
(2004) 04 DEL CK 0036
In the Delhi High Court
Case No : CRP No. 473 of 2003

Shyama Natural Pharma and Herbals Ltd. APPELLANT
Vs
Bake Well Engineering (P) Ltd. RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Citation : (2004) 3 BC 74 : (2004) 111 DLT 91 : (2004) 74 DRJ 396

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : S.R. Khandelwal and Sikha Sapra, for the Appellant; Vinay Gupta, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—The brief facts of the case are that the Revisionist had filed a suit for the recovery of Rs. 1,60,000/- and for mandatory injunction. This Suit was decreed by a Judgment dated 14.5.2001, the operative part of which reads thus:

"In view of the above discussion, I hold that the plaintiff has successfully proved its case against the defendant. The suit of the plaintiff is decreed in its favor and against the defendant. A decree for recovery of Rs. 1,60,000/- along with interest @ 18% per annum from the date of institution of the suit till realisation of decretal amount is passed in favor of the plaintiff and against the defendant. Another decree for mandatory injunction is also passed in favor of the plaintiff and against the defendant directing the defendant to return to the plaintiff the original cheque No. 910243 dated 16.12.1999 for Rs. 1,39,544/- drawn on State Bank of India, Jaipur. Costs of the suit are also awarded in favor of the plaintiff. DECREE SHEET be drawn accordingly. File after necessary compliance be consigned to record room".

2. The decree holder became aware of the fact that the cheque in respect of which the defendant had been directed to be returned to the plaintiff numbered

710243 and not 910243. The application for correcting the Decree had been filed which was rejected by the impugned Order dated 13.2.2003. The learned Additional District Judge hearing the Execution Case No. 31/2001 was of the view that no error in the Judgment had occurred since the number of the cheque had been erroneously stated in the Plaint itself. It is the common case of the parties that in respect of cheque No. 710243 dated 16.12.1999 proceedings u/s 138 of the Negotiable Instruments Act are pending. It is also the common case of the parties that no cheque bearing No. 910243 had been issued by either of the parties. Learned Counsel for the respondent states that the Decree was ex parte. However, no Appeal has been filed.

3. Learned Counsel for the respondent relies on the decision in *State of Punjab Vs. Darshan Singh*, wherein the Hon'ble Supreme Court had observed as follows:

"12. Section 152 provides for correction of clerical or 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 passing of 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, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the tribunal cannot and, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically. Therefore and subject to the conditions or limitations provided therein. The powers u/s 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions 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 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party, if at all, is to file an appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the Courts below have been liberally construing and applying the provisions of Sections 151 and 152 of the code even after passing of effective orders in the lis 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. Similar view was expressed by this Court in *Dwaraka Das v. State of M.P.* and *Jayalakshmi Coelho v. Oswald Joseph Coelho*.

13. The basis of the provision u/s 152 of the Code is founded on the maxim "act us curiae neminem gravabit" i.e. an act of Court shall prejudice no man. The maxim "is founded upon justice and good sense; and affords a safe and certain guide for the administration of the law", said Cresswell, J. in *Freeman v. Tranah* (ER p. 967). An unintentional mistake of the Court which may prejudice the cause of any party must and alone could be rectified. In *Master Construction Co. (P) Ltd. v. State of Orissa* it was observed that the 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 this point it was said that in a case where the order contains something which is not mentioned in the decree, it would be a case of unintentional omission or mistake as the mistake or omission is attributable to the Court which 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 can be entertained to facilitate such rectification of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case".

4. Learned Counsel for the Revisionist, however, relies on *Jayalakshmi Coelho Vs. Oswald Joseph Coelho*, wherein the Apex Court had observed that no error which has occurred in the Decree on account of arithmetical or clerical error or accidental slip may be rectified u/s 152. The facts of this case dearly do not apply to the dispute before me. Learned Counsel for the Revisionist also relies on *Pratibha Singh and Another Vs. Shanti Devi Prasad and Another*, wherein the Hon"ble Supreme Court had made the following observations:

"17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the Court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3, CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47, CPC depending on the facts and circumstances of each case--which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected u/s 152, CPC by the Court which passed the decree by supplying the omissions. Alternatively, the exact description of decretal property may be ascertained by the executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47, CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, we think it would be more appropriate to invoke Section 47, CPC".

5. On a perusal of the ratio in *Pratibha's* case (*supra*) it will be apparent that the plaintiff had been remiss in the pleadings inasmuch as the provision in the CPC had not been adhered to so far as the plaint is concerned. Had the immovable

property been correctly identified, there would have been no vagueness that could have been pleaded in the execution of the Decree. Courts of law are ever mindful of the fact that the plaintiff should not be denied the fruits of the Decree and if some nebulous question has to be determined in Execution Proceedings, the Court should not hesitate from doing so. In the present case, undoubtedly, the plaintiff ought to have been more careful in mentioning the correct number of the cheque. In view of the fact that there is no attending controversy about the number of the cheque, the Executing Court should not have felt inhibited by Section 152 of the CPC or the decisions rendered in the context of that provision and ought to have invoked the powers vested in it by Section 47 of the CPC. The question would have been totally different had a discussion and a detailed investigation been necessitated. It is palpably evident that there is an error in the number of the cheque. The fact that the proceedings u/s 138 of the Negotiable Instrument Act are pending underscores the relevance of the mandatory injunction prayed for.

6. In these circumstances the Executing Court has exercised jurisdiction in an erroneous manner, which has effected a miscarriage of justice. The Revision is allowed and the impugned Order is set aside. The Judgment shall be deemed to mention the number of the concerned cheque as 710243 instead of 910243 appearing in the Judgment and the Decree.

7. Petition stands disposed of.