

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5034 OF 2005

Shri Ashok V. Khadake

.. Petitioner.
(Orig. Defendant No.1)

V/s.
M/s. Krishiseva Kendra
& another

.. Respondents.
(No.1- Orig. Plaintiff/Applicant
(No.2- Orig. Defendant No.2)

None for the parties.

CORAM: M.S.SONAK,J.

DATE : 27th MARCH, 2015.

PC:-

This Petition was dismissed for default earlier and thereafter restored on 13th November, 2014.

2 This matter was thereafter called out on 26th March, 2015, but because none appeared for the Petitioner, the same was posted today.

3 Even today, none appeared for the Petitioner. Therefore, this **Petition** is once again **dismissed for default**.

Mentioned at 3.00 p.m.:-

Mr. T. S. Ingale, for the Petitioner.

Mr. P. R. Arjunwadkar, for the Respondents.

The order dictated in the morning session is re-called.

This Petition challenges the order dated 13th June, 2005, by which the Joint Civil Judge, Senior Division, Kolhapur has allowed the Respondents' application under Section 152 of the CPC for amendment of the Judgment and Decree dated 2nd November, 1993 in Special Civil Suit No.7 of 1988.

2 The learned Counsel for the Petitioner submitted that if the Judgment and Decree is perused, then there are clear finding that M/s. Krishiseva Trading Corporation are two different entities. After recording of such finding, learned Civil Judge very specifically decreed the suit, inter alia directing the original Plaintiff to pay rent to the original Defendant No.1 in RCS No.545 of 1987, till the passing title in favour of M/s. Krishiseva Trading Corporation. The learned Counsel further submitted that this was not and could not have been regarded as some accidental slip so as to warrant the correction thereof, after the decree has been confirmed by the Appellate Court.

3 Further learned Counsel for the Petitioner submitted that the provisions contained in Article 137 of the schedule of the Limitation Act, 1963, are attracted whether an application is made under Section 152 of the CPC. In the present case, the decree in question was made on 2nd November, 1993 and the application under Section 152 of the CPC was made on 23rd March, 2004. Accordingly, learned Counsel submitted that

the application under Section 152 ought to have been rejected on the ground that same was barred by the law of limitation.

4 Having heard the learned Counsel for the parties and perused the record, in my judgment, no case is made out to interfere with the impugned order. Admittedly, in the present case, M/s. Krishiseva Trading Corporation was not at all a party to any of the suits in which the common decree came to be made. The party to said suits was M/s. Krishiseva Kendra. Besides, there is nothing in the judgment which would indicate that directions were issued to the Plaintiff in RCS No.545 of 1987 to pay rent to Defendant No.1 in the said suit till the passing of the title in favour of M/s. Krishiseva Trading Corporation. The name of M/s. Krishiseva Trading Corporation, no doubt appears in clause 8 of the said order, but the same does appear to be an accidental slip.

5 The learned Civil Judge upon detailed consideration of not only the application under Section 152 of the CPC but also evidence was led by the parties, has recorded a conclusion that reference to M/s. Krishiseva Trading Corporation was an accidental slip. Again there is neither any jurisdictional error nor any perversity in the record of such conclusion. Accordingly, it cannot be said that there is any jurisdictional error involved in the exercise of powers under Section 152 of the CPC.

6 The submission that the provisions contained in Article 137 of the Schedule to the Limitation Act, 1963 will apply, in case of an application by any of the parties inviting the Court to exercise powers under Section 152 of the CPC cannot be accepted. Section 152 of the CPC provides that 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 parties. The expression '*at any time*' appearing in Section 152 of the CPC indicates that the powers therein are not circumscribed by the provisions contained in Article 137 of the Schedule to the Limitation Act, 1963. Even the learned counsel for the petitioner accepted the position that there is no period of limitation prescribed for the Court to *suo moto* correct such errors. However, the contention of the learned counsel for the petitioner was that such period of limitation will apply where any of the parties invite the Court to exercise powers under Section 152 of the CPC. This submission, however, cannot be accepted as the expression '*at any time*' applies to both - correction of the said errors by the Court on its own motion or on the application of any of the party.

7 From the perusal of the Section 29(2) of the Limitation Act, 1963, it is evident that where any special law prescribed limitation, that will be deemed to be substituted in the Schedule to the Limitation Act, 1963. If therefore, Section 152 of the CPC is read alongwith Section 29(2) of the Limitation Act, 1963, then it would be clear that the words '*at any time*' in Section 152 of the CPC would be deemed to have been substituted in place of the period prescribed in the Article 137, assuming that such an Article is at all attracted to the facts and circumstances of the present case. Therefore, the application for rectifying clerical or arithmetical errors in judgment and decree may be made at any time. Even otherwise, the provisions of the Limitation Act, 1963, normally do not apply to the applications for exercise of functions of ministerial character.

8 Accordingly, there is no reason to interfere with the impugned order. This **Petition** is **dismissed**. There shall be no order as to costs.

9 At this stage, the learned Counsel for the Petitioner applies for a stay upon impugned Judgment and Order dated 13th June, 2005 for a period of eight weeks from today as the Petitioner deserves to take re-course against this order before the Hon'ble Supreme Court.

10 Taking into consideration the circumstances of this case, stay as prayed for, is granted for a period of eight weeks from today.

(M.S.SONAK,J.)