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**(1988) 08 DEL CK 0028**

**In the Delhi High Court**

**Case No : Civil Revision Appeal No. 648 of 1985**

Hari Singh

APPELLANT

Vs

Sher Singh

RESPONDENT

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**Date of Decision :** 19-08-1988

**Acts Referred:**

**Citation :** (1988) 36 DLT 180 : (1988) RLR 658

**Hon'ble Judges :** P.K. Bahri, J

**Bench :** Single Bench

**Advocate :** B.B. Malik, for the Appellant;

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## **Judgement**

P.K. Bahri, J.

(1) This civil revision is directed against the order dated 19th April, 1985 passed by Smt Aruna Suresh, Commercial Sub Judge by which she dismissed an application moved by the petitioner u/s 151 of the CPC praying that the court should amend the final decree and include the relief of possession in respect of the shop in question.

(2) Facts in brief leading to the filing of the application before the Commercial Sub Judge are : that the petitioner had instituted a civil suit in the year 1970 seeking dissolution of partnership and rendition of accounts on the averments, that the petitioner and his two brothers are owners of 3098 in Hathi Khan a. Bahadurgarh Road, Delhi while petitioner alone was in exclusive possession of the same and he had obtained a license from the Municipal Corporation of Delhi for carrying out business of wood work and had procured a license of 5 H.P. Industrial Power load and he carried on business for some period but on 1st April, 1967 he took the respondent sher Singh as a partner and the partnership was reduced into Writing on 15th April, 1967. it was averred that the partnership was at will and the petitioner-plaintiff gave a notice dissolving the partnership and required the dependant-respondent to render the accounts.

(3) The suit was contested by Slier Singh. on. the ground that in fact ther was no

partnership entered into between him and the petitioner and as a matter of fact the petitioner had let. out the shop inclusive of industrial power connection at a rental of Rs. 50 p.m. and the petitioner had been paid huge premium for letting out the said premises and the power connection. He had pleaded that the partnership deed was got executed as a sham document as in law the petitioner was not entitled to let out the power connection and in fact no partnership business was ever carried on in the shop in question. After hot contest Shri K. S. Gupta, Commercial Sub Judge, vide his judgment dated 20th December, 1974 gave. findings that there was existing partnership business between the parties and the plea of the respondent that the tenancy was created in his favor in the cloak of partnership was negatived. An appeal was filed which was dismissed by Shri Jaspal Singh, Additional District Judge, vide his judgment dated 27th April, 1978. I am told that a second appeal filed by Sher Singh was dismissed in limine by this court. A local commissioner was duly appointed later on, on the application moved by the petitioner to go into the accounts and the local commissioner filed his report. It is significant to mention that in the claim petition filed before the local commissioner the petitioner had made reference to the terms of the partnership deed which clearly showed that the shop in question belonged to the petitioner and on dissolution of the partnership the possession of the shop was to revert back to the petitioner. The respondent had suffered ex parte proceedings before the local commissioner

(4) Unfortunately for the petitioner the local commissioner in his report did not at all make. reference to the light of the petitioner to get the shop. He gave the report that a sum of Rs. 22,100 was due from the defendant-respondent to the plaintiff-petitioner. The petitioner had given an application to the court before the report of the local commissioner was received that the shop in question should be got scaled but it so happened that the respondent Sher Singh filed an objection petition under Order 21 Rule 2 of the CPC pleading that after the passing of the preliminary decree a compromise had been arrived at between him and the petitioner by virtue of which he had accepted him as a tenant in the shop. He produced a carbon copy of the alleged compromise deed. The petitioner hotly contested the claim of the respondent in this connection and after recording evidence Shri R. N. Jindal vide his judgment dated 21st August, 1984 dismissed the objections of the respondent. On January 11, 1985 Shri Jindal recorded an order mentioning that the plaintiff accepted the report of the local commissioner and, thus, he passed the final decree for recovery of Rs. 22,100 with costs in favor of the plaintiff and against the defendant. The plaintiff was given fifteen days" time to file necessary court fee. Requisite court fee appears to have been filed but it appears that the final decree is yet to be drawn by the learned judge on the court fee. The petitioner moved an application before the Commercial Sub Judge praying that the final decree should be varied in order to incorporate the relief of possession of the shop in favor of the petitioner. This application has been dismissed by the learned Sub Judge on the reasoning that the court has become functus officio and no relief of possession can be granted.

It is also mentioned in the order that no such relief of possession had been claimed in the plaint or before the local commissioner. A show cause notice was issued in this civil revision to the respondent and Shri S. P. Mahajan, counsel for the respondent appeared at the time of admission of the revision petition. In an application moved by the petitioner this court passed an order on 26th November, 1985 appointing Shri Bhushan Lal Anand, Advocate, as a receiver and he was required to take over possession of the shop in question and keep it sealed. One Subhash Chand filed an application in this court that he has been given possession of the shop and could not be dispossessed. His application was dismissed vide order dated 4th March, 1986. F.A.O. filed by Subhash Chand was dismissed by the Division Bench vide judgment dated 7th March, 1986 and Special Leave to Appeal filed in the Supreme Court also came to be dismissed vide order dated 13th October, 1986. The shop admittedly now stands sealed and is in possession of the receiver.

(5) In a suit seeking settlement of accounts it is the duty of the court to get the accounts settled fully and completely. Order 20 Rules 17 also authorises the court to give special directions to the local commissioner with regard to the manner of taking accounts. In the present case the bone of contention between the parties was the right in the shop. According to the petitioner he was the owner of the shop and the shop has been used for partnership business on the basis of the partnership deed executed between the parties. The respondent however, took up the plea that the partnership was a bogus and sham document and that in fact he had been inducted in the shop as a tenant. A finding has been given by the court that the partnership was a genuine one and the partnership business came into existence between the parties and the plea of the respondent that he was inducted in the premises as a tenant was also rejected. One of the terms of the partnership deed unequivocally shows that the possession of the shop was to revert back to the petitioner on the partnership being dissolved. In a suit for dissolution of partnership and settlement of accounts, ordinarily the liabilities have to be paid and assets to be collected and the business has to be wound up (see : *Tarif Singh v. Kanshi Ram and others*-AIR 1936 Lah 458 .(1) In *Alluri Appamma and Others Vs. Balaji Lal and Others*, (2) it was observed that in a suit for dissolution of partnership, the partnership assets have to be valued, the accounts have to be taken, the liabilities have to be ascertained. their discharge has to be provided for and the balance of the partnership assets should be directed to be divided between the partners according to their shares. Where this is not done and the plaintiff is directed to a separate suit, the direction is wholly erroneous in law. In *Mohabbat Ali Vs. Ajudhia Prasad and Another*, there was a partnership and a suit was brought seeking dissolution of partnership and rendition of accounts. The suit was decreed but the words used in the decree were that it is declared that the partnership stands dissolved and the plaintiff and defendant will be entitled to certain quantity of coal each. In execution an objection was taken that no decree of possession has been passed to the said quantity of coal and so the decree was not executable. The contention was

negated and It was held that although the word "possession" had not been mentioned in the decree but from the nature of the suit it is clear that the decree was for actual possession of the coal.

(6) In the present case the court was duty bound to decide completely and effectively regarding the accounts of the partnership. One of the assets in the partnership was the shop and the partnership deed clearly provided that the shop belonged to the petitioner and it had to revert back to him on dissolution of partnership. The court failed to incorporate the relief of possession of the shop in its final decree due to some misapprehension and may be due to the fault of the petitioner in not pointing out to the court at that very moment that such a relief has to be incorporated in the final decree. The court was perhaps misled in not incorporating such a relief of possession in the final decree in view of the fact that the local commissioner has not made a mention of shop in his report. It has to be again, emphasised that in the claim filed before the local commissioner the petitioner had prayed to the local commissioner for mentioning in the report that the possession of the shop in any case has to be given to the petitioner. "It is a maxim of law that an act of court shall prejudice no man Every court and tribunal has an inherent jurisdiction apart from statutory jurisdiction to correct any error committed by itself. It can invoke such jurisdiction and can exercise it in appropriate case where its conscience is aroused and if it considers that without the exercise of such powers the ends of justice would be frustrated." In the present case, as already mentioned above, it was the duty of the court to completely wind up the partnership affairs and while doing so make a specific order with regard to the shop which was being used by the partnership business. The omission by the Court to make any order in this respect is, on the face of it, a mistake of the court. For this mistake of the court the petitioner should not have been penalised by dismissing his application when he pointed out the said mistake and required the court to correct the decree so as to incorporate the relief of possession of the shop in the final decree. Counsel for the petitioner has made reference to a few judgments where the courts have exercised Jurisdiction u/s 151 or Section 152 of the CPC for correcting the mistakes appearing in the order of the court. One of such cases is *Nalampati Radhakrishnaiah v. Union Bank of India* (1982 1 FWR 426 (4)). In the said case the court omitted to exercise its discretion with regard to the award of future interest in a mortgage suit. On an application being moved u/s 152 requiring the court to exercise such a discretion the High Court held that such error appearing in the order of the court can be corrected under the provisions of Section 152. In *Manilal Gadiya Vs. Mangilal Kesarinath Sewak and Others*, the court allowed the decree to be corrected by resort to Sections 151 and 152 of the CPC so that the decree may incorporate the shares of the parties as required by Order 20 Rule 15 and Appendix D Form 21 of the Code of Civil Procedure. In *Bajrang Rai and Others Vs. Ismail Mian and Others*, the Full Bench of the said court pointed out various situations where such inherent powers could be exercised u/s 151. One of the situations is where there does not exist any specific provision to meet the

necessities of a particular case. The court has inherent powers to pass such order as are commensurate with the interest of justice. "In the present case obviously the court due to some misapprehension had failed to incorporate the relief of possession in respect of the shop in favor of the petitioner in its final decree and there is no provision in the CPC which could be taken resort to by the petitioner for getting the same mistake rectified except by invoking the inherent powers of the court u/s 151 of the Code of Civil Procedure." In *Annapurna Chatterjee Vs. Sm. Sabita Guha and Others*, it was held that if a litigant is made to suffer on account of default of the court, the court will not be justified in refusing him to grant relief on technical grounds.

(7) After all the local commissioner was appointed only to assist the court in having the accounts of partnership scrutinised and to arrive at proper finding as to what amount would be due from one party to another. It was the duty of the court itself to decide on the main point arising between the parties regarding the possession of the shop in question as to whether the shop was to remain with the respondent or was to revert back to the petitioner. The moment the court gave the finding in its judgment that the plea of the respondent was false that he had been inducted in the shop as a tenant, the intention of the court from the preliminary decree itself was obvious that after the accounts had to be completely finalised, the shop was to revert back to the petitioner as provided in the partnership deed itself. The genuineness of the partnership deed has been upheld by the court in its judgment and which finding became final and operated as *res judicata* between the parties and could not be re-opened in the final decree.

(8) So, I hold that the learned Sub Judge was wrong in refusing to exercise its inherent power to correct and modify the final decree and to incorporate the relief of possession in refusing to exercise its inherent power to correct and modify plaintiff. "The court has not become *functus officio* for correcting its own mistakes." Hence this civil revision had to succeed. I may mention that at the stage of final arguments in this revision petition no one appeared on behalf of the respondent. So, the respondent is to be treated as *ex parte*. I allow the revision petition and set aside the impugned order and direct that the final decree should be corrected and it be mentioned that possession of the shop in question is to be given to the petitioner. The official receiver shall hand over the possession of the shop in question to the petitioner. As no appearance was put in at the time of final arguments by the respondent I make no order as to costs.