

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.4022 of 2014

Date of decision: 05.04.2017

Mandeep Singh Sidhu and others

..Petitioners

Versus

The Improvement Trust, Patiala and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Harminder Singh, Advocate
for the petitioners.

Mr. S.C. Pathela, Advocate
for the respondents.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 24.01.2014 (Annexure P-5) passed by the District Judge, Patiala, whereby, the application filed by the petitioners under Sections 151, 152 and 153 CPC was dismissed.

Briefly, the facts of the case as made out in the present revision petition are that the land of the petitioners was acquired by the State Government under the provisions of the Punjab Town Improvement Act, 1922. The Land Acquisition Collector, Patiala passed award No.1 of 1997-1998 on 07.08.1998 and the possession of the acquired land was taken on 19.08.1998. The petition filed by the petitioners under Section 18 of the Land Acquisition Act, 1894 (hereinafter called as 'the Act') was registered as Land Reference No.1 of 16.09.1998, which was decided on 29.07.2011

by the Land Acquisition Tribunal, Improvement Trust, Patiala (District Judge, Patiala). As per the said judgment, the petitioners were held entitled to interest @ 9% per annum on the enhanced amount of compensation from the date of passing of award by the Collector till the date of payment under Section 28 of the Act. More than one year had passed from the date of passing of award i.e., 07.08.1998 as well as taking of possession i.e., 19.08.1998 and the petitioners were entitled to interest @ 9% per annum for a period of one year i.e., from the date of taking of possession and thereafter @ 15% per annum till actual payment is made. Thereafter, the petitioners filed an application under Sections 151, 152 and 153 CPC for making corrections in the judgment and requested the Tribunal to grant interest @ 15% per annum after expiry of period of one year from the date of award/taking of possession by correcting the name of petitioner No.3. Reply to the application was filed wherein it was admitted that as per provisions of Section 28 of the Act, interest was payable @ 9% for one year and @ 15 % thereafter. The application filed by the petitioners was dismissed vide order dated 24.01.2014, which has been challenged by way of filing the present revision petition.

Learned counsel for the petitioners submits that the Court below has not taken into consideration the provisions of Section 28 of the Act, which are statutory in nature and the petitioners cannot be deprived of the same at the time of passing of judgment dated 29.07.2011. Learned counsel further submits that payment of interest on excess compensation is covered by the provisions of Section 28 of the Act. The period of more than one year had expired from the date of passing of award as well as taking of

possession and the petitioners were entitled for interest. Learned counsel also submits that in para No.8 of the application, it has been mentioned that the name of one of the petitioners i.e., petitioner No.3 was mentioned as Preet Singh Sidhu instead of Sat Preet Singh Sidhu and that correction was liable to be corrected to avoid any complication at the stage of getting of the compensation. It was a typographical error but the same has not been taken into consideration. Learned counsel also submits that the judgment relied upon in the impugned order is not applicable to the facts of the present case. Learned counsel for the petitioners has also relied upon judgments rendered by Hon'ble the Apex Court in ***Vikas Aggarwal vs. Anubha, 2002(2) RCR (Civil) 602, Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal, 1962 AIR (SC) 527, P.K. Palanisamy vs. N. Arumugham & Anr., 2009(9) SCC 173*** as well as judgment rendered by this Court in ***Union of India through defence Estates Officer, Delhi Circle, Delhi Cantt. vs. Chandan Singh son of Tek Chand, and others, Civil Revision No.6345 of 2011 decided on 09.04.2013*** in support of his contentions.

Learned counsel for the respondents has opposed the submissions made by learned counsel for the petitioners and submits that the impugned order is well reasoned and inherent powers of the Court cannot be exercised for the purposes of review of the wrong order and the same can be corrected on moving of an application under Order 47 Rule 1 CPC. As per provisions of Section 152 CPC, the Court has power to correct its own error in a judgment, decree or order but the inherent power cannot be exercised to review its own judgment. Learned counsel for the respondents has also relied upon judgment rendered by Hon'ble the Apex

Court in ***Dwaraka Das vs. State of Madhya Pradesh, 1999(2) RCR (Civil) 56*** as well as judgment rendered by the Division Bench of this Court in ***Gita Ram Kalsy vs. Arjan Singh Kalsy (Died) through his L.Rs., 1996(2) PLR 463*** in support of his contentions.

Heard arguments of learned counsel for the parties and have also perused the impugned order as well as other documents available on the file.

Undisputedly, the inherent powers of the Court under Section 151 CPC can be exercised to advance interests of justice and the technicalities will have no place in such matters. Section 151 CPC is reproduced as under: -

“Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

A similar issue was there before Hon'ble the Apex Court with regard to powers of the Court to be exercised under Section 151 CPC in ***Padam Sen vs. State of Uttar Pradesh, 1961-1 SCR 884***. The observations made by Hon'ble the Apex Court are as under: -

“The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section

151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature.”

The said observations made by Hon'ble the Apex Court clearly shows that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically mentioned in Section 151 itself. The inherent powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the Legislature. This restriction, for practical purposes, on the exercise of those powers is not because all those powers are controlled by the provisions of the Code but because it should be presumed that the procedure specifically provided by the Legislature for orders in certain circumstances is dictated by the interests of justice.

In the present case, the miscellaneous application was moved under the provisions of Section 152 read with Sections 151 and 153 CPC for correction in the award passed by the Tribunal in Land Reference No.1 dated 16.09.1998. The Tribunal in para No.31 of the award has observed as under: -

“In addition to this, the petitioner will also be entitled to interest @ 9% per annum on the enhanced amount of compensation from the date of award by the Collector till the date of payment under Section 28 of the Land Acquisition Act.”

The period of one year had expired from the date of passing of

award as well as taking of possession and the claimant/applicants were entitled to interest @ 9% per annum for a period of one year w.e.f.19.08.1998 i.e., from the date of taking of possession and after one year from the said date, they were entitled to interest @ 15% till its actual payment on the amount of compensation including excess amount, which was enhanced by the Tribunal. The application moved by the petitioners was contested on the ground that the same was not maintainable as the relief, which has not been granted, has been declined. It was opposed on the ground that it was not a clerical error, which can be corrected under the provisions of Section 152 CPC and the modification sought for does not fall within the ambit of Sections 152 and 153 CPC. The appeal filed by the State of Punjab against the award passed by the Tribunal has not been decided so far.

The petitioners made two prayers in the application before the Tribunal, one for grant of interest @ 15 % after the expiry of period of one year from the date of passing of award/taking of possession of the land in dispute and the other was for correction in the name of petitioner No.3 as his name was mentioned as Preet Singh Sidhu instead of Sat Preet Singh Sidhu. As far as mentioning of name of one of the petitioners i.e., petitioner No.3 is concerned, the mistake can be corrected as it is a typographical mistake.

As per provisions of Section 28 of the Act, the interest is payable @ 9% for one year and @ 15% thereafter. The application moved by the petitioners was dismissed by holding that the prayer made in the application cannot be accepted as it was not a clerical error or arithmetical

mistake.

Undisputedly, the inherent power is to be exercised, in case, the same is necessary to do the right and to undue a wrong in the course of administration of justice. The aim of legislature in enacting various provisions of law of procedure is to serve the ends of justice. In case, it falls within the ambit of express provisions of the statute, the inherent powers of the Court must, to that extent, be regarded as abrogated by the legislature. The Court is empowered to satisfy itself by seeing as to whether truth comes out of that or not. The Court has complete inherent power in cases, where the Court is to do complete justice to the parties to the litigation. The inherent powers under Section 151 CPC can be exercised by the Court to redress only such grievance for which, no remedy is provided under the Code. Section 151 is mere procedural provision which enables the party to have the proceedings of a pending suit conducted in a manner and same is consistent with the justice and equity. Such inherent powers cannot be used to reopen settled matters or to restrain the execution of a decree at the instance of one, who was not party to the suit.

The scope of Section 152 is when there is a clerical or arithmetical mistakes in judgments, decrees and orders, which may arise from any accidental slip or omission at any stage and the same can be corrected by the Court either of his own motion or on the application moved by any of the parties.

The power under Section 152 is for rectification of clerical or arithmetical error but it cannot be used for reconsideration of the merits of the case. The principle behind this provision is that no one should suffer due

to bonafide mistake. The typographical/clerical errors are not legal errors, it requires no review and the same have crept in through inadvertence and it can be corrected under Sections 151 and 152 of the Code. Even there can be a mistake in drafting of the preliminary decree in the suit for recovery of money and even such decree can be corrected under Section 152 of the Code. Even there is no time limit for moving an application under Section 152 the Code as has been held by this Court in ***Bawa vs. Babu, AIR 1979 P&H 94.***

The power of correcting clerical or arithmetical mistake cannot be equated with power of review. Section 152 of the Code deals with amendment of judgments, decrees and orders whereas Section 153 confers a general power on the Court to amend any defect or error in any proceedings in a suit and to make all necessary amendments for the purpose of determining the real questions between the parties. The object of the section is to minimize litigation and to avoid multiplicity of proceedings and to see that mere technicalities may not be allowed to stand in the way of substantial justice. The Court has power to allow all necessary amendments for raising real question at issue between the parties, Provided no injury or injustice is caused to the party opposite or other party can be sufficiently compensated by way of costs or otherwise.

It has been held in various judgments of this Court as well Hon'ble the Apex Court that the rules of procedure are intended to be a handmade to the administration of justice and it cannot be refused merely on the ground that some mistake, negligence, inadvertence or even infraction of the rules of procedure is there. The object is that this power can be

exercised for the purpose of determining the real question in controversy between the parties and it is intended to serve the ends of justice and for administration of justice.

It appears that the impugned order is only a result of misreading of material on record as in Para No.8 of the application, it has clearly been mentioned that petitioner No.3 has been mentioned as Preet Singh Sidhu instead of Sat Preet Singh Sidhu in the judgment and this mistake is liable to be corrected to avoid any complication at the stage of receiving/withdrawing compensation. Said mistake has not been taken note of as it has occurred during typing of the judgment, which can be termed as typographical mistake. Moreover, the benefits granted under Section 28 of the Act are statutory in nature and the petitioners could not be deprived of said rights at the time of passing of the judgment. The mistake can be corrected by the same Court but still it has not been corrected.

In view of the facts and circumstances as mentioned above, the present revision petition is partly allowed and impugned order dated 24.01.2014 (Annexure P-5) is modified to the extent that name of petitioner No.3 be read as Sat Preet Singh Sidhu instead of Preet Singh Sidhu.

05.04.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No