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IN THE HIGH COURT OF BOMBAY AT GOA

**CIVIL APPLICATION (REVIEW) NO.4 OF 2015
IN
WRIT PETITION NO.49 OF 2014**

AGUADA HOMES COOPERATIVE HOUSING
SOCIETY LTD.,
THROUGH ITS PRESIDENT APPLICANT'

V E R S U S

M/S. ALCON REAL ESTATES PVT. LTD.
THROUGH ITS DIRECTOR

MR. VICTOR ALBUQUERQUE AND ANR. RESPONDENTS

Mr. Joseph Vaz, Advocate for the Applicant.
Mr. S. G. Desai, Senior Advocate with Adv. Devidas J. Pangam, for
the Respondents.

**CORAM: M. S. SANKLECHA, J.
DATE: 13TH APRIL, 2015.**

ORAL ORDER:

The applicant seeks amendment of clerical mistake in
the order dated 9/10/2014 passed by this Court in Writ Petition
No.49/2014.

2. The application was originally filed under Section 152

of the Civil Procedure Code (Code) along with Order 47 Rule 1 of the Code. However, at the commencement of the hearing, Mr. J. Vaz, learned counsel for the applicant states that he is restricting this application only to an application under Section 152 of the Code i.e. to correct a clerical mistake and he is not seeking any relief under Order 47 Rule 1 of the Code.

3. It is the applicant's case that the following sentence in paragraph 4 of the order dated 9/10/2014 which needs to be deleted is as under:

"It is also not in dispute that one building in which hotel is being run by petitioner was never transferred to the Cooperative Society."

4. It was submitted by Mr. J. Vaz, learned counsel for the applicant that during the proceedings leading to the order dated 9/10/2014 the respondents i.e. original petitioner had relied upon the Deed of Sale dated 17/2/1998. According to him, the aforesaid deed of sale inter alia provided also for the transfer of commercial block, which is being run as a hotel and called Block "E" along with the residential blocks "A to H". In support attention was drawn to various

provisions of the Deed of Sale dated 17/2/1998, which inter alia seems to suggest that the commercial block "E" was also transferred to the applicant-society. Further, Mr. Vaz, learned counsel for the applicant also placed reliance upon the decision of the Supreme Court in “ *Niyamat Ali Molla Vs. Sonargon Housing cooperative Society Ltd. and others*” and 2007 (13) SCC 421 and “ *Muktar Steels (P)Ltd. Co. V. Hind Ro-Rolling Industries Ltd.*” (2005) 11 SCC 399 in support of his application for correcting clerical errors in the order under Section 151 and 152 of the Code.

5. As against the above, Mr. S. G. Desai, learned Senior Counsel for the respondent submits that the impugned sentence in the order dated 9/10/2014 is not on account of any mistake but a deliberate statement on the basis of the submission made on behalf of the applicant. The contention of the applicant is disputed by the respondents. It is submitted that on the basis of the interpretation put upon the agreement of sale dated 17/2/1998 did the Court record and accept the position that the commercial Block was not transferred.

6. Although proceedings under Article 226 of the Constitution of India may not be strictly governed by the procedure

provided in the Code (Section 141 of the Code), yet the principles stated therein are being invoked by the applicant. Therefore the application as filed is being tested on the anvil of the above principle invoked by the applicant and applicable to all Civil Courts.

7. On reading of the sale deed dated 17/2/1998 it is not free from doubt whether the Commercial Block 'E' in which a Hotel was being run was transferred to the Society. Section 152 of the Code provides for jurisdiction of every Court to correct inadvertent errors or mistakes which have slipped into its orders. There has to be no dispute about the errors having crept into the order as only then can it be corrected by the Court. However, where the order said to contain a mistake is passed by the learned Judge who is not presently sitting at Goa, then the application has to be decided on the basis of the document which evidences mistake in the order and the submission of the other side. Thus when the other side disputes it to be a mistake and the matter in controversy is not free from doubt, then it is no longer an accidental slip in the order so as to apply the principle of correcting the order on account of accidental error or omission. In this case the respondent's interpretation of the sale deed dated 17/2/1998 appears to be equally plausible.

8. Mr. J. Vaz, learned counsel for the applicant relies on the decision of Niyamat Ali Molla (supra) to contend that the principle underlying the powers under Section 152 of the Code is to ensure that no person shall be prejudiced by the order of the Court. It is on the aforesaid principle that Section 152 of the Code empowers the Court to correct the errors which occur on account of accidental slips or omission. There can be no dispute with the above proposition. However, the Court has also observed that though such powers exist, the exercise of such powers cannot be so as to review an earlier judgment. The exercise of this power therefore can only take place when there is no manner of doubt in the mind of the Court that an accidental slip has occurred. Thus the above decision is distinguishable. Similarly, Mr. Vaz has also relied on the decision of Muktar Steels (P) Ltd. Co. (supra), where the original order of the Court, recorded that the "Court fee is liable to be paid" instead of "Court fee is not liable to be paid". The omission of the word 'not' in the order was a clerical error and not disputed by the other side. Thus the aforesaid case is distinguishable, there was no occasion for any interpretation of a document nor any contest to it being a mistake. Thus the above decision will have no application to the present facts.

9. In view of the above, I see no reason to entertain this review application. The review application is dismissed with no orders as to costs.

M. S. SANKLECHA, J.

Ap/-