

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

% *Judgment Pronounced on: January 06, 2014*

+ **CM(M) No.1299/2013 & C.M. No.19310/2013**

SH ASHOK KUMAR AHUJA & ANR Petitioners
Through Mr.Manoranjan, Adv.

versus

SH GULAB RAI KHANCHANDANI Respondent
Through Mr.Tarun Chandiok, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition under Article 227 of the Constitution of India has been filed by the petitioners/tenants against the order dated 7th November, 2013 passed by the learned District & Sessions Judge, South-West District, Dwarka Courts, New Delhi, passed in appeal being RCT No.13/12.
2. The facts of the matter are that the respondent/landlord filed the eviction petition on the ground of second default in the payment of rent against the petitioners under Section 14(1)(a) of Delhi Rent Control Act, 1958 (in short, called the “DRC Act”) which was allowed by the learned Rent Controller by order dated 27th March, 2010 passed in the eviction petition bearing No.E-06/08 (on transfer).
3. In the eviction petition filed by the respondent against the petitioners, in column No.8, the specific statement was made by the respondent about the details of the accommodation available with the tenant, i.e. two shops, two rooms on rear side, verandah, one store, one kitchen, one bathroom and

one WC on the ground floor as shown in red colour in the site plan attached along with the eviction petition. In the prayer clause of the eviction petition, the relief sought was that an order of eviction of the petitioners from the premises No.A-4 (Shops), Ground Floor, Inderpuri, New Delhi as shown in red colour in the site plan be passed. It is an undisputed fact that the red colour in the site plan depicts the area comprising of the same details as mentioned in column No.8 of the eviction petition. Even, the legal notice Ex.PW-1/9 contains the details of the entire premises.

4. However, in the operative part of the order, the prayer was granted in favour of the respondent with respect to premises two shops bearing No.A-4, Ground Floor, Inderpuri, New Delhi.

5. The petitioners' appeal against the said order, being RCT No.08/10 was dismissed by the learned Rent Control Tribunal by judgment dated 16th November, 2011.

6. The petitioners challenged the said judgment delivered by the learned Rent Control Tribunal before this Court by filing of a petition under Article 227 of the Constitution of India, being CM(M) No.1438/2011 which was also dismissed on 8th February, 2012 by passing a detailed order.

7. Thereafter, the respondent initiated the execution proceedings in order to enforce the judgment dated 27th March, 2010, being Ex.No.39/12. The petitioners on 16th May, 2012 filed the objections under Section 47 CPC before the Executing Court.

8. By order dated 7th December, 2012, the said objections were dismissed. The Executing Court by invoking power under Section 152 CPC made correction in the eviction order dated 27th March, 2010 under his

signature by adding the sentence “as shown in red colour in the site plan Ex.PW-1/3 as mentioned”.

9. The petitioners challenged the order dated 7th December, 2012 passed by the Executing Court by filing of an appeal being RCT No.13/12 which was also dismissed by judgment dated 7th November, 2013 passed by the learned District & Sessions Judge, South-West District, Dwarka Courts, New Delhi.

10. The said judgment has now been challenged by the petitioners in the present petition, inter-alia, on the following grounds:-

- (i) The Courts below have been liberally applying the provisions of Section 152 CPC after passing the defective orders.
- (ii) No Court can under the said provision modify/alter or add to the terms of its original judgment.
- (iii) Only the remedy was available to the respondent to file an application seeking for amendment of decree by way of correcting the clerical mistake.

11. Learned counsel appearing on behalf of the petitioners argued that the Executing Court while dismissing the objections had no power to suo moto invoke the provisions of Section 152 CPC and to grant a relief to the respondent which was granted at the time of passing the eviction order. Therefore, the said order dated 7th December, 2012 is to be declared as illegal and liable to be set-aside. Learned counsel has relied upon a decision passed in the case of *State of Punjab vs. Darshan Singh*, AIR 2003 SC 4179 where it has been held that Section 152 gives power to correct clerical or arithmetical error in the judgment and cannot be equated with powers of

review and omission which goes to the merits of case cannot be corrected and will be beyond the scope of Section 152 CPC. It has been clarified to say that Section 152 CPC cannot be invoked to correct the omission which is intentional. In the present case, the omission of description, the property is two shops cannot be said to be an intentional omission as it is a case of nobody that tenancy was in respect of two shops only.

12. Learned counsel for the petitioners has also referred the operative part of the order dated 7th December, 2012 passed by the Executing Court while dismissing the objections under Section 47 CPC, which reads as under:-

“.....if some defect has remained in the eviction order/judgment, it can be corrected by the court on its own U/s 152 of CPC and on the ground of that inadvertent mistake, petitioner cannot be made to suffer. Hence the eviction order dated 27.03.2010 stands corrected under the signature of the undersigned and objections stand dismissed....”

13. It is the admitted position that in the prayer clause of the execution petition filed by the respondent, the relief was sought for issuance of warrants of possession in respect of two shops bearing No.A-4, Ground Floor, Inderpuri, New Delhi, more specifically shown in red colour in the site plan Ex.PW-1/3. The said site plan contains the full details of the tenanted premises as mentioned in column 8 of the eviction petition.

14. It is also an undisputed fact that when the eviction petition was filed, in column No.8, the following statement was made:-

“8. Details of accommodation available together with particular as regards ground area garden and out houses,	Two shops, two room on rear side, verandah, one store, one kitchen, one bathroom and one W.C. on the ground floor as
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if any (Plan to be attached) shown red in the site plan attached.”

15. In the eviction petition, specific prayer was made to pass the eviction order against the petitioner for premises No.A-4 (shops), Ground Floor, Inderpuri, New Delhi as shown in red colour in the site plan.

16. The site plan was exhibited as Ex.PW-1/3 which contains the same details as mentioned in column 8 of the eviction petition.

17. Thus, it is evident that when eviction order was passed, due to oversight or typing mistake, an error had happened and the sentence “as shown in red colour in site plan Ex.PW-1/3” has not come in the eviction order while passing the same.

18. The learned Appellate Court while passing the impugned order did not accept the arguments of the petitioners on the following reasons:-

“.....The argument that in the eviction order, the eviction is stated to be in respect of two shops cannot be appreciated as first of all the eviction order is in respect of tenanted premises which is reflected in Ex.PW1/3 and the eviction is sought for the entire premises and Rent Controller has taken note of the fact that the description of the premises find correctly mentioned in the site plan Ex.PW1/3. So the eviction order pertains to the tenanted premises shown in Ex.PW1/3 i.e. site plan annexed with the eviction petition coupled with the fact that prayer was to the effect that eviction order be passed in respect of the premises as shown red in the site plan attached be passed.

The mention that it is in respect of two shops in the eviction order which clerical error/mistake corrected in the order and continued in the orders passed by the Rent Controller Tribunal as well as

Hon'ble High Court of Delhi will not make a difference as the concept of two shops do not arise at all. Even if the municipal number is taken, it is A-4 (Shop), Ground Floor, Inder Puri, New Delhi and the site plan describes the premises specifically i.e. two shops, two rooms, verandah, one store, one kitchen, one bath room and W.C. etc., so there cannot be any question of two shops only and the same is definitely a clerical mistake.

.....It cannot be disputed that in case of recovery or possession of immoveable property or in case of eviction filing of site plan is a must. The very purpose of filing of site plan is to get the property identified i.e. not only property but exact extent of the property. Rather, if there is a discrepancy in description of the property and the site plan then it is the site plan which is considered to be more authentic for purpose of determining the extent of accommodation and the extent of property.

.....It was further observed that the Trial Court merely observed in the operative part of the judgment that the suit is decreed or an appellate Court disposing of an appeal against dismissal of the suit observing the appeal is allowed and do not specify the reliefs to which the successful party has been found entitled to, tantamount to a failure on the part of the author of the judgment to discharge obligation cast on the judge. In such circumstances, the successful party can move application u/s 152 seeking appropriate rectification of judgment. The said case is squarely applies to the facts and circumstances of the case.”

19. It is an admitted case of the parties that eviction sought was in respect of the entire premises and not in respect of part of the premises and the prayer was also in terms of the site plan and the Rent Controller had also held in its eviction order that the site plan has been proved as Ex.PW-1/3.

20. The Courts in similar situation when the power of Section 152 CPC was invoked, has rendered the following decisions:-

- (i) In case of ***Ram Chandra Singh vs. Savitri Devi & Ors.***, AIR 2004 SC 4096, it was held that principle behind the provision of Section 152 is that no party should suffer due to the mistake of the court and whatever is intended by the Court while passing the order of decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice.
- (ii) In case of ***Ashuthosh Das vs. Smt. Sushma Rani***, AIR 2004 Gauhati 136 where in a suit for recovery of possession, it was simply stated that the suit was decreed with cost. It was held that such omission is an accidental slip or omission and will be corrected by the court itself to avoid the miscarriage of justice. So, section 152 CPC can be invoked by the party by moving an application or it can be suo moto invoked by the court to avoid the miscarriage of justice which had been done in the present case.

21. Even, this Court in similar situation has passed the judgment in the case of ***Motor And General Finance Ltd. vs. Mr. Gautam Roy And Ors.***, 2006 IX AD (Delhi) 321, relevant paras of which read as under:-

“3. Respondent No. 1 availed of the appellate remedy and the appeals were dismissed by the Rent Control Tribunal (for short, “the Tribunal”). The second appeals filed before this Court are pending consideration. The petitioner sought to take out execution proceedings in respect of the tenanted premises and it is during those proceedings, it

transpired that there was some problem in the possession being taken over on account of the fact that the eviction order dated 03.03.1999 had referred to a site-plan Ex. AW-6/8, while, in fact, that was not the complete tenanted premises. The total premises consisted of Ex. AW-6/8 and Ex. AW-7/1 being the two site-plans. The petitioner filed applications under Sections 151 and 152 of the Code of Civil Procedure, 1908 (hereinafter referred to as, “the Code”) seeking a prayer that the eviction order be corrected by incorporating Ex. AW-7/1 in para 46 of page 49 of the judgment dated 03.03.1999 where the reference had been made to the site-plan Ex. AW-6/8. This application of the petitioner has been rejected by the impugned order dated 06.05.2004 resulting in the present revision petition.

8. In view of the aforesaid observations, it is apparent that while dealing with a decree of immovable property, every endeavor should be made to see that the successful party is not deprived of the fruits of the success of the decree and resort can be had to the provisions of Section 152 or Section 47 of the said Code depending on which is more appropriate. However, the qualification is that it should be an inadvertent error and not affecting the merits of the case.

9. Learned Counsel further referred to the judgment of the Supreme Court in ***Sheodhyam Singh and Ors. vs. Mst. Sanichara Kuer and Ors.***, AIR 1963 SC 1879 where in para 7 it was observed that in case of a mis-description only where the identity of the property is well established, there should be no impediment to execution of the decree. A reference was also made to the judgment in ***Bhavan Vaja and Ors. vs. Solanki Hanuji Khodaji Mansang and Anr.***, (1973) 2 SCC 40 to the effect that though an executing court cannot go behind the decree under execution, but that does not mean that it has no duty to find out the

true effect of the decree. In appropriate cases, for construing a decree, the executing court can take into consideration the pleadings as well as the proceedings leading up to the decree. The jurisdiction of the executing court does not begin and end with merely looking at the decree as it is finally drafted.

17. In this behalf, a controversy was raised as to whether the application filed by the petitioner was in the eviction proceedings or the execution proceedings. On perusal of the application, it is found that the application was originally made in the eviction proceedings. It appears, however, that at the stage of filing, both the eviction petition and the execution nos. were referred to and learned Counsel for the petitioner explained this by stating that since the Court of the ARC was the court which both decrees and executes the order, it was desired that the application should be filed in the manner it was so filed. In my considered view, nothing much turns on this objection as, really speaking, what the petitioner was seeking was the correction of the accidental slip / omission and even if the application has been placed in the execution file, though filed both in the eviction petition and the execution, such technicality would not defeat the prayer made by the petitioner.

21. The observations of the Supreme Court in **Bhavan Vaja's case** (supra) are material in this behalf where it has been emphasized that while construing a decree, pleadings and other proceedings can be taken into account. There was really no dispute about the extent of the tenanted premises. There were two plans filed one for the outhouse and one for the main shop and both plans were exhibited. The eviction petition itself set out the extent of the tenanted premises both in column 1 and column 8 as referred to aforesaid. The judgment of which execution is sought also in various paragraphs referred to the extent of the tenanted premises in the same manner. Merely because the ARC

at that time while passing the final decree referred to one of the plans instead of the two plans will not mean that this is a deliberate attempt on the part of the ARC to pass an eviction order in respect of part of the premises while not doing so for the remaining part. This would be contrary to the complete judgment itself where the sub-tenancy has been found in respect of the complete tenanted premises. In fact, this is how even the respondent understood the judgment till such time as the impugned order gave another opportunity to the respondent to raise further pleas to somehow defeat the eviction order. In a case where there is no dispute about the extent of the premises, there was no mandatory requirement even to file a plan. The reliance placed by learned Counsel for the petitioner on the provisions of Order VII Rule 3 of the Code is appropriate. The plan was filed as a mere abundant caution, but inadvertent mistake in mentioning only one of the plans instead of both the plans while passing the decree of eviction though describing the whole tenanted premises, has given rise to all this unnecessary litigation and delay in execution of the eviction order. I am of the considered view that there is no merit in this objection.”

22. In view of the above said reasons and settled law, in the present case, it was merely an accidental slip or omission which was suo moto corrected in order to avoid the miscarriage of justice. The application for correction is not mandatory when it shows that it was merely an accidental slip. The Court has a power to invoke Section 152 CPC under such situation as happened in the present case. The decisions referred by the petitioners are not directly applicable to the facts of the present case in view of the reasons that in the eviction petition, the eviction was sought with respect to the entire property. The site plan shows the complete details.

23. I have been informed by the learned counsel for the parties that in view of the warrants of possession issued by the Executing Court, the respondent has been able to get the possession of the two shops shown in the site plan Ex.PW-1/3.

24. In view of the above said settled law and the facts and circumstances of the present case, there is no merit in the present petition. The same is accordingly dismissed along with the pending application. The interim order passed on 3rd December, 2013 stands vacated.

The respondent is at liberty to execute the decree with regard to the rest of the portion of the tenanted premises by filing of an appropriate application for issuance of warrants of possession in respect thereof.

(MANMOHAN SINGH)
JUDGE

JANUARY 06, 2014