

OD-1

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/165/2021
With
CS No. 144 of 2016
IA No. GA/1/2021

ONGC LIMITED
Versus
SQUARE FOUR ASSETS MANAGEMENT AND RECONSTRUCTION COMPANY
PVT. LTD. AND ORS.

BEFORE:

The Hon'ble JUSTICE HARISH TANDON
AND
The Hon'ble JUSTICE RABINDRANATH SAMANTA

Date : November 29, 2021.

(Through Video Conference)

Appearance

Mr. Ajoy Krishna Chatterjee, Sr. Adv.
Mr. Anup Kanti Poddar, Adv.
Mr. Ayan Poddar, Adv.
Ms. Moumi Yasmin, Adv.
Ms. Poulami Bhowmick, Adv.
...for the appellant/defendant no.2

Mr. Joy Saha, Sr. Adv.
Mr. Zeeshan Haque, Adv.
Mr. Subranil Dey, Adv.
Ms. Sudipta Paul, Adv.
...for the respondent nos. 1 to 6

Mr. Kaushik Banerjee, Adv.
...for the respondent no.7

The Court: Leave is granted to the advocate-on-record of the
appellant to obtain the certified copy of the order dated 29th September, 2021

with an undertaking that it will be filed with the department despite disposal of the instant appeal.

The instant appeal arises from an order dated 29th September, 2021 passed by the Single Bench dismissing an application filed by the appellant seeking the correction of a typographical, ministerial or clerical error crept up in the order dated 11th July, 2017.

The suit for eviction, recovery of possession and ascertainment of the mesne profit was instituted by the plaintiff/respondent against the appellant in respect of the immovable property described in the schedule appended to the plaint. Subsequently, an application under Chapter XIII A of the Original Side Rules of this Court was taken out alleging that the defendant/appellant has no plausible defence nor there is any reasonable ground which can be treated as a good defence and, therefore, the decree is required to be passed immediately.

By order dated 11th July, 2017, the said application filed by the plaintiff/respondent was disposed of recording the fact that the appellant had already delivered vacant possession of the demised premises and, therefore, the only remedy which can be extended pertains to the quantification of the mesne profit between the period from October 2015 to December 2016. Accordingly, the mesne profit was quantified and/or determined and a decree was passed directing the appellant to pay the sum so determined with a simple interest at the rate of 8% per annum from the date of the order till the payment is made. So far as the balance claim was concerned, it has been referred to a Special Referee appointed by the Court. Subsequently, an application was filed for correction of

the clerical/ministerial error which crept up in the said order more particularly pertaining to the area which was in occupation of the appellant.

According to Mr. Chatterjee, learned senior advocate, the deed of assignment/lease would evince that the demised premises was comprised of 22,500 sq. ft. as depicted in part I of schedule C thereto and by no stretch of imagination it can be construed as 31,500 sq. ft. of super built up area. He strongly contends that the bilateral document, if it discloses the facts, the parties cannot resile therefrom nor in fact have been done and, therefore, the learned Judge while passing a decree on an application under Chapter XIII A had committed a mistake in recording the area of the demised premises. He further contends that even the rent receipts which were subsequently issued as well as the notice terminating the agreement would corroborate such facts and therefore there is no fetter on the part of the Court to exercise the power assigned under Section 152 of the Code or even otherwise in exercise of the inherent power to correct the ministerial/clerical error.

On the other hand, the learned advocate for the respondent opposes the appeal with categorical assertion that the scope under Section 152 of the Code is very limited and cannot be used as a tool to reopen the judgement or the decree. He further submits that the mistake, if it is clerical or ministerial, can always be corrected by the Court but the party choosing for such correction has to promptly approach the same Judge when the event happened before the Court is still fresh in his mind. In order to countenance such submission, the judgement of the Supreme Court rendered in case of *State of Maharashtra -vs- Ramdas Shrinivas Nayak* reported in AIR 1982 SC 1249 has been referred. He

thus submits that the single Bench at the time of passing the decree as well as dismissing an application under Section 152 of the Code was aware of the said fact and in fact acted upon the uniform stand of the parties which cannot be said to be a mistake or an error as contemplated under Section 152 of the Code.

Having heard the respective submissions and on consideration of the materials which have been canvassed before us, the only point which falls for consideration is whether the scope under Section 152 of the Code can be extended to find out the mistake by making a roving enquiry or is amenable to be exercised simplicitor on the basis of the bare look of the order or the judgement.

It is no doubt true that the scope under Section 152 of the Code is limited and microscopic. The legislature never intended to expand the horizon of such provision for the purpose of ascertaining the facts by making a roving enquiry nor intended to be used as a tool for re-visitation or re-look of the matter in its entirety. The mistake must be ministerial or clerical or arithmetical which on the bare look of the same is amenable to be ascertained and no reasonable man would allow such mistake to find place within the four corners of the judgement or the order. It is not a tool to be used in the guise of power of review nor the Court exercises the appellate jurisdiction. The aforesaid provision is based on the legal maxim *Actus Curiae neminem gravabit* so that the act of Court shall not prejudice any litigant. If there is a mistake in the order, such mistake should not be allowed to perpetuate for all time to come but should be rectified provided the Court finds such mistake patent on the face of it.

We are conscious of the somewhat settled proposition of law that in the guise of the correction of the clerical, arithmetical or ministerial error, one

cannot achieve either the review, modification or clarification as the concept and the consideration are completely different. The wrong cannot be allowed to remain on record and should be corrected provided such wrong does not require any extensive enquiry or assimilation of the facts or the evidence to be gathered for such purposes. It is one thing to say that there has been a clerical, ministerial or arithmetical error than the wrong recording of the event happened before the Court. In latter case, the remedy as suggested in *Ramdas Nayak* is required to be resorted but the said principles cannot be extended to an eventuality contemplated under Section 152 of the Code. Definitely if there has been a wrong recording of the events happened before the Court and if the party feels to get it rectified, the proper remedy is to approach the same Judge before it fades from his memory and the appellate Court would be slow and circumspect in interfering with such orders. It is totally different when an approach is made to the Court on the ground of clerical, ministerial and arithmetical error discernible from the face of the record without any extensive enquiry into it.

Reverting to the facts of the instant case, we have found that the points sought to be agitated by Mr. Chatterjee require a roving enquiry of the documents and the facts pleaded by the parties including the veracity thereof which by no stretch of imagination can be construed as an error under Section 152 of the Code. If such points are raised, the appropriate forum would deal with it but not in exercise of power under Section 152 of the Code.

We are deliberately not making any observations on the merit or the demerit of the argument as any observation would have counter impact and therefore restricting our observation to the scope under Section 152 of the Code.

If on a factual interpretation of the documents and the materials, if two views are possible and one view has been adopted by the Court, it would not be proper on the part of the appellate Court to interfere with the order by substituting the other view except when the view expressed by the Single Bench is unconscionable, unreasonable and improbable.

There is no infirmity or illegality in the impugned order. The appeal is dismissed. In view of the dismissal of the appeal, the connected application has become infructuous and is accordingly dismissed.

No order as to costs.

(HARISH TANDON, J.)

(RABINDRANATH SAMANTA, J.)