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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 28.03.2017*

+ CM(M) 305/2017

MANU RAMCHANDANI Petitioner
Through Mr.Sudhanshu Batra, Sr. Advocate
with Mr.Gaurav Dubey and Mr.Shashwat
V.Dubey, Advocates

versus

M/S THREE N CONSTRUCTIONS PVT LTD & ORS.... Respondent
Through Mr.Ashish Mohan and Mr.Mohit
Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.10450/2017

Exemption allowed, subject to all just exceptions.

CM(M) 305/2017 & CM No.10449/2017

1. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 28.01.2017 by which the trial court disposed of three applications filed by the respondent/plaintiff under Section 151 CPC, under Section 152 and 153 CPC and under Order 6 Rule 17 CPC.

2. The background facts are that the respondents filed a suit for recovery of possession, recovery of money, mesne profit, damages, use and occupation charges against the petitioners in respect of property No.M-36,

GK-I Market, First Floor, New Delhi. On 21.9.2013 the trial court decreed the suit. The petitioners have filed an appeal being RFA No.71/2014 against the said decree which is pending consideration. The said appeal is listed on the Regular Board.

3. It is somewhere around that stage that the respondent seems to have realised that there is a misdescription in the plaint of the suit property which has been described as “first floor” whereas it is actually “ground floor”. Based on the same, the present application has been filed for correction/amendment of the judgment and decree dated 21.9.2013. It may be noted that this court where the appeal is pending, namely, RFA 71/2014 by order dated 11.5.2016 has granted liberty to the trial court to decide the applications filed by respondents for correction, subject to rights and contentions of the petitioner.

4. I have heard learned counsel for the parties. Learned senior counsel appearing for the petitioner has vehemently argued that the respondent cannot take advantage of their negligence. He submits that in the cross-examination of the petitioner, it had been stated that the address mentioned in the plaint is incorrect. He submits that despite the said deposition of the petitioner the respondents were negligent and took no steps to amend the plaint. He relies upon judgment of the Supreme Court in ***State of Punjab vs. Darshan Singh in Appeal (civil) 8497-8408/2003*** to contend that the corrections which are sought to be made by the trial court by the impugned order cannot be termed to be clerical corrections.

5. Learned counsel for the respondent has pointed out that in the course of cross-examination of D1W1, the trial court had noted the deposition of the said witness that he has nothing to do with the first floor and is in

occupation of the ground floor. Regarding this submission of D1W1 the trial court had noted that henceforth the suit shop is described as stated in the deposition. He also points out that no prejudice was caused to the petitioner as alongwith the plaint a site plan was filed which clearly depicted the location of the suit property as that of the ground floor and mezzanine floor.

6. A perusal of the impugned order would show that the trial court has noted the cross-examination of D1W1 which took place on 2.8.2013 and the order of the trial court noting that henceforth the suit shop mentioned in the deposition shall mean the suit property. It also noted that no prejudice was caused to the petitioners by the wrong description of the property and allowed the application of the respondent under section 152 and 153 CPC. The application under Order 6 Rule 17 CPC was disposed of as redundant.

7. Section 152 reads as follows:-

“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.”

8. The Supreme Court in the case of ***Pratibha Singh & Anr. vs. Shanti Devi Prasad & Anr., AIR 2003 SC 643*** was dealing with a case where a correct, specific and exact description of the immovable property forming subject matter of the suit was missing. In those facts, the Supreme Court held as follows:-

“2. Failure on the part of plaintiffs to give correct, specific and exact description of the immovable property forming subject-matter of suit, added by omission on the part of the Trial Court to insist on compliance by the draftsman of the plaint with the rules of pleadings, has resulted in a decree which is yet to

witness its full execution and satisfaction though the litigation has by this time stretched over two decades.

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17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case -- which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the CPC.”

9. The facts of the present case are somewhat identical i.e. a case of misdescription of the property. What the petitioner seeks to do is to deny to the respondent the fruits of a decree that has been passed against the petitioner

10. In the present case there are several facts which show that there is a clerical mistake in description of the property by the plaintiff/respondent in the plaint, and that no prejudice was caused to the petitioners as the petitioners always understood the property in question being subject matter of the suit to be the property, namely, ground floor and mezzanine floor in

question of which the petitioners were the tenants.

11. The respondents have placed on record before this court the siteplan annexed with the plaint. The siteplan correctly described the location of the property as ground floor and mezzanine floor.

12. Similarly, in the cross-examination of D1W1 on 2.8.2013 the court had noted as follows:-

“I am known by name of Manohar as well as Manu Ramchandani. The suit shop is situated in M-Block Market, G.K.-I, New Delhi on the ground floor. The area of suit shop is approximately 300-350 sq.feet. (Vol. The suit shop as described in plaint is located on first floor and I have nothing to do with First floor shop thus the shop under our occupation and possession is on the ground floor numbered as M-36B, located on ground floor and area of which is approx. 300-350 sq.ft. together with the work shop which is located on the rear side of the said shop.

The area of rear work shop is approx. 100-120 sq.ft.

The suit shop in total would be around 400-470 sq.ft.

(Hence forth the suit shop mentioned in the deposition will mean as such).”

13. In the light of the above two facts, it is manifest that no prejudice has been caused to the petitioners. The petitioners were all along aware that the property in question which is subject matter of the suit is the property as described in the site plan, namely, ground floor and mezzanine floor. What the petitioners are trying to do is actually render the decree passed by the trial court as redundant on technicalities which the petitioner cannot be permitted to do.

14. There is no infirmity in the impugned order which would warrant any interference by this court. The trial court has rightly exercised powers under

Section 152 CPC to correct the description of the property.

15. There is no merit in the present petition. Petition is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

MARCH 28, 2017

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