HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

BEFORE JUSTICE S.K.AWASTHI

Civil Revision No.32/2010

Smt. Chandan Bai

Versus

Budh Prakash & Others

Shri J.P.Mishra and Shri Gaurav Mishra, learned counsel for the applicant.

Shri Deepak Shrivastava, learned counsel for the respondents No.2 to 5.

O R D E R

(17.02.2017)

1. This revision application takes exception to the order dated 15.01.2010 passed in Miscellaneous Civil Case No.190/2010 by the Second Civil Judge Class-II, Datia by which the application under Section 152 of C.P.C. has been rejected.

2. The facts leading to filing of the instant revision application are that the applicant filed the suit for declaration of title with respect to the 1/2 of the portion of Khasra No.38 situated in village Reda and Khasra No.265/1/2 situated in village Jhadia, Tehsil and District Datia, the suit was registered as Civil Suit No.24A/2004 and the final judgment was pronounced on 21.07.2007. However, the applicant is raising the grievance that, the trial Court while reducing in writing the concluding paragraph has committed a typographical error by reflecting the ownership of the applicant to be 1/3rd on the suit property, thus, an application was filed by the

applicant under Section 152 of CPC seeking correction in judgment and decree. It is this application which has been rejected by the court below leading to filing of the instant revision application.

3. Learned counsel for the applicant has submitted that, while exercising power under Section 152 of Civil Procedure Code, the court can correct a clerical or arithmetic mistake or errors arising in the judgment, decree or order from any accidental slip or omission, the instant case falls within the parameter of this provision which is apparent from the findings recorded in the impugned judgment and decree. Thus, the order of the court below is illegal and deserves to be set aside.

4. On the other hand, the learned counsel for the respondent carried me through the entire judgment and submitted that, a mere observation in one portion of the judgment will not give colour to the remaining judgment and the reading of the judgment in its entirety will indicate that the court below did not commit any error warranting indulgence by this Court.

5. I have considered the rival submissions and perused the record.

6. Before adverting to the contentions of the respective parties, it is appropriate to draw the scope of consideration which has been aptly portrayed in the judgment pronounced by the Court in the case **Devakinandan Yadav vs. State Bank of Indore, Sagar** reported in **2001 (4) M.P.L.J. 402** in the following manner :-

> **7.** There can be no dispute that while

deciding the issue about the total liability of the defendants, the trial Court in paragraph 15 of its judgment observed that the defendants were liable to pay a sum of Rs.2,33,921.95 paisa. At the same time, the Court also recorded a finding that as the defendants during currency of the suit had paid a sum of Rs.2,02,000/-, after giving the adjustment of the said amount the plaintiff would be entitled to a decree for Rs.31,921.95 paisa only. From a perusal of paragraph 15, it would not appear that present was a case of error arising in the judgment from any accidental slip or omission. In fact the Court was alive to the situation as to what should have been the decree against the defendants. The Court found that on the date of the suit a sum of Rs.2,33,921.95 paisa was due, but at the same time the Court found that during pendency of the suit sum of Rs.2,02,000/- was paid to the plaintiff by the contesting defendants. Whether the plea of payment during the pendency of the suit was raised or not would not be material for disposal of an application under section 152, Civil Procedure Code. It must appear to the Court before it exercises its powers under section 152, Civil Procedure Code that the error has crept in the judgment by an accidental slip or omission. In the present case, the Court being alive to the situation did record a finding. The finding may be condemned as bad, contrary to the pleadings or perverse, but such a finding which is based on the merits of the matter cannot be annuled by the same Court exercising its powers under section 152, Civil Procedure Code. The Court had the jurisdiction to exercise its powers under Order 47, Civil Procedure Code by reviewing the order if it was of the opinion that the error was apparent on the face of the record, but an error which relates to the merits of the matter cannot be corrected under section 152, Civil Procedure Code.

9. In the matter of Dwaraka Das v.State of M.P.,(1999) 3 SCC 500, the Supreme Court has considered the scope of section 151 and 152, Civil Procedure Code. Para 6, for the purposes of the present petition, is material. It reads as under:—

> "section 152, Civil Procedure Code provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders of 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, the 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 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 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, however 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 Civil Procedure Code even after passing of effective orders in the lies 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 respondent-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 life interest was concerned. The omission in not granting the pendente life interest could not be held to be accidental omission or mistake as was wrongly done by the trial Court vide order dated 30-11-1973. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State."
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> **10.** From a perusal of the passage quoted above, it would clearly appear that the exercise of the powers under section 152, Civil Procedure Code 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. If the order passed by the learned Court below is allowed to stand, it would infact mean that this Court would allow the effective judicial order passed by the lower Court under section 152, Civil Procedure Code. According to Supreme Court, after passing of the judgment, decree or order, the Court becomes functus officio and thus is not entitled to vary the terms of the judgments, decrees and orders earlier passed. The Supreme Court was clear when it stated that the omissions sought to be corrected which go to the merits of the case are beyond the scope of section 152, Civil Procedure Code for which the proper remedy for the aggrieved party is to file an appeal or review application.

7. This question further came for consideration before the Hon'ble Supreme Court in the case of **Jayalakshmi Coelho vs. Oswald Joseph Coelho,** reported in **(2001) 4 SCC 187,** wherein in paragraph 14 it has been held as under :-

> **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

> under Section 152 CPC 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 something 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 reconsideration 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 though the 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 the court's inherent powers as contained under Section 152 CPC. It is to be confined to something initially intended but left out or added against such intention.

8. The perusal of the aforesaid makes it clear that the court below has very limited jurisdiction and in

case while deciding the application under Section 152 of C.P.C. the Court is required to dwell into the merits of the case then, such power is not available to the court below for reasons indicated in the judgments reproduced above.

9. In the context of the above, if the facts of the case are examined then, it would be clear that, the anomaly which is shown as "omission" is infact not complimenting with reasoning given in the judgment dated 21.07.2007 passed in Civil Suit No.24A/2004. Therefore, the indulgence in the instant case cannot be done. The reasoning may be perversed or bad but this aspect cannot be examined in the proceedings initiated under Section 152 of C.P.C., for this the Civil Procedure Code prescribed appeal under its provision which the courts have enough latitude to examine all the aspects of the matter.

10. Taking this view of the matter, the instant revision application is dismissed for the reasons indicated herein above.

(S.K.Awasthi)
Judge

AK/-