

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10477 OF 2014

Smt. Khairunissa S. Bilawala .. Petitioner
vs.
Rajiv Achyut Diskalkar and anr. .. Respondents

Mr. P.S. Dani, Sr. Advocate i/b Ms Pallavi A. Kulkarni for the
Petitioner.
Ms Chimalkar for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 08 SEPTEMBER 2015.

P.C. :-

1. Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith. Even otherwise, this Court by order dated 3 August 2015 had made it clear that this petition will be disposed of finally, at the stage of admission.

2. The Small Causes Court has made a decree on 6 May 2014 in R.A.E.& R. Suit No. 68/125 of 1999 directing the eviction of the respondents in the suit instituted by the petitioner.

3. In the plaint, address of the original defendant Achyut D. Disthilkar was indicated as 'Vasundhara' First floor, Room No.8, 3rd Floor, Borkar Wadi, Ram Maruti Road, Dadar, Mumbai-400 028.

Upon demise of original tenant, his legal heirs have been brought on record. Defendant No.1(b) Nitin has been indicated as residing at '*Vasundhara*', Room No.8, 4th Floor, Borkar Wadi, Ram Maruti Road, Dadar, Mumbai-400 028.

4. In the plaint, the suit premises have been described as a room on 3rd floor, being Room No.8 as mentioned in cause title of the plaint. This description is found in paragraph '2' of the plaint.

5. The judgment and decree dated 6 May 2014 describes the suit premises as Room No.8, 3rd floor, possibly on the basis of description in the paragraph '2' of the plaint.

6. After the decree was made, the petitioner-decree holder, by application dated 6 June 2014 applied for correction of the decree, so as to indicate that the suit premises means and implies Room No.8 on the 4th floor. The petitioner invoked the provisions of Section 152 of the Civil Procedure Code, 1908 (CPC) for this purpose. By the impugned order dated 16 July 2014, the said application has been rejected. Hence, present petition.

7. Mr. P.S. Dani, learned senior advocate for the petitioner, submits that the description of the suit premises in the decree is obviously an clerical error. No doubt, such error was prompted by the inaccurate description of the suit premises in the plaint. However, Mr. Dani points out that at all the stages of suit, parties were add idem that the suit premises were Room No.8 on the 4th Floor and therefore, this was a case where the provisions of Section 152 of the CPC ought to have been invoked and the error which has crept into the record, corrected.

8. Ms Chimalkar, learned counsel for the respondents, submitted that the provisions of Section 152 of CPC were not at all attracted to the facts and circumstances of the present case. She submitted that there was no error, whether clerical or otherwise on the part of Trial Court. The error, if at all, was on the part of the petitioner. Despite several opportunities and despite lapse of considerable period of time, the petitioner took no steps correct the error and therefore, it is impermissible to invoke Section 152 of the CPC. Ms Chimalkar submitted that the respondents have already instituted an appeal against the decree dated 6 May 2014 and in pursuance thereof the execution of the decree has also been stayed. If the correction of the

decree is permitted at this stage, then the valuable rights of the respondents to challenge the decree on the ground of mis-description of the suit premises might be taken away. Ms Chimalkar submitted that though this may be an error, at the highest, the same can be corrected at the stage of only execution of decree in case the decree is upheld. Ms Chimlakar also pointed out that in this case, the petitioner has not invoked the Section 151 of the CPC. For all these reasons, she submitted that this petition deserves to be dismissed.

9. Having heard the learned counsel for the parties and perused the record, in my judgment, the petitioner's application under Section 152 of the CPC ought to have been allowed, in the facts and circumstances of the present case.

10. There was no dispute whatsoever between the parties that the suit premises are Room No.8 on the 4th floor. In the written statement, no ground was taken that there is some serious mis-description of the suit premises. In the cause title, at one place, there is reference to 3rd floor and at another place, after respondent No.1(b) was brought on record, there is reference to 4th floor, which is correct floor on which the suit premises are located. It is also not

the case of the respondents that they were let out some other flat on the 3rd floor or 1st floor of the building 'Vasundhara', Borkar Wadi, Ram Maruti Road, Dadar, Mumbai-400 028. In these circumstances, it is obvious that there was clerical error in the matter of description of the suit premises. At no stage, did the party raised any serious issue with regard to such mis-description. Accordingly, a case was made out for correction of this clerical error by resorting to Section 152 of the CPC.

11. Section 152 of the CPC, reads thus:

152. Amendment of judgments, decrees or orders – 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 the parties.

12. The aforesaid provision, makes no distinction between the error that may have crept into judgments, decrees or orders either on account of Court itself or the parties to proceedings. The emphasis is upon clerical or arithmetical mistakes in the judgments, decrees or orders or for that matter record of the Court. Such mistakes may have crept in on account of mistakes of the parties. However, that does not mean that powers under Section 152 of the CPC cannot be invoked. Further, the mere circumstance that there

was no reference made to Section 151 of the CPC by the petitioner, does not mean that the Court cannot exercise powers under the said provisions.

13. Accordingly, since the error is obvious and further since the error is purely clerical in the nature, the same should have been corrected by the Trial Court. There is no question of taking away any defence of the respondents. It was never the plea of respondents that the suit itself was infirm on account of any mis-description of the suit premises. At the stage of filing of written statement or for that matter even in the course of evidence, neither of the parties appear to have realised the error which had crept into the pleadings and which has finally found way into decree. In these circumstances, there is no question of any prejudice as such to the respondents.

14. Prejudice, if any, in these circumstances is to the Trial Court, who was required to spent considerable judicial time upon a matter of this nature. In these circumstances, Mr. Dani, learned senior advocate for the petitioner, on the basis of instructions from the petitioner, has graciously offered to pay costs of Rs.15000/- to

Kirtikar Law Library. The petitioner to pay such costs to *Kirtikar Law Library* within a period of four weeks from today.

15. It is also made clear that neither in this order nor for that matter the issuance of corrected judgment and decree by the Trial Court will in any manner affect the appeal instituted by the respondents against the judgment and decree dated 6 May 2014. At the highest, the Appeal Court, to grant leave to the respondents (appellants before the Trial Court) to place on record the corrected judgment and decree, so that the record is maintained proper. The petitioner to also to place on record the corrected judgment and decree on record of the Appeal Court.

16. Accordingly, this petition is allowed. Rule is made absolute in terms of prayer clauses (a) and (b). The Trial Court is directed to issue the amended judgments and decree, subject to payment of usual costs.

(M. S. SONAK, J.)

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CERTIFICATE

“I certify that this Order uploaded is a true and correct copy of original signed Order.”