

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) No. 7382/2009 & CM 7618/2012 (u/s 17B)**

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Reserved on: 30th November, 2012

Decided on: 1st February, 2013

BHAGWATI PRINTERS PVT. LTD. Petitioner

Through: Mr. Gulshan Chawla, Mr. Sumit
Purkayastha, Advs.

versus

RAM CHANDER SINGH Respondent

Through: Ms. Jyoti Dutt Sharma, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Since CM 7618/2012 under Section 17B ID filed belatedly, this Court vide order dated 3rd October, 2012 listed both the petition and the said application for hearing together.

2. By the present petition the Petitioner challenges the order dated 3rd December, 2008 whereby after passing of the award dated 7th May, 2008 the learned Trial Court in an application under Rule 28 of the Industrial Dispute (Central Rules) 1957 (in short the ID Rules) directed the Petitioner to reinstate the workmen and in lieu of back wages to pay a compensation of Rs. 50,000/-

3. Learned counsel for the Petitioner contends that by the award dated 7th May, 2008 the learned Trial Court though held that the termination of the Respondent and 14 other workmen was illegal, however specifically on the

issue of reinstatement with back wages awarded lumpsum compensation amounting to Rs. 85,000/- to the Respondent and other 14 workers. The impugned order dated 3rd December, 2008 amounted to reviewing the award dated 7th May, 2008 and was beyond the jurisdiction of the learned Trial Court. Reliance is placed on *Kapra Mazdoor Ekta Union v. Management of Birla Cotton Spinning and Weaving Mills Ltd. & Ors.* 2005 (2) LLJ 271 (SC); *Uttar Pradesh State Road Transport Corporation Vs. Imitiaz Hussain* 2006 (1) LLJ 714 (SC) and *U.P. State Road Transport Corporation Corporation, Kanpur Vs. Babu Singh & Ors.* 2003 LLR 808 (Allahabad HC). It is further contended that the statement of the Managing Director of the Petitioner on the basis of which the Respondent had rejoined the service on 2nd January, 2006 was without prejudice to his rights and contention and any concession made during the proceedings to mitigate the loss cannot be treated as a preliminary award and acted upon. Thus the impugned order be set aside.

4. Learned counsel for the Respondent contends that there is no infirmity in the order dated 3rd December, 2008. While passing the award on 7th May, 2008, the intention of the learned Trial Court was to grant reinstatement with back wages, however since the workmen were out of job for 9 years it directed lumpsum compensation. At that stage an accidental slip occurred and the learned Trial Court failed to notice that the Respondent had actually rejoined the duty on the 2nd January, 2006 and thus his case was not on parity with other 14 workmen who neither filed an application nor had rejoined the duties despite the statement of the Managing Director of the Petitioner. The learned Trial Court was well within the scope of Rule 28 of the ID Rules in

correcting the accidental slip and directing reinstatement of the Respondent with lumpsum compensation in lieu of back wages. Reliance is placed on *M/s. Lipton Ltd. & Anr. Vs. Their Employees AIR 1959 SC 676 and Delhi Transport Corporation Vs. Jagdish Chander 120 (2005) DLT 664 (FB)*.

5. I have heard learned counsel for the parties. The facts giving rise to the filing of the present petition are that the Petitioner terminated the services of the Respondent and 14 other workmen. An industrial dispute was raised which was sent for adjudication on the following terms:

“Whether the services of the workmen shown in Annexure ‘A’ have been terminated illegally and/or unjustifiably and, if so, to what relief are they entitled and what directions are necessary in this respect?”

6. The claim of the Respondent and others was that the Petitioner was not paying earned wages declared by the Government despite the fact that they had a clean service record. Their services were illegally terminated on 11th January, 1998 on false allegations without conducting any enquiry. It was further stated that the Petitioner was not maintaining any wage register, leave register etc. The Petitioner contested the claim and denied that it was not paying the minimum wages to the workmen or that the service record of the Respondent and other workmen was clean and that there was no complaint against them. According to the Petitioner, the Respondent and other workmen created nuisance and indiscipline in the factory since 29th December, 1997 and committed illegal activities. On 7th January, 1998 they gheraoed the production manager and misbehaved with him. They created a situation whereby willing workers were also not allowed to enter the factory. Under these circumstances the Respondent and 14 others were deemed to be

absentees and having willfully abandoned the job. On the pleading of the parties the following issues were framed:

“1. Whether the workmen involved in illegal activities or committed misconduct as claimed by the management?(OPM)

2. Whether the services of the workmen have been dispensed with legally?

3. Relief in terms of reference.”

7. As regards the issue No.1 the learned Trial Court came to the conclusion that the Petitioner failed to establish that the workmen committed illegality or misconduct or any incident occurred from 7th January, 1998 to 10th January, 1998 as alleged. Thus, the issue was decided against the Petitioner. As regards the issue No.2 it was held that the services of the Respondent and 14 others were terminated illegally, unjustifiably and in contravention of Section 25F of the ID Act. While dealing with the 3rd issue of relief which is the bone of contention, the learned Trial Court held that the length of the services of the 15 workmen ranged from 2 years to 8 and a half years and since 10 years had elapsed from their termination, in its opinion instead of reinstatement and back wages lumpsum compensation would be an appropriate relief under the circumstances of the case. It thus directed the Petitioner to pay compensation of Rs. 85,000/- to the Respondent and similar compensation to the other 14 workmen. During the course of proceedings on 16th December, 2005 the statements of the Managing Director of the Petitioner and its authorized representative of the workman were recorded which read as under:

“Statement of Shri Anil Verma MD of the mgt. R/o 24/102 Hemant City, MG Road, Gurgaon, Haryana.

On SA:

The mgt has no objection if the workman/ workmen are willing to join their duties without prejudice with immediate effect at the establishment of the mgt. Plot No. 62-63, Phase-VI, Sector-37, Udyog Vihar, Gurgaon. The working hours are 9.00 AM to 5.30 PM.

RO & AC

16.12.05

Statement of Shri Mahesh Srivastava AR for the workman.
W.SA.

In view of the statement of Mr. Anil Verma, MD for the mgt., the workmen namely Ramesh, Harish Chander, Amrender Kumar, Lok Nath and Ranjeet are willing to join their duties without prejudice with effect from 19.12.05 whereas the other workmen shall be joining their duties on or before 2.1.06, at the mgt. establishment at Plot No.62-63. Phase-VI, Sector-37, Udyog Vihar, Gurgaon. The working hours are noted as 9.00 AM to 5.30 PM.

RO& AC.

16.12.05”

8. Pursuant to this statement the Trial Court noted in its order dated 16th December, 2005 that in view of the statement of Mr. Anil Verma, MD of the management and Shri Mahesh Srivastava AR for the workmen, the workmen had an option to join the duties as stated by Mr. Mahesh Srivastava. In view of this order and the statement of the Managing Director of the Petitioner no other workmen joined the duty, except the Respondent who joined the duty on 2nd January, 1996.

9. A perusal of the award dated 7th May, 2008 clearly shows that this fact of the Respondent rejoining the duty with the Petitioner without prejudice was not brought to the notice of the Trial Court and thus the same was not even considered because the learned Trial Court held that since the

termination of the workmen more than 10 years had elapsed and it is on this count that it directed payment of lump sum compensation instead of reinstatement with back wages. After the award dated 7th May, 2008, Respondent filed an application under Rule 28 of the ID Rules for correction of the award dated 7th May, 2008 pointing out that during the pendency of the proceedings before the Trial Court pursuant to order dated 16th December, 2005 the Respondent had joined the duty with the Petitioner with effect from 2nd January, 2006. On the said application a reply was filed by the Petitioner stating that application of the Respondent amounted to seeking review of the award dated 7th May, 2008 which was beyond the jurisdiction of the Trial Court and joining of the Respondent with the Petitioner during the pendency of the trial was without prejudice to its rights and subject to the final outcome of the case. The learned Trial Court taking recourse to Rule 28 of the ID Rules, 1957 held that while passing the final award dated 7th May, 2008 an accidental slip or omission took place and the Court lost sight of the fact that the applicant Ram Chander Singh was working with the Management since 2nd January, 2006 after getting reinstatement under the orders of the Court dated 16th December, 2005. It further held that if the fact regarding reinstatement of the workman had been considered, there was no occasion for the Court to award lumpsum compensation of Rs. 85,000/- in lieu of reinstatement and back wages. It was apparent from the bare perusal of the award dated 7th May, 2008 that fact regarding reinstatement of the Respondent was not at all considered while awarding lumpsum compensation. It held that if the award was not changed or corrected it would cause gross injustice to the Respondent and the proposed change did not fall within the purview of review rather fell under Rule 28 of the ID

Rules being a case of accidental slip or omission in an award. The Trial Court thus vide impugned order dated 3rd December, 2008 directed the Petitioner to reinstate the Respondent and in lieu of back wages awarded lumpsum compensation of Rs. 50,000/-.

10. The issues in the present case are whether the order dated 16th December, 2005 amounted to a preliminary award directing reinstatement of the Respondent and whether non-consideration of the factum of the Respondent rejoining the duty amounted to an accidental slip or omission by the Court which could have been corrected in an application under Rule 28 of the ID Rules. As regards the 1st issue there can be no dispute that the order dated 16th December, 2005 passed on concession of the Managing Director of the Petitioner did not amount to a preliminary award as the same was without prejudice to the rights. The statement of the Managing Director of the Petitioner is clear and as learned counsel for the Petitioner rightly stated the same was to mitigate the losses in case an award was finally passed against the Petitioner. Though a preliminary award can be passed on the admission/ concession of the adverse party, however the concession in this case was without prejudice to the rights of the Petitioner. Hence there was no preliminary award of reinstatement in favour of the Respondents.

11. Regarding the next issue whether the Trial Court could have modified the award dated 7th May, 2008 stating it to be an accidental slip or omission, it may be noted that the issue as to what errors can be corrected by a Court under Section 152 CPC came up for consideration before the Hon'ble Supreme Court in *Jayalakshmi Coelho Vs. Oswald Joseph Coelho* (2001) 4 SCC 181. It was held:

“13. So far as the legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 CPC, 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:

The basis of the provision under Section 152 CPC is found on the maxim *actus curiae neminem gravabit* i.e. an act of court shall prejudice no man (*Jenk Cent-118*) as observed in a case reported in *Assam Tea Corpn. Ltd. v. Narayan Singh* [AIR 1981 Gau 41] . Hence, an unintentional mistake of the court which may prejudice the cause of any party must be rectified. In another case reported in *L. Janakirama Iyer v. P.M. Nilakanta Iyer* [AIR 1962 SC 633] it was found that by mistake the words “net profit” were 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 v. Tribeni* [AIR 1965 SC 1935] 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. v. State of Orissa* [AIR 1966 SC 1047 : (1966) 17 STC 360] 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 which may say something or omit to say something which it did not intend to say or omit. No new arguments or rearguments on merits are required for such rectification of mistake. In a case reported in *Dwaraka Das v.*

State of M.P. [(1999) 3 SCC 500] this Court has held that the correction in the order or decree should be of the mistake or omission which is accidental and not intentional without going into the merits of the case. It is further observed that the provisions 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. The trial court had not granted the interest pendente lite though such a prayer was made in the plaint but on an application moved under Section 152 CPC the interest pendente lite was awarded by correcting the judgment and the decree on the ground that non-awarding of the interest pendente lite was an accidental omission. It was held that the High Court was right in setting aside the order. Liberal use of the provisions under Section 152 CPC by the courts beyond its scope has been deprecated. While taking the above view this Court had approved the judgment of the Madras High Court in *Thirugnanavalli Ammal v. P. Venugopala Pillai* [AIR 1940 Mad 29 : (1939) 2 MLJ 751] and relied on *Maharaj Puttu Lal v. Sripal Singh* [AIR 1937 Oudh 191 : ILR 12 Luck 759] . Similar view is found to have been taken by this Court in a case reported in *State of Bihar v. Nilmani Sahu* [(1996) 11 SCC 528] where the Court in the guise of arithmetical mistake on reconsideration of the matter came to a fresh conclusion as to the number of trees and the valuations thereof in the matter which had already been finally decided. Similarly in the case of *Bai Shakriben v. Special Land Acquisition Officer* [(1996) 4 SCC 533] this Court found omission of award of additional amount under Section 23(1-A), enhanced interest under Section 28 and solatium etc. could not be treated as clerical or arithmetical error in the order. The application for amendment of the decree in awarding of the amount as indicated above was held to be bad in law.

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 thought 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.

12. Rule 28 of the ID Rules reads as under:

“28. Correction of errors.- The Labour Court, Tribunal, National Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/ he issues.”

13. A perusal of the Rule 28 ID Rules shows that the same is para materia to Section 152 CPC. In view of the law laid down by the Supreme Court it is thus apparent that under Section 152 CPC only an arthematic mistake i.e. a

mistake of calculation, a clerical mistake i.e. a mistake in writing or typing can be corrected. The present is not an omission wherein the Court said or omitted to said something which it did not intend to say or omit. In fact from the perusal of the award dated 7th May, 2008 it is apparent that the factum of the Respondent rejoining the duty was not even brought to the notice of the Trial Court. The effect of the impugned order dated 3rd December, 2008 is that it has modified and altered the terms of the original award and in fact passed a fresh judicial order after the award was passed. This is not the scope of Rule 28 ID Rules. As stated above, liberal use of the provision under Section 152 CPC by the Courts beyond its scope is deprecated. The power of rectification of clerical or arithmetic errors of accidental slips does not empower the Trial Court to have a relook over the matter and to pass another order. On a second thought the Court may find it that it may have committed a mistake in passing an order in certain terms but every such mistake cannot be rectified in an application under Rule 28 of the ID Rules. In view of the aforesaid discussion, the impugned order dated 3rd December, 2008 is set aside.

14. Petition and application are disposed of.

(MUKTA GUPTA)

February 01, 2013
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