above suit as if it is a decree in a simple suit for recovery of money.

(P.92)

13. Lastly, the decision of the Delhi High Court in K.B. Madan and Co. Vs. IFFCO, may be considered where again the same principles have been reaffirmed holding that it is an inadvertent error or a clerical error or omission which can be corrected under Sections 152 and 153-A C.P.C. and not every error. I need not multiply precedent any further. What I find in the case in hand is that the Settlement Officer has proceeded ex parte in passing an order which has adversely affected the petitioner herein. No notice has been given to him. His jurisdiction is extremely limited to correction of clerical and arithmetical errors only and not every error which would require ratiocination and elaborate argument. The errors must be such which are patently apparent on a plain reading of the order. The writ petition is allowed in terms of the aforesaid.