

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION St.NO.25234 OF 2015**

**Hadokht Faredoon Kermanian & Ors.**

**..Petitioners**

**Vs.**

**Parvez Ardeshir Buzorg & Ors.**

**..Respondents**

**Mr. A A. Kumbhakoni Senior Advocate i/b Mr. A. M. Kulkarni for the  
Petitioners**

**Mr. Rajiv Singh i/b Solomon & Co. for the Respondent Nos.1 to 3**

**Mr. Tushar Bhavsar i/b Ms Neha Choksi for the Respondent No.4**

**CORAM : R. M. SAVANT, J.**

**DATE : 16<sup>th</sup> SEPTEMBER, 2015**

**P.C.**

1           The order dated 19-8-2015 passed by the Learned Judge of the City Civil Court, Mumbai, by which order, the Chamber Summons No.1170 of 2015 filed by the Plaintiffs invoking Section 152 of the Civil Procedure Code, for clarification of the judgment and order dated 30-4-2015, came to be allowed is taken exception to by way of the above Petition.

2           The Suit in question being Suit No.8283 of 1986 was filed for dissolution of the partnership and distribution of the assets of the partnership firm which is running a restaurant. Suffice it would be to state that the Suit came to be dismissed by the judgment and order dated 30-4-2015 on the ground of a technicality revolving around the compliance of Order VI Rule 15 of the Civil Procedure Code. The operative part of the order reads thus

“1 Suit NO.8283 of 1986 is dismissed.

2 No order as to costs

3 Court Receiver appointed by the Hon'ble High

Court is hereby discharged.

4 Decree be drawn up accordingly.

5 R & P be sent to Record Department.”

3           The controversy involved in the present proceedings revolves around clause (3) of the operative part whereby the Trial Court discharged the Receiver who was appointed pending the Suit. The Petitioners herein are the heirs of the original partners and are Defendant Nos.1(a) to 1(c) and Defendant Nos.4 and 5 in the Suit in question. It seems that they were appointed as agents of the Court Receiver along with the Defendant No.2 to conduct the business of the hotel on payment of royalty. In view of the fact that clause (3) was silent as regard who was to be handed over possession after the Court Receiver was discharged that the instant Chamber Summons came to be filed by the Plaintiffs for supplying the omission which was there in the order dismissing the Suit. In the said context, it is required to be noted that except Defendant No.2 Gulrokh Ardsheri Jamshed Tajbux, the rest of the partners are no more. The application filed by the Plaintiffs i.e. the Chamber Summons was opposed to on behalf of the present Petitioners and the opposition was on the ground that jurisdiction under Section 152 of the Civil Procedure Code could not be invoked for supplying the omission which has occurred in the order. The Chamber Summons was also opposed on the ground that the said

Defendants were in possession of the partnership business albeit as agents of the Receiver along with the Defendant No.2. The Trial Court in the first instance adjudicated the issue as to whether the jurisdiction under Section 152 of the Civil Procedure Code could be exercised. The Trial Court having regard to the said provision held that the decree or order or any error arising there from on account of any accidental slip or omission could be corrected and therefore the objection of the present Petitioners i.e. the Defendants could not be accepted. The Trial court thereafter having regard to the fact that the one of the partners i.e. the Defendant No.2 was alive directed that possession should be handed over to the Defendant No.2 as she being the sole surviving partner of the firm. The Trial Court as indicated above accordingly by impugned order dated 19-8-2015 has allowed the Chamber Summons and has accordingly issued the clarification which forms part of clause (3) of the impugned order, which reads thus :

“(3) Court Receiver appointed by the Hon'ble High Court is hereby discharged and Court Receiver is directed to hand over the possession of the Suit premises and business of the partnership firm to defendant no.2 being the sole surviving partner of partnership firm.”

4           The Learned Senior Counsel Mr. A. A. Kumbhakoni appearing on behalf of the Petitioners would reiterate the case of the Petitioners which was urged before the Trial Court and would contend that having regard to the nature of the clarification sought, the same would not fall within the scope or

ambit of the jurisdiction of the Court under Section 152 of the Civil Procedure Code. The Learned Senior Counsel sought to place reliance on the judgment of the Apex court in the matter of **Jayalakshmi Coelho Vs. Oswald Joseph Coelho**<sup>1</sup>. which judgment is an exposition of the Apex Court as regards the powers of the Court under Section 152 of the Civil Procedure Code. The Learned Senior Counsel would contend that since the Petitioners were in possession as agents of the Court Receiver, it is they who were entitled to continue in possession after the Court Receiver has been discharged.

5           In my view, it is not possible to accept the said contention of the Learned Senior Counsel appearing for the Petitioners. In so far as the jurisdiction under Section 152 is concerned, as indicated above the accidental slip or omission occurring in the judgment can be corrected by having recourse to the said provision. In the instant case, though by clause (3) of the original order dismissing the Suit, the Court Receiver has been discharged, the sequitur to the same did not find place in the original order which warranted the filing of the instant application i.e. the Chamber Summons. The omission to mention the sequitur to the directions which has been issued in clause (3) is therefore an omission which can be said to have arisen on account of an accidental slip of the Trial Court whilst passing the final order dismissing the Suit as the Trial Court was required to issue a direction that after the discharge of the Court

---

1 (2001) 4 Supreme Court Cases 181

Receiver as to whom the possession was to be handed by him. Since the Trial Court had accidentally failed to do so, the exercise of jurisdiction under Section 152 of the Civil Procedure Code cannot be faulted with.

6           Now coming to the other aspect that is the direction to hand over possession to the Defendant No.2, it is an undisputed position that the Defendant No.2 is the sole surviving partner of the said partnership firm. The Petitioners as indicated above are the heirs of the original two partners out of 4 and in that sense their rights as yet are inchoate. The Defendant No.2 being the sole surviving partner, the Trial Court cannot be said to have erred in directing that the possession of the partnership business be handed over to the Defendant No.2 on the discharge of the Court Receiver. In my view, the Judgment of the Apex Court in Jayalakshmi's case (*supra*) does not aid the case of the Petitioners in their endeavour to show that the jurisdiction under Section 152 could not be exercised as in paragraph (13) itself, the Apex Court has relied upon its earlier judgment where it has been held that recourse to Section 152 could be taken for correction of the decree, in so far as the mistake or omission which is accidental and not intentional, without the court having to go into the merits of the case. In the instant case, as indicated above what has been done by the Trial Court is only supplying the omission which had occurred in clause (3) of the original order dated 30-4-2015. Hence the impugned order passed by the Trial Court is not required to be interfered by this Court in its Writ Jurisdiction.

7           It s mentioned across the bar by the Learned Senior Counsel for the Petitioners that the Petitioners have filed their own independent proceedings being a Suit. If that be so, it is for the Petitioners to obtain appropriate orders in the Suit filed by them. Needless to state that if any such application for interim reliefs is made in the Suit filed by the Petitioners, the same would be considered on its own merits and in accordance with law.

8           With the aforesaid observations, the Writ Petition is disposed of.

**[R.M.SAVANT, J]**

**CERTIFICATE**

Certified to be true and correct copy of the original signed order