

(2003) 06 CAL CK 0011

In the Calcutta High Court

Case No : F.M.A. No. 468 of 2001, R.V.W. No. 134 of 2003 and C.A.N. 479 of 2003

National Rubber Works

APPELLANT

Vs

Smt. Daisy Mantosh

RESPONDENT

Date of Decision : 27-06-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114, 151, 152

Citation : AIR 2003 Cal 284

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Pratap Chatterjee, Jotirmoy Bhattacharya and Souvik Nandi, for the Appellant; Saptanshu Basu, Juthi Banerjee and Raja Mantosh, for the Respondent

Judgement

Arun Kumar Mitra, J.—Judgment was delivered and decree was passed on 11th December 2002 in the instant F.M.A. No. 468 of 2001. Thereafter on 13th January, 2003 the plaintiff/respondent being the petitioner filed an application under Order 47, Rule 1 of the CPC praying for review of the judgment and order dated December 11, 2002 passed by this Court being RVW No. 134 of 2003. Simultaneously, thereafter on 15-1-2003 the defendant/appellant being the applicant filed an application for correction of the judgment and/or decree passed in the instant F.M.A. 468 of 2001 by this Court. The said application for correction has been numbered as 479 of 2003.

2. Now therefore two applications, one for review of judgment and decree and the other for correction of clerical/typographical errors apparent in the judgment and decree passed in F.M.A. No. 468 of 2001 are taken up together for hearing.

3. Let me consider the application for review first since it has been filed earlier that is on 13-1-2001. In the application for review filed by the plaintiff/respondent from paragraphs 1 to 15 the entire plaint case including the prayers made out in the plaint have been stated. In paragraph 16 it has been stated that the appellant contested the suit by filing the written statement. In paragraphs

17, 18 and 19 the petitioner in review has stated about the judgment passed by the learned Trial Judge and the learned Appellate Court below, including the observations made therein. In these 3 paragraphs it has also been stated that the suit was dismissed by the learned trial Judge and the respondent preferred Title Appeal No. 134 of 2001. In the Appellate Court below the respondent filed an application under Order 41, Rule 26 read with Section 151 of the C.P. Code praying for Commissioner to be appointed to inspect the residence of Mr. Charles Montosh. In paragraph 19 it has been stated that the learned Appellate Court below remanded the matter for taking further evidence. In paragraph 20 reference has been made to the instant appeal being FMA No. 468 of 2001. Now in paragraph 22 three grounds have been set out as ground for review of the judgment and order passed by this Court in FMA No. 468 of 2001. The said three grounds are hereinbelow :

"(I) For that by an error apparent on the face of the record the Hon"ble Court, though finding that he disagreed with the contentions made by the learned counsel for the appellant, set aside the judgment/order of remand, which was the impugned order and upheld the judgment and decree passed by the trial Court which had in effect been set aside by the order of the lower Appellate Court.

(II) For that by an error apparent on the face of the record the Hon"ble Court, though dismissing the appeal, set aside the judgment/order of remand which was the impugned order and upheld the judgment and decree passed by the trial Court, which had in effect been set aside by the order of the lower Appellate Court.

(III) For that further or other grounds will be taken at the time of hearing."

4. Error apparent on the face of the record may be of two types ; (I) Clerical error or typographical mistake and (II) Error of law apparent on the record. The first ground specifies an error wherein the judgment which has been observed that this Court disagreed with the contention made by the learned counsel for the appellant set aside the judgment/order of remand, which was the impugned order and upheld the judgment and decree passed by the trial Court and which had in effect being set aside by the order of the lower Appellate Court. The judgment is to be read as a whole and not by segregating the words. If the judgment is carefully gone through it will clearly appear that there is no legal error anywhere and the error mentioned is a clerical or typographical error or mistake. Insofar as the ground itself the words clearly appear to bear certain meaning and the alleged error mentioned in this ground is also a typographical mistake and/or clerical error. Insofar as the third ground is concerned at the time of submission the learned counsel for the petitioner in review did not, take any other ground or made any other submission excepting the submissions relating on the above two grounds. The learned counsel submits that on the above two grounds the Judgment and order under review should be reviewed, modified and/or changed in favour of the petitioner in review and on this score this Court

should dismiss the appeal.

5. Now let us consider the application for correction being CAN 479/03 where it has been stated that there are certain clerical mistakes and typographical errors in the judgment and decree passed in FMA No. 468/01 and those mistakes should be corrected. The learned counsel for the applicant in this application for correction that is the defendant in the trial Court submits that if there is clerical or typographical error in a judgment and/or order and/or decree the Court has power under Sections 151 and 152 of the CPC to correct the mistakes either of its own motion or on the application of any of the parties. The learned counsel for the applicant herein in this context relies on a decision reported in (1990) 1 Cal LJ 234 (Sri Prohlad Roy v. Sunil Kr. Roy alias Sasadhar Roy. "In this case one Hon"ble Division Bench of this Court observed when a mistake is committed by Court, no technical consideration far less law of limitation stands in and Court should cure it under the inherent power." In this case the Hon"ble Division Bench was discussing the power of the Court u/s 151 of the Code of Civil Procedure.

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 Singh (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 of 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 visualise 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 in 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.

9. From the careful reading of the judgment and decree passed by this Court in FMA No. 468/01 it clearly appears that there are some typographical errors which need be corrected but those are not legal errors which can modify the judgment or reverse the judgment as prayed for by the plaintiff/ petitioner in review application.

10. In my opinion, the clerical and/or typographical errors which crept in through inadvertence in the judgment and decree passed by this Court in FMA No. 468/01 should be corrected in the following manner :

(1) In page 4 second paragraph in the third line instead of ".....learned appellate Court below allowed the appeal and dismissed of the petition....." It will be ".....the learned appellate Court below allowed the appeal and disposed of the petition.....". In the same page No. 4 of the judgment in the

last paragraph in the first line instead of "it is relevant to note in this context that in the lower appellate Court the appellant filed two applications....." it will be "it is relevant to note in this context that in the lower appellate Court the plaintiff filed two applications". Page 5 last paragraph in the penultimate line instead of ".....accommodation available to the appellant/plaintiffs....." it will be ".....accommodation available to the respondent/plaintiff.....". In page 6, third line of the first paragraph of the judgment instead of ".....ought not to have allowed the defendant to adduce further evidence" it will be ".....ought not to have allowed the plaintiff to adduce further, evidence." In page 13, in the 5th line of the second paragraph of the judgment instead of "the learned counsel for the defendant submits....." It will be "the learned counsel for the appellant submits.....". In page 14 in first line of the first paragraph instead of "the learned counsel for the respondent....." It will be "the learned counsel for the appellant.....". In the same page 14 and same paragraph one in the 6th & 7th lines instead of "the learned Counsel for the respondent....." it will be "the learned Counsel for the appellant.....". Then in the same page 14 in the paragraph 3 first line of the judgment instead of "the learned Counsel for the respondent....." it will be "the learned Counsel for the appellant.....". In page 18 last paragraph in the third line instead of ".....landlord tenancy relationship." it will be "..... landlord-tenant relationship.....". In the same page 18 in the last paragraph in the 6th line instead of ".....landlord tenancy relationship....." It will be ".....landlord-tenant relationship.....". In the last page that is in page No. 20 in the 2nd paragraph in the 3rd line instead of ".....appellant" It will be ".....respondent.....". In the same page that is page No. 20, second paragraph in the 4th and 5th lines instead of "the appeal is, therefore, dismissed." It will be "the appeal is, therefore, allowed." In the same page that is in page No. 20 in paragraph 3 of the judgment instead of "appellant prays for stay of operation of judgment and decree". It will be "the learned counsel for the respondent prays for stay of operation of judgment and decree".

11. Admittedly some typographical errors crept in through inadvertence in the judgment and accordingly those are corrected in the above manner. It is needless to mention that the Court has inherent power under Sections 151 and 152 of the C.P. Code to collect such mistakes which crept in through inadvertence and which are only clerical error in nature.

12. The application, for Review being No. RVW 134/2003 filed on behalf of the plain tiff/respondent and the application for correction being No. CAN 479/2003 filed on behalf of the defendant/appellant are both disposed of accordingly. The corrections made hereinabove be made or introduced in the judgment and decree dated 11th December, 2002 passed in FMA No. 468 of 2001.