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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 205/2018 & CM No. 39389/2018
SATISH KUMAR JAINPetitioner
Through: Mr. R.K. Jain, Adv.

versus

VEENA JAIN @ SHEELU JAIN & ORS. Respondents
Through Mr.Sumit Rana, Advocate with
Mr.Amit Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

ORDER

% **13.12.2018**

1. The following impugned orders passed by the court of Ms.Chhavi Kapoor, MM (Mahila Court-1), Shahdara District, Karkardooma Court, Delhi ('Trial Court'), are the subject matter of challenge in this revision petition:

(i) order dated 04.08.2018 dismissing the miscellaneous application bearing CID No.1/18 in Civil Suit No. 106/12, filed by the petitioner/plaintiff under Section 152 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC') for correction of the decree sheet and

(ii) order dated 16.08.2018 dismissing the application under Order XLVII rule 1 and 2 CPC of the petitioner.

2. The petitioner filed a civil suit no. 106/12 (C.ID No. 01/18) against the respondents/defendants for grant of a decree of possession of built up property for portion comprising of one room on the ground

floor and the entire 1st and 2nd floor, forming part of property having Municipal No.148, State Bank Colony, GT Road, Delhi as shown in the site plan annexed with the plaint. Both the parties adduced their respective evidence and after hearing both the parties, the Trial Court by order dated 09.05.2018 granted relief in the following terms '*In view of my observations, suit of the plaintiff is decreed with costs. Decree-sheet be prepared in accordance with relief granted*'. The decree-sheet mentions '*This suit coming on this day for the disposal before this court in the presence of Sh.P.K. Jain, Advocate for plaintiff, Sh. R.B. Singh, Advocate for defendants. It is ordered that the suit of the plaintiff is decreed with costs*'.

3. The petitioner filed an application on 29.05.2018 under Section 152 read with Section 151 CPC for correcting the judgment and decree by incorporating the necessary details of the suit property. The application was dismissed as non-maintainable vide impugned order dated 04.08.2018. The Trial Court while dismissing the application observed that '*The undersigned officer is holding the court of Metropolitan Magistrate/Mahila Court and she does not have the jurisdiction to exercise powers of a Civil court at this stage, when the file has already been sent to the successor court as per orders of Hon'ble High Court of Delhi. In such circumstances, the application is not maintainable and is dismissed*'.

4. The petitioner filed an application on 09.08.2018 under Order XLVII Rule 1 and 2 read with Section 151 CPC before the Trial Court

for review of the order dated 04.08.2018. This application came to be dismissed by impugned order dated 16.08.2018 for the same reason.

5. Learned counsel for the petitioner submits that Ms. Chhavi Kapoor, learned Metropolitan Magistrate (Mahila Court-1), Shahdara District, Karkardooma Court, Delhi, had in fact heard the final arguments in the civil suit while she was posted as Civil Judge (West), Tis Hazari Courts, Delhi. She listed the suit for pronouncement of the order for 27.03.2017. Meanwhile, Ms. Chhavi Kapoor, learned Civil Judge was transferred to Shahdara District as Metropolitan Magistrate (Mahila Court-1). By order of this Court on administrative side on 06.02.2017, she finally decided the civil suit no. 106/12 by the judgment and decree dated 09.05.2018 while she was posted as Metropolitan Magistrate (Mahila Court-1), Shahdara District, Karkardooma Court, Delhi. After pronouncement of the judgment, she had sent back the file to the successor court of Civil Judge-06, West District, Tis Hazari Courts, Delhi and the purpose of sending the file/record back was that the file was required to be consigned to the Record Room in the concerned district i.e. West District, Delhi.

6. Learned Counsel for the petitioner cites a judgment of the Hon'ble Supreme Court in **Laxmi Ram Bhuyan vs. Hari Prasad Bhuyan & Ors., AIR 2003 SC 351**, wherein it was held that *'It is for the Court, decreeing the suit, to examine the reliefs and then construct the operative part of the judgment in such manner as to bring the reliefs granted in conformity with the findings arrived at on different*

issues and also admitted facts. The trial Court merely observing in the operative part of the judgment that the suit is decreed or an appellate Court disposing of an appeal against dismissal of suit observing the appeal is allowed, and then staying short at that, without specifying the reliefs to which the successful party has been found entitled tantamounts to a failure on the part of the author of judgment of discharge obligation cast on the Judge by the provisions of the Code of Civil Procedure'. The Apex Court further observed that "The parties, the draftsman of decree and the executing Court cannot be left guessing what was transpiring in the mind of the Judge decreeing the suit or allowing the appeal without further placing on record the reliefs to which the plaintiffs are held entitled in the opinion of the Judge." Further, the Apex Court has also opined that the remedy lies in Section 152 of the CPC "in our opinion, the successful party has no other option but to have recourse of Section 152 of CPC which provides for clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission being corrected at any time by the Court either on its own motion or on the application of any of the parties. A reading of the judgment of the High Court shows that in its opinion the plaintiffs were found entitled to succeed in the suit. There is an accidental slip or omission in manifesting the intention of the Court by couching the reliefs to which the plaintiffs were entitled in the event of their succeeding in the suit. Section 152 enables the Court to vary its judgment so as to give effect to its meaning and intention."

7. While deciding a case titled as **Amar Nath v. Jee Ram and Anr. 2017 SCC OnLine Del 8524**, I have relied upon a judgment of the Hon'ble Supreme Court in **Ravinder Kaur v. Ashok Kumar (2003) 8 SCC 289** and the relevant paras read as under:-

“11. The Apex Court in *Ravinder Kaur v. Ashok Kumar*, (2003) 8 SCC 289, observed that Courts of law should be careful enough to see through such diabolical plans of the judgment debtors to deny the decree holders the fruits of the decree obtained by them.

12. It is noticed that the impugned judgment is dated 22.03.2011 whereas the decree is dated 10.05.2011. Learned Trial Court did not ensure that the description of the property is mentioned in the Decree Sheet. Order XX Rule 6 of CPC prescribes the contents of decree which reads as under:—

“6. Contents of decree. - (1) The decree shall agree with the judgment; it shall contain the number of the suit, the [names and descriptions of the parties, their registered addresses,] and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.”

13. Order XX Rule 9 of CPC directs that when the suit is for recovery of immovable property, it must mention description of such property, which reads as under:—

“9. Decree for recovery of immovable property. - Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.”

14. Order XX Rule 7 of CPC provides that the decree shall bear date the day on which the judgment was pronounced and it reads as under:—

“7. Date of decree. - The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.”

15. The learned Additional District Judge has failed to mention the description of property in terms of Order XX Rule 6 and Rule 9 of CPC. Instead of mentioning the same date of judgment i.e. 22.03.2011 in the decree sheet, learned Additional District Judge has put the date as 10.05.2011. She also signed it on the first page at the bottom above the name of Advocate. The succeeding learned Additional District Judge has ordered to rectify the decree sheet vide order dated 22.01.2016 in M.A. No. 33/2015 and ordered to mention the description of property in the decree-sheet, but decree-sheet was not rectified. This troubled the decree-holders/plaintiffs/respondents to move another application before the same learned Additional District Judge and only then amended decree sheet was ordered to be prepared on 04.02.2017 and the amended decree sheet was prepared on that day.

16. In *Ravinder Kumar* (supra), the Apex Court observed that errors on the part of Judicial Forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name in the Judicial system.”

8. The judgment dated 09.05.2018 indicates that the suit for possession in respect of suit property was decreed in favour of the petitioner which is not mentioned in the relief. While rendering its findings on issues No.4, 5, 6, 7 & 8 in favour of the petitioner, the Trial Court concluded that *“since the possession of the defendants in the suit property is unauthorized therefore I hereby call upon them to vacate the entire first floor, second floor and one room on the ground floor (portion Mark Yellow in site plan Ex.PW1/1) of the suit property and hand it over back to the plaintiff immediately. Consequently, issues No.4, 5, 6, 7 & 8 are answered in favour of the plaintiff.”* Thereafter, the trial court decided issue No.1 followed by finding on issue No.2 and then issue No.4. While granting relief in the end, the trial Court ordered *“in view of my observations, suit of the plaintiff is decreed with costs. Decreesheet be prepared in accordance with relief granted.”* The Trial Court failed to mention the specific details of the relief granted for the possession and the suit property. In the judgment and decree dated 09.05.2018, Ms. Chhavi Kapoor has mentioned her designation as Metropolitan Magistrate, Mahila Court-1. In fact, she had heard the arguments as Civil Judge and listed the matter for orders. In spite of her transfer as MM (Mahila Court-1) for the purpose of deciding the civil suit, she continues to be Civil Judge.

9. Nevertheless, the decree that was passed, failed to record the effect of this judgment as the contents of the decree were not as per Order XX Rule 6 and 9 of the CPC.

10. Learned counsel for the respondent, on instructions, states at the bar that the respondent has no objection if the impugned orders dated 04.08.2018 and 16.08.2018 are set aside and the matter is sent back to the learned Civil Judge/Metropolitan Magistrate to decide the application dated 29.05.2018 in accordance with law.

11. In these circumstances, the impugned orders dated 04.08.2018 and 16.08.2018 are hereby set aside and Ms.Chhavi Kapoor, learned MM (Mahila Court-1), Shahdara District, Karkardooma Court, Delhi, who has decided the civil suit No. 106/12 is directed to decide the application under Section 152 CPC in accordance with law, keeping in view the observations made in this order. She is also directed to mention her designation as Civil Judge.

12. Parties are directed to appear before the said Court on 10.01.2019 at 10 am.

13. The petition along with application, being CM No. 39389/2018, is disposed of accordingly.

VINOD GOEL, J.

DECEMBER 13, 2018

"shailendra"