

01 03.08.22
&
02 Ct. No. 04

Ab

In the High Court at Calcutta
Civil Appellate Jurisdiction
Commercial Division

F.M.A.T. 128 of 2022
CAN 1 of 2022
CAN 2 of 2022
CAN 3 of 2022

State of Bank of India
Vs.
India Power Corporation Limited & Anr.

With

F.M.A.T. 142 of 2022
CAN 1 of 2022
CAN 3 of 2022

State of Bank of India
Vs.
India Power Corporation Limited & Anr.

Mr. Jishnu Saha,
Mr. Debnath Ghosh,
Mr. S. D. Majumder,
Ms. Pubali Sinha Chowdhury,
Mr. Bhavesh Garodia.
... for the appellant/petitioner.
Mr. Deepak Khoshla,
Mr. Mainak Bose,
Mr. Kaushik Chaudhury,
Mr. Bratin Kumar Dey,
Ms. Anjana Banerjee.
... for the respondents.

The bunch of appeals has been filed challenging the ad interim order of injunction, correction of the said order and the order extending the aforesaid orders.

It appears that upon filing a suit for various reliefs pertaining to the declaration that the contract of guarantee executed by the plaintiff no. 1 in favour of the lenders and the appellant acting as security trustee and/or agent for the said lenders is null and void *ab initio* and the other reliefs relating to the sale and transfer of the equity shares of the plaintiff no. 1.

An application for temporary injunction was

moved for an *ex parte* ad interim order on 24th January, 2022. The Commercial Court restrained the defendant nos. 3 to 20 from initiating proceedings or continuing proceedings of recovery of (alleged) debt against the plaintiff no. 1 in terms of the alleged dues of the defendant no. 21 on the basis of the guarantee executed on 23rd September, 2016 by the plaintiff no. 1 till 29th January, 2022 before any Tribunal.

On the next date, an application was taken out by the plaintiffs captioned as “an application under Section 151 of the Code of Civil Procedure” for correction of the typographical errors crept in the order dated 24th January, 2022 and related reliefs. The first paragraph of the said application pertains to the nature of the suit and the reliefs claimed therein. The second paragraph relates to the events happened before the Court at the time of passing an *ex parte* ad interim order of injunction. In the third paragraph, it has been averred that upon obtaining a copy of the order dated 24th January, 2022 the following typographical and similar errors have been noticed, which requires correction/modification/amplification by the Court in terms of the suggestion given in paragraph 3 and the Table appended thereto. Paragraph 4 and the Table thereafter relates to the other consequential orders passed for interrogatories, which are of no relevance for the present purposes. Paragraph nos. 5, 6 and 7, which form part of the submissions are in relation to an existence of prima facie case, balance of convenience and inconvenience and irreparable loss and injury that would be caused in the event the prayer made therein is not allowed.

Interestingly, the prayer of the said application manifest the correction of the typographical errors in the order dated 24th January, 2022 in tune with the Table inserted in paragraph 3 thereof.

It is beyond cavil of doubt that the nomenclature of the application is immaterial nor can be a determinant factor for the purpose of the consideration of the reliefs claimed therein. The subsistence of the application is required to be looked into and the Court should not be swayed by a mere nomenclature or wrong quoting of Section in an application.

It admits no ambiguity that the inherent power enshrined under Section 141 of the Code cannot be activated and/or pressed in action, if there is an express provision provided in the Code. The inherent power reserved in a procedural law is to meet out the justice in absence of any express provision and to be exercised *ex debito justitiae*.

The power of the Court to grant relief in order to render the complete justice is eminent in the said provision and to be exercised by the Court with great caution and care and not in a mechanical or routine manner. The subsistence of the application as evident from the averments made within the four corners thereof leaves no ambiguity in our mind that what was sought to be achieved is the correction of the typographical errors crept in the order dated 24th January, 2022.

There is an express provision provided in the Code under Section 152 thereof bestowing the power upon the Court to correct the typographical, arithmetical and/or ministerial errors in the judgements, decrees or orders either by its own motion or an application filed by either of the parties.

The Apex Court in the case of ***State of Punjab vs. Darshan Singh***, reported in **(2004) 1 SCC 328** succinctly held that such power is required to be exercised for correction of the mistakes by the Court and does not clothe any such power in passing the

effective judicial orders. The aforesaid power is to be exercised within the limited compass and cannot expand its horizon to reach out all in and sundry things after the parent order is passed nor can be utilized and/or used for reconsideration and/or revisitation of the order. It would be apt to quote the relevant excerpts from paragraph 12 of the said Report, which runs thus:

“Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the Section cannot be pressed into

service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of Code even after passing of effective orders in the lis pending before them. No Court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order. Similar view was expressed by this Court in *Dwaraka Das v. State of M.P. Pradesh* and *Jayalakshmi Coelho v. Oswald Joseph Coelho*.”

The language employed in Section 152 of the Code is based upon a legal maxim “*actus curiae neminem gravavit*”; meaning thereby the act of the Court shall not cause prejudice to the litigant. Ordinarily the error occasioned through an accidental slip or of such nature or even an error, which is *ex facie* found of the record, is amenable to be corrected by invoking the aforesaid power enshrined under Section 152 of the Code. While exercising such power, the Court need not have to make a roving enquiry and hovers upon the voluminous papers to find out such errors.

In a recent judgement rendered in case of ***Sepco Electric Power Construction Corporation vs. Power Mech Projects Ltd.*** reported in **(2021) 10 SCC 792**, the Apex Court succinctly highlighted the scope of the power of the Court in correcting the typographical errors in the following:

“Contrary to the contention of the respondent, as recorded in the order dated 16-5-2019 of the Court, there was no typographical error in the order dated 12-2-2019. One can say that there is a typographical error when there is an inadvertent mistake in a figure or the spelling of a word by reason of pressing a wrong key of the keyboard or the omission or duplication of a word or phrase or even a sentence/sentences. A typographical error is obvious. That was not the

case here.”

The Law enunciated in the aforementioned Reports manifest that the power to correct the typographical errors is conferred upon the Court, but such power is to be exercised with great caution and care and never intended to make a fresh effective judicial order or imposed some new things into the judgement, order or a decree, which are conspicuously absent therein.

Reverting to the instant case, the order dated 24th January, 2022 was clear, explicit, lucid and categorical that the ad interim order of injunction is imposed from initiating the proceedings or continuing with proceedings of the recovery of debt on the basis of the guarantee executed on 23rd September, 2016. The Court after passing an ad interim order of injunction was cautious that it will not impinge upon any action or further action to be taken before any appropriate Court having concurrent or superior jurisdiction to the said Court. The Court not only mentioned once but twice in the said order and, therefore, it cannot be construed that the omission to pass an order as suggested in paragraph 3 was due to the typographical or ministerial errors.

If the Court has passed an order granting a particular relief it *ipso facto* lead to the presumption that other relief has not been granted and, therefore, a person aggrieved thereby has a remedy provided under the Act, but certainly invocation of Section 152 of the Code is warranted.

We, thus, cannot concur with the decision of the Commercial Court in passing an order dated 11th February, 2022 on the basis of an application for correction of typographical and/or ministerial errors and, therefore, the same is hereby set aside.

Reverting back to the parent order dated 24th January, 2022, we find that the said order was extended from time to time and in the meantime the appellant has also filed affidavit and we have been given to understand that the said application is otherwise ready for final hearing and the date has been fixed on 5th August, 2022. It would not be proper at this stage when the main application for temporary injunction is due for its final disposal to interfere with the said order with the rider that the Commercial Court shall not be swayed by the fact that this Court declined to interfere with the *ex parte* ad interim order of injunction.

It is to be remembered that the consideration at the time of passing an *ex parte* ad interim order of injunction is different than at the time of disposing of an application for temporary injunction finally after exchange of affidavits and in presence of both the parties.

Since the application for temporary injunction has been fixed on 5th August, 2022, we expect that the learned Judge shall take up the said application on the said date and endeavour shall be shown to dispose of the same within fortnight thereafter.

The Commercial Court shall fix the matter on day to day basis in order to adhere the time limit indicated hereinabove.

It goes without saying that the Counsels of the respective parties appearing before us have assured this Court that they would co-operate and assist the Commercial Court in disposing of the said application for temporary injunction within the time indicated hereinabove and shall not pray for unnecessary adjournment unless necessitated by unforeseen and unavoidable circumstances.

With these observations all the appeals and

connected applications are disposed of.

There shall however be no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)