

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRP No.178/2010 and C.M.No.19799/2010

Judgment delivered on: 10.11.2010

Amitabh Dhar Dubey Petitioner
Through: Mr. Ruchir Mishra, Advocate.

Versus

Nishi Mishra Respondent
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

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1. By this revision petition filed under Section 115 r/w Section 151 of the Code of Civil Procedure, 1908, the petitioner seeks to set aside the order dated 12.5.2010 passed by court of the learned ADJ, Delhi.

2. A brief conspectus of facts relevant for deciding the present petition is that vide order dated 24.7.08 the respondent wife was granted maintenance along with maintenance of the child and litigation expenses, but no date from which date the said maintenance was to be paid was mentioned in the order. Seeking clarification of the said order, the respondent filed an application under Section 151 and 152 of the Code of Civil Procedure and vide order dated 12.5.2010 the learned trial court directed the maintenance to be paid from the date on which the application for maintenance was filed and not from the date of the order i.e 24.7.08. Feeling aggrieved with the same, the petitioner has preferred the present revision petition.

3. Mr. Ruchir Mishra, counsel for the petitioner submits that in the absence of any specific date stated in the order dated 24.7.2008, maintenance is payable only from the date of passing of the said order and not from the date of filing of the application. The contention of the counsel for the petitioner is

that in the order dated 24.7.2008, no direction was given by the learned matrimonial court to pay the amount of maintenance from the date of the application and since the order is silent about such date, therefore, it has to be construed that the maintenance is payable by the petitioner to the respondent from the date of passing of the order. In support of his contention, counsel for the petitioner has placed reliance on the judgment of the Apex Court in the case of *Jasbir Kaur Sehgal Vs. District Judge, Dehradun & Ors.* (1997) 7 SCC 7. Counsel submits that the order dated 12.5.2010 passed by the learned trial court on the application of the respondent under Section 151 & 152 of CPC is clearly illegal and perverse as the court has acted without jurisdiction. The contention of the counsel is that under Section 152 CPC, the court can carry out the correction only when there are some clerical or arithmetical mistakes in the order but the court cannot pass any substantive order afresh to decide the rights of the parties. Counsel further submits that the denial of maintenance amount from the date of the application was on

account of the fact that the respondent was drawing sufficient income from her employment, being a Class-I Government Officer and therefore, by allowing the application moved by the respondent under Section 151 and 152 of CPC, the learned trial court has taken a fresh decision on the main application of the respondent moved under Section 24 of the Hindu Marriage Act. Counsel further submits that in the order dated 10.11.2009 passed by this Court at the time of deciding the petition bearing C.M.(M) 1196/2008 filed by the petitioner, the Court clearly observed that the respondent was not entitled to any maintenance for herself and the said order was duly taken into consideration by the learned trial court at the time of passing of the impugned order dated 12.5.2010.

4. I have heard learned counsel for the petitioner at considerable length.

5. The present petition filed by the petitioner is totally misconceived. The application under Section 24 of the Hindu Marriage Act was preferred by the respondent wife on 16.7.2007 to seek grant of maintenance amount of

Rs.1,28,000/- p.m. besides claiming a sum of Rs.2 lacs towards litigation expenses. The said application was decided by the learned trial court vide order dated 24.7.2008, thereby giving directions to the present petitioner to pay Rs.20,000/- p.m. as maintenance for the respondent wife and Rs.10,000/- p.m. for maintenance of the child. The petitioner was also directed to pay a sum of Rs.25,000/- towards the litigation expenses. The petitioner was also directed to clear the arrears within a period of three months. The said order was assailed by the petitioner by filing a petition bearing C.M.(M) No. 1196/2008. In the said petition the respondent took a stand that the order dated 24.7.2008 is silent as to from which date the maintenance should be paid to the respondent wife and the minor child. The counsel for the respondent also submitted that she had already moved an application to seek clarification of the order dated 24.7.2008 passed by the learned trial court but the same was kept pending by the learned trial court on account of the pendency of CM.(M) 1196/2008 filed by the petitioner in the High Court. This Court then gave directions to the learned

trial court to proceed with the said application filed by the respondent to seek clarification and to decide the same as no such clarification could be granted by this Court in the C.M.(M) 1196/2008 filed by the petitioner. Pursuant to the said directions, the learned trial court vide order dated 12.5.2010 disposed of the application filed by the respondent under Section 151 and 152 of CPC. The trial court observed that perusal of the order dated 24.7.2008 clearly shows that the date from which the maintenance was to be paid by the petitioner was not specified and therefore the need arose to clarify the said order. The learned trial court held that the rules and procedures are hand maids of justice and are made to subserve the interest of justice and therefore, the trial court clarified the order dated 24.7.2008 to the extent of holding that the maintenance would be payable by the petitioner to the respondent wife and the minor child from the date of the application.

6. Before examining the contention of the counsel for the petitioner that the learned trial court has acted without

jurisdiction while passing the order dated 12.5.2010, it would be useful to reproduce the Sections 151 and 152 of CPC as under:

“151. Saving of inherent powers of Court.

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

152. Amendment of judgments, decrees or orders.

Clerical or arithmetical mistakes in judgments, decrees 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.”

The main grievance of the petitioner is that the learned trial court has inserted the date of the grant of maintenance while resorting to section 152 hence exceeding its jurisdiction. Section 152 manifestly mentions that the court on application can correct any accidental slip or omission in the order at any time. It is a settled legal position that the provisions of Section 152 cannot be invoked to modify, alter or add to the terms of the original decree so as to in effect pass an effective judicial

order after the judgment in the case. Here it would be relevant to refer to the judgment of the Apex Court in the case of **Jayalakshmi Coelho vs. Oswald Joseph Coelho (2001)4 SCC 181** where the rationale and legal position with regard to Section 152 was discussed in detail in the following paragraphs:

"14. So far legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 C.P.C., any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the court. The principle behind the provision is that no party should suffer due to mistake of the court and whatever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice. A reference to the following cases on the point may be made:

*15. The basis of the provision under Section 152 C.P.C. is found on the maxim "Act us Curiae Neminem Gravabit" i.e. an act of Court shall prejudice no man (Jerk Cent-118) as observed in a case reported in **AIR 1981 Guwahati 41, The Assam Tea Corporation Ltd. versus Narayan Singh and another**. Hence, an unintentional mistake of the Court which may prejudice cause of any party must be rectified. In another case reported in - **I.L. Janakirama Iyer and others etc. etc. versus P.M. Nilakanta Iyer : AIR1962SC633 : AIR1962SC633** it was found that by mistake word "net profit" was written in the decree in place of "mesne profit". This mistake was found to be clear by looking to the earlier part of the judgment. The mistake was held to be inadvertent. In **Bhikhi Lal and others versus Tribeni and others : AIR1965SC1935 : AIR1965SC1935** it was held that a decree which was in conformity with the judgment was not liable to be corrected. In another case reported in **Master Construction Co. (p) Ltd. versus State of Orissa and another** it has been observed that 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 the point, it has been indicated as an example that in a case where the order may contain something which is not mentioned in the decree would be a case of unintentional omission or mistake. Such omissions are attributable to the Court who 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 are required for such rectification of mistake.

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*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 some thing 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 on 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 mention in the order or the judgment or something which was intended to be there stands added to it.***

(emphasis supplied)

7. Hence it would be manifest from above that the accidental slip or omission can be rectified under the scope of Section 152 of CPC. The omission of mentioning of the date from which maintenance would be granted is clearly an accidental slip as the court in the order dated 24.7.08 has

mentioned that the ***“...Arrears be cleared within three months.”*** It evinces from this very sentence that payment of arrears would mean that the past payment which is only in circumstances where the maintenance is to be paid prior to the date of passing of the order. Hence this sentence provides a clear cut indication that the non-mentioning of the date of grant of maintenance was an accidental slip or omission. Even otherwise, the section operates on the principle that no man should suffer due to the mistake of the court and if the maintenance is denied to the respondent wife and the child on the ground that the court did not grant maintenance from the date of application but from the date of the order, it would cause serious prejudice to the purpose for which the application for maintenance is filed. Therefore, this court is of the clear view that the learned trial court has exercised its powers well within the scope of section 152.

8. Even in the hindsight, it is a settled legal position that the maintenance is ordinarily granted from the date of the presentation of the application and not from the date of the

order. There are a series of judicial pronouncements to this effect. However, it would be relevant to mention the judgment of the Division Bench of this court in the case ***Vinod Kumar Jolly vs. Sunita Jolly 2008(147) DLT 326*** where the same legal principle was reiterated in the following paragraph:

*"Insofar as other appeal filed by the wife and child of the appellant is concerned, we find from the impugned judgment that no reasons are given by the learned ADJ as to why the direction is given to pay maintenance from the date of the order only and not from the date of filing of the petition. **The normal rule is that the maintenance is to be allowed from the date of filing of the petition. If this rule is to be deviated, there has to be special reasons for adopting such course. We find none.**"*

(emphasis supplied)

Hence, as already discussed above, even in the order dated 24.7.2008, the intendment of the court was quite clear and even direction was given to the petitioner to clear the arrears of the maintenance amount within a period of three months. Had the intention of the court was to grant the maintenance only from the date of passing of the order, then at least no such direction to clear the arrears of the maintenance amount within a period of three months would have been given by the court. The judgment of the Apex Court

in *Jasbir Kaur Sehgal's case (Supra)* cited by the petitioner is of no help to the petitioner in the facts of the present case as in the said case the Apex Court held that the court has discretion in the matter as to from which date maintenance under Section 24 of the Act should be granted. The Apex Court also held that such discretion of the court would depend upon multiple circumstances.

9. Clearly, in the order dated 24.7.2008 no reasons were given by the trial court to deny maintenance amount to the respondent from the date of the application and once no specific reason was given; there was no reason to deny the maintenance to the respondent from the date of the application.

10. So far the contention raised by the counsel for the petitioner with regard to disentitlement of the respondent to maintenance being Class I Government Officer is concerned, it is quite apparent that so far grant of maintenance by the trial court for the period prior to 1.7.2009 is concerned, the same has been upheld by the High Court. A perusal of Para 9 of the

impugned order clearly shows that as far as the quantum of maintenance and entitlement of the respondent wife and child for the period prior to 1.7.2009 is concerned, the order of the trial court has been upheld by the High Court.

11. In the light of the above, I do not find any merit in the present petition. The same is hereby dismissed in limine with costs of Rs.10,000/- to be paid by the petitioner with the Delhi High Court Bar Association Lawyers Social Security & Welfare Fund within two weeks from the date of the order. Let the matter be put up before the Registrar General for compliance on 10.12.2010.

November 10, 2010
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KAILASH GAMBHIR, J