

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

111

CR-265-2022 (O&M)
Date of decision: 24.08.2022

RAJINDER SINGH

....Petitioner(s)

Versus

AMRIK SINGH AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Avnish Mittal, Advocate
for the petitioner.

MANJARI NEHRU KAUL. J. (ORAL)

The instant petition has been filed under Article 227 of the Constitution of India praying for setting aside of the impugned order dated 04.01.2022 (Annexure P-10) passed by learned lower Appellate Court in Civil Miscellaneous No.17 of 2020 titled Amrik Singh and another Versus Rajinder Singh, disposing of the application dated 01.02.2020 (Annexure P-8) filed by the applicants-respondents under Order 47 Rule 1 read with Section 151 CPC for setting aside the order dated 20.01.2020 (Annexure P-7) and for dismissing the application so filed by the respondents (Annexure P-8) with costs.

Learned counsel contends that the impugned order suffers from patent illegality as the learned lower Appellate Court has acted beyond the scope of review. He submits that no application for correction of the decree was filed by the respondents, therefore, they were estopped from filing the review application and the learned lower Appellate Court had thus wrongly entertained the said application.

Learned counsel submits that even otherwise there was no error apparent on the face of it as once the Court had applied its mind while passing the order dated 20.01.2020 (Annexure P-7), the power of review could not have been

exercised to change the said order. Furthermore, learned counsel submits that once the decree-sheet specified about the costs of appeal, the Court below could not have interfered with the award of costs.

I have heard learned counsel for the petitioner and perused the relevant material on record.

An application for review under Order 47 Rule 1 can be made only on any of the following grounds:-

- i. When the applicant has discovered some new and important matter or evidence which was not within his knowledge earlier, despite exercise of due diligence or it could not have been produced by him at the time of the passing of the decree or making of the order, as the case may be;
- ii. When there is some mistake or error apparent on the face of the record;
- iii. For any other sufficient reasons.

Adverting to the case in hand, a bare perusal of the judgment and decree dated 09.10.2013 (Annexure P-1) reveals that the learned lower Appellate Court held that “***The suit of the appellant is hereby decreed with costs....***”. It was further held therein that “***The appeal in question is allowed. Decree sheet be drawn accordingly***”. Therefore, no order as to costs of appeal was made by the learned lower Appellate Court. However, while drawing the decree-sheet, inadvertently, it was mentioned “***This is ordered that appeal in question is decreed with costs...***”.

Applications for correction of decree under Section 152 CPC was moved by both the parties, which were dismissed. Both the parties moved this

Court by preferring Civil Revision bearing No.7573 of 2019 and 508 of 2020 respectively. This Court vide order dated 28.11.2019 passed in CR-7573-2019 directed the learned lower Appellate Court to decide the application of the petitioner under Section 152 CPC in accordance with law. The civil revision filed by the respondents came to be dismissed as withdrawn.

The learned lower Appellate Court while allowing the said application filed by the petitioner vide order dated 20.01.2020 made the following corrections in red ink “***this is ordered that the appeal in question is allowed with costs. The suit of the appellant is decreed with costs...***”.

Aggrieved by the order dated 20.01.2020, the respondents filed an application for review of the said order under Order 47 Rule 1 read with Section 151 CPC. After hearing both the sides, the learned lower Appellate Court allowed the review application by holding that the judgment dated 09.10.2013 is silent about awarding any costs of appeal and only the suit of the petitioner was decreed with costs.

This Court does not concur with the submissions made by the learned counsel that the learned lower Appellate Court exceeded the scope of review while passing the impugned order. There can be no doubt about the settled proposition of law that the decree-sheet has to be drawn in accordance with the decree and not *vice versa*. A decree-sheet has to give effect to the judgment and decree preceding it, and anything not contemplated by the judgment and decree cannot be made a part of the decree-sheet.

Since, there was no order as to costs of appeal, the learned lower Appellate Court had erred in making the aforementioned corrections in decree-sheet vide order dated 20.01.2020. In the opinion of this Court, it was indeed an

error apparent on the face of the record and the learned lower Appellate Court cannot be faulted with for exercising its power of review. As a sequel of the above discussion, the instant revision petition being devoid of merit is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

August 24, 2022

S.Sharma(syr)

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No