

HIGH COURT OF MADHYA PRADESH : JABALPUR

C.R. No.84/2011

Mastram

-Versus-

Karelal (through LRs)

Shri R.K. Samaiya, Advocate for the applicant.

Shri Dilip Parihar, Advocate for the non-applicant.

Single Bench:

Hon'ble Shri Justice Vijay Kumar Shukla, Judge

<i>Whether approved for reporting ?</i>	Yes.
<i>Law laid down</i>	In exercise of powers under sections 151 and 152 of the CPC the Court has power to correct an accidental slip or omission in the judgment itself, however, the words 'accidental slip' or 'omission' cannot be construed permitting the Court to re-examine the case on merits of question of facts or law or to permit a party to raise new arguments.
<i>Significant paragraph Nos.</i>	14

ORDER

(Jabalpur, dtd.16.01.2019)

The present revision petition is filed under Section 115 of the Code of Civil Procedure [for brevity " the CPC"] challenging the order dated 2-12-2010 passed by the learned IV Civil Judge, Class-2, Damoh in MJC No.18/2010 whereby the application filed by the applicant under sections 151 and 152 of the CPC for correction in the decree dated 9-11-2009 has been rejected.

2. The facts which are requisite to be stated are that the applicant filed a suit for specific performance of contract stating *inter alia*, that there was an agreement entered into between the parties on 5-7-2008 and the non-applicant agreed to sell the disputed land for a sale consideration of Rs.29,500/-. The applicant had given Rs.21,000/- to the non-applicant and the possession was given but due to non-availability of Rin Pustika sale-deed could not be executed. Later, the non-applicant refused to execute the sale-deed and, therefore, the applicant filed a suit for specific performance of the contract seeking a direction to the non-applicant to execute a registered sale-deed in respect of the land in question – situated in Patwari Halka No.25, Khasra No.113/1, admeasuring 0.34 hectare out of 0.82 hectare. Alternatively, if the Court finds it not possible to pass a decree for specific performance of contract then the non-applicant be directed to return the amount along with interest.

3. After issuance of notice, the non-applicant chose not to file reply and the trial Court framed the issues – as to whether the applicant is entitled to for execution of sale-deed on the basis of the agreement dated 5-7-2008 for 0.34 hectare of the disputed land which was. The issue was found proved that the applicant had paid the entire amount to the non-applicant on 5-7-2008 and 11-11-2008. Issue Nos.3 and 4 were also decided in favour of the applicant.

4. The trial Court passed the decree directing the non-applicant to execute a sale-deed in respect of the land mentioned in the agreement within a period of two months from the date of passing of the decree. In para 2 of the decree it was also mentioned that in case the non-applicant/defendant No.1 does not execute a sale-deed, the applicant/plaintiff would be entitled for the deposited amount of Rs.29,500/- accruing interest thereon from 5-7-2008, till the amount is returned to the plaintiff. It was further directed that the defendant No.1 would also pay interest at the prevalent bank rate on the amount of Rs.8500/- from 11-11-2008.

5. The applicant filed an application dated 8-11-2010 before the trial Court under sections 151 and 152 of the CPC seeking amendment in the decree, stating that the whole case of the plaintiff is duly proved and, therefore, there could not have been a decree for refund of the deposited amount. The same has been made a part of the decree due to inadvertence and apparent error of law and it is also an accidental mistake, therefore, amendment be made in the decree by dealing with alternative condition for refunding the amount of sale consideration. The trial Court by the impugned order rejected the said application on the ground that the same does not fall within the meaning of accidental mistake, omission etc. and,

therefore, the application preferred under sections 151 and 152 of the CPC is not tenable.

6. Per contra, learned counsel for the non-applicant supported the impugned order and submitted that there is no any manifest jurisdictional error warranting any interference in revisional jurisdiction. Further, the revision is not maintainable as the impugned order is interlocutory in nature. To substantiate his contention he referred a judgment passed by this Court in **Johra Bi and others vs. Jageshwar and others, 2010 (1) MPLJ 98**. He vehemently urged that the amendment sought in the decree amounts to review of the decree which is not permissible under the law. Even if it is assumed for the sake of argument, that alternative condition of refund of sale consideration in decree is erroneous, then also the same could not have been sought to be corrected under sections 151 and 152 of the CPC.

7. The objection of the non-applicant that revision is not maintainable, cannot be sustained. The order rejecting an application for correction in the decree preferred under sections 151 and 152 of the CPC, cannot be held to be an interlocutory order, as it decides the said question finally.

8. Learned counsel for the applicant strenuously urged that when the trial Court was convinced that the plaintiff has made out a case of specific performance of contract, the Court should not have passed an order for return/refund of the sale consideration. He submitted that in exercise of power under sections 151 and 152 of the CPC, the same could not have been corrected, as the same amounts to apparent error of law. In support of his contention he referred to the judgments rendered by the Apex Court in the cases of **Master Construction Co. (P) Ltd., vs. State of Orissa and another, AIR 1966 SC 1047; Jayalakshmi Coelho vs. Oswald Joseph Coelho, (2001) 4 SCC 181; Niyamat Ali Molla vs Sonargon Housing Co-operative Society Ltd. & Ors., AIR 2008 SC 225; Mohd. Yukub s/o Mohd. Ishaq vs. Abdul Rauf s/o Abdul Kareem, 2002 (1) MPLJ 475; and Abdul Hameed s/o Bashir Mohd. (dead) through LRs. Bashir Mohd. and another vs. Shahjahan Begum, 2008 (2) MPLJ 586.**

9. The spinal issue which has cropped up for consideration before this Court for consideration is that whether the condition of return/refund of sale consideration incorporated while passing a decree of specific performance can be said to be an accidental slip or omission made by the Court.

10. I have bestowed my anxious consideration on the contentions put forth by the learned counsel appearing for the parties. A decree for specific performance is governed by the provisions of the Specific Relief Act, 1963 [hereinafter referred to as 'the Act']. Chapter II of the Act deals with specific performance of contracts. Section 9 provides defences respecting suits for relief based on contract. Section 10 of the Act illustrates instances in which specific performance of contract is enforceable. Section 11 provides cases in which specific performance of contracts connected with trusts enforceable. Section 12 of the Act deals with specific performance of part of contract. Section 20 provides discretion and powers to the Court to pass a decree for performance in what cases. Section 20 of the Act being relevant for the present purpose, is extracted hereunder:

“20. Discretion as to decreeing specific performance.-

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances

under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1 : Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2: The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”

11. On a studied scrutiny of the judgment and decree it is noted that the trial Court framed issues and the Issue No.4 was that

whether the plaintiff is entitled to get the sale-deed executed from the defendant No.1. The Issue No.5 was – in the alternative, relief for refund of sale amount of Rs.29,500/- accruing interest @ 3% p.a. The trial Court while deciding the issue also decided the issue that in case, the sale deed is not executed by the defendant in favour of the plaintiff, the plaintiff would be entitled for the sale consideration along with interest. From a reading of the judgment and decree in entirety, this Court does not find any accidental mistake, omission or apparent error of law. Discretion is conferred to the Court while passing a decree of specific performance. However, the executing Court has rightly declined to examine the legality and validity of the judgment and decree passed by the trial Court, as the same was not within the ambit and scope of an accidental slip or omission, warranting any correction of mistake either under Section 151 or 152 of the CPC.

12. The judgment referred in the case of **Master Construction Co. (P) Ltd. (supra)** in para 7 itself says that in case of accidental slip or omission attributed to the Judge himself, he may correct the same, however the expressions – accidental slips or omission would not be construed to allow the applicant to re-argue the case on merits on question of fact or law, or to raise new arguments.

13. In the case of **Jayalakshmi Coelho (supra)** in para 13 of the judgment the Court made it clear that provisions of Section 152 of the CPC cannot be invoked to modify, alter or to add to the terms of the original decree so as to pass an effective judicial order after the judgment in the case. The mistake or accidental slip by Court would depend upon facts of the case.

14. In **Niyamat Ali Molla (supra)** it was ruled that under the provisions of sections 151 and 152 of the CPC a decree can be corrected in case of mistake, as there was mistake in the schedule of the property attached with the decree. In para 19 of the judgment the Court again held that that the Court cannot exercise the inherent jurisdiction under Section 152 of the CPC so as to review its judgment. It can also not exercise its jurisdiction when no mistake or slip occurred in the decree or order.

15. In order to substantiate his contention the learned counsel for the applicant also referred to the judgment passed by a Co-ordinate Bench of this Court in **Mohd. Yukub s/o Mohd. Ishaq (supra)** contending that amendment can be allowed even in an execution proceedings. He asseverated that in the said case while passing decree for specific performance of contract, the relief of

possession of the house was not mentioned and, therefore, correction was allowed. He also referred to the judgement passed in **Abdul Hameed s/o Bashir Mohd. (dead) through LRs. Bashir Mohd. and another (supra)**. In both the cases relied upon by the learned counsel for the applicant, handing over possession was not a part of the decree for specific performance of the contract. But, in the present case there is no such omission. The Court has decided an issue and while passing the decree for specific performance, also directed alternatively, that in the event of non-execution of contract, the plaintiff would be entitled for return of sale consideration along with interest. The law has also been reiterated in the case of **K. Rajamouli vs. A.V.K.N. Swamy, (2001) 5 SCC 37**. The Apex Court again reiterated that Section 152 of the CPC provides that a clerical or arithmetical mistake in judgments, decree 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, but validity of a decree cannot be examined.

16. In view of the above enunciation of law, I do not perceive any merit in the present revision petition, as the aforesaid condition of return of sale consideration, in the event of failure to execute the sale-deed does not amount to accidental mistake or slip.

The Court has rightly declined to examine the validity of the decree in question.

17. In view of aforesaid, I do not find any illegality in the order impugned in the revision petition and the same is accordingly **dismissed**. However, the applicant will have liberty to resort to remedy available to him in accordance with law. In the facts and circumstances of the case, there shall be no order as to costs.

(Vijay Kumar Shukla)
Judge

ac.