IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

CRP.No. 563 of 2010 ( )

I.A.NO.612/2009 IN OS 152/2002 OF SUB COURT, KOTTARAKKARA
DATED 09-09-2010

REVISION PETITIONER(S): PLAINTIFF

M/S.CATHOLIC SYRIAN BANK LTD.
PUNALUR BRANCH, PUNALUR
REP. BY THE BRANCH MANAGER
PUNALUR BRANCH, PUNALUR.

BY ADV. SRI.C.A.JOY

RESPONDENT(S): COUNTER PETITIONER

1. MR.S.RAVI, S/O.P SUBRAMANIYAN ACHARI
   RESIDING AT PADMABHAVAN, THOLICODU
   PUNALUR, PIN 691 305.

2. P.SUBRAHMANYAN ACHARI
   S/O.PADMABHABHAN ACHARI
   RESIDING AT PADMABHAVAN, THOLICODU
   PUNALUR, PIN 691 305.

3. S.PONNAMMA, W/O.SASIDHARAN,
   AGED 60 YEARS, RESIDING AT MANIKANDA VILASOM
   MANIYAR, PUNALUR, PIN 691 305.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P.No.563 of 2010

Dated this the 29th day of January, 2015

<u>O R D E R</u>

In this revision, the petitioner challenges the order dated 9th September, 2010 in I.A.No.612 of 2009 in O.S.No.152 of 2002 on the file of the court of the Subordinate Judge of Kottarakkara, by which the court below dismissed the application filed by the petitioner under Section 152 of the Code of Civil Procedure.

2. The petitioner filed the suit for realisation of a sum of ₹4,03,523/- together with interest at 9% per annum with quarterly rests from the date of suit till the date of realisation from defendants 1 and 2 personally and by sale of the plaint

schedule properties described in the plaint and also by sale of all of their assets both movable and immovable. There is also a prayer to pass a decree for the sale of the immovable property described in the plaint A schedule in terms of Order 34 of the Code of Civil Procedure for recovery of the amounts as claimed in the plaint.

3. The respondent/defendant filed a written statement in which there was only a bald statement that the defendants never executed any agreement of hypothecation, agreement of guarantee, letter and affidavit etc. as stated in paragraph 5 of the plaint. With reference to the specific averment in paragraph 8 of the plaint that the plaintiff is entitled to a decree against defendants 1 and 2 charged on the plaint schedule property, there is no denial or contest in the written statement.

4. The court below decreed the suit by the judgment dated 8th January, 2009 by which the plaintiff was allowed to realise an amount of ₹4,03,523/- with interest at 9% per annum from the date of suit till realisation from the defendants. No oral evidence was adduced by the defendants. In paragraph 8 of the judgment, the court below held thus :

> "Though defendants had disputed the execution of documents for the availing of the loan and the execution of revival letters acknowledging the liability, during the cross examination nothing was disputed to PW1. In the proof affidavit PW1 had deposed about the loan availed by defendants 1 and 2 by executing Exhibits A1 to A9 and the execution of revival letters as per Exhibits A8 and A9. Thus the unchallenged evidence of PW1 regarding the loan availed by defendants 1 and 2 and the execution of revival letters (Exts.A8 and A9) by them is clearly proving the case of plaintiff regarding the loan availed by defendants 1 and 2. As first and second defendants had executed Exts.A8 and A9 revival letters acknowledging their liability, the contention regarding the bar of limitation is unsustainable."

5. However, no charge decree was granted as prayed for. According to the plaintiff, the property mortgaged to the

plaintiff was transferred in favour of the third defendant. It was made clear in paragraph 8 of the plaint that the plaintiff never wanted any relief personally against defendant No.3 and the plaintiff only wanted a decree against defendants 1 and 2 and for a charge on the plaint schedule property.

6. I.A.No.612 of 2009 was filed by the plaintiff under Section 152 of the Code of Civil Procedure to incorporate in the judgment that the plaintiff is entitled to realise the amount decreed from the defendants and by sale of the plaint schedule property and the other assets of the defendants. The plaintiff also wanted to amend the decree incorporating these details and also the schedule of immovable of property mortgaged by defendants 1 and 2 in favour of the plaintiff Bank. The court below dismissed the application by the order impugned holding

that the plaintiff is not entitled to invoke Section 152 C.P.C. "to get the omitted prayer allowed". It was also held that the remedy of the plaintiff was to prefer the appeal against the judgment and decree.

7. Though notice was served on the defendant, there is no appearance for the defendant. Heard the learned counsel for the petitioner.

8. In **Syamala v. Catholic Syrian Bank Ltd.** **(2000 (2) KLT 491)**, in a similar situation where the judgment and decree omitted to grant a charge over the property, a learned Single Judge of this Court dismissed the revision filed by the defendant challenging the order allowing the application under Section 152 C.P.C. filed by the plaintiff. The decision in

Syndicate Chit Funds Ltd. v. Narayanan Nair **(1988 (1) KLT 825)** was followed. In **Catholic Syrian Bank Ltd. v. Jyothi Trading Company** **(2000 (2) KLT 575)**, the suit was for realisation of money by sale of the plaint schedule properties. The defendants withdrew their contentions and agreed for the decree in terms of the plaint. The court below decreed the suit as prayed for. However, pendente lite interest was not granted. It was held that the judgment and decree are liable to be corrected under Section 152 of the Code of Civil Procedure.

9. In **Raman Nadar Velayudhan Nadar v. Janaki Karthik** **(2011(2) KLT 149)**, it was held thus :

> "22. To err is human. Courts are manned by human beings. In the course of passing a judgment or order, it cannot be said that no mistake whatsoever would be committed by a Judge or a Presiding Officer. The well accepted principle is that an act of Court shall

do no harm to the litigant. If it is brought to the notice of the Court that while passing the judgment, a mistake was committed by the Court resulting in injury and hardship to a litigant, it is the duty of the Court to correct the mistake. As held in Kuruvilla Thomas v. State Bank of Travancore (1988(1)KLT 563) the test to be applied as to what the Judge intended. With reference to the facts of the present case, if the Judge wanted to deviate from the allotment made by the Commissioner and it was reflected so in the judgment, there would be no ground to say that it was an error arising out of accidental slip or omission. On the other hand, if the Judge intended to retain the allotment as made by the Commissioner, but still, while stating the different plots to be allotted to different parties, a deviation is made, not deliberately, but inadvertently, that is a clear case of an error which arose out of accidental slip or omission. Such an error is evident in the case on hand. The only alternative that is possible is to correct the error and to remedy the injury caused to the litigant. Dismissal of the application on technical grounds would not be proper. A pragmatic approach to the question is necessary. It only adds to the prestige of the Court, if it corrects its own mistake. The Supreme Court has held in Niyamat Ali Molla v. Sonargon Housing Co-operative Society Ltd. & Ors. (2007(4)KLT SN 66 (C.No.73) SC = AIR 2008 SC 225) that a decree can be corrected not only under S.152 of the Code but also under S.151 of the Code. Learned counsel appearing for the first respondent relied on the decision in Velayudhan Nair v. Kerala K.Y.Kuries (P) Ltd. (1987 (2)KLT 449) to support his contention that S.151 C.P.C. cannot be invoked when there is a specific provision under the Code of Civil Procedure to deal with the situation. It is well settled that S.151 of the Code would not be available if there is a specific provision in the Code to deal with a contingency. It is also well settled that an act of the Court shall do no harm to the litigant. In view of the decision of the Supreme Court in Niyamat Ali Molla v. Sonargon Housing Co-operative Society Ltd. & Ors. (2007(4)KLT SN 66 (C.No.73) SC = AIR 2008 SC 225), (there cannot be any doubt that if the circumstances so warrant, even the jurisdiction under S.151 of the Code can be resorted to, to correct a mistake which is evident on the face of record. The power that can be exercised under S.151 is quite different from the power of review and the power of correcting errors under S.152 of the Code of Civil Procedure. Still there may be areas where such errors could not be corrected either by exercising the power of review or exercising jurisdiction under S.152 of the Code of Civil Procedure. In those cases, if the Court comes to the conclusion that an error of the Court has caused prejudice to the litigant resulting in injury, nothing prevents the Court from exercising the jurisdiction under Section 151 of the Code of Civil Procedure."

10. In **Syndicate Chit Funds Ltd. v. Narayanan Nair (1988 (1) KLT 825)**, interpreting the scope of Section 152 of the Code of Civil Procedure, it was held thus :

"Four categories are mentioned in the Section which call for invocation of powers therein. (1) Clerical mistakes ; (2) arithmetical mistakes ; (3) errors arising from accidental slips; (4) errors arising from accidental

> omissions. The provision can be invoked if any one of them exists. It cannot be understood that if there is no clerical or arithmetical mistake, the judgment is not liable to be amended for any reason whatsoever. The object of the Section is to preserve substantial justice from being submerged in the bog of technical hurdles. It enables the court to change or vary its judgment so as to give effect to its meaning and intention. It helps to minimise litigation and avoid multiplicity of proceedings. It is not merely the power vested in court, but it casts a duty on the court that such amendments must be made in order to give effect to the true meaning and intention of the judgment. It is based on the principle that the act of the court shall not prejudice any party. That is precisely the reason for empowering the court to make such corrections even without an application from any party aggrieved. The words "either on its own motion" reflect the legislative concern to remind the court of its duty to do the needful when a situation warrants it, even if there is no application from any person to make such corrections. The power to amend judgments or decrees is intended for promotion of justice. Hence such power must be exercised very liberally whenever such amendments become necessary to promote the cause of justice and to save the parties from the ordeals of a separate litigation for such reliefs."

11. In the light of the principles of law mentioned above, the court below was not justified in dismissing the application. The court below failed to exercise the jurisdiction

vested in it by law.

Accordingly, the revision is allowed. The order impugned is set aside and I.A.No.612 of 2009 is allowed. No order as to costs.

K.T.SANKARAN
JUDGE

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