

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1651 OF 2019
WITH
CIVIL APPLICATION NO.423 OF 2014
IN
FIRST APPEAL NO.1651 OF 2019**

Bismillah Khan S/o Hanif Khan & Ors. ... Appellants

V/s.

The Board of Trustees of The Port of
Mumbai & Ors. ... Respondents

Mr. Omar K. Shaikh for the appellants.

Mr. Roopdaksha B. with Ms. Heenal Wadha i/by Law
Point for the respondent No.1

CORAM : AMIT BORKAR, J.

DATED : JANUARY 18, 2023

PC.:

1. The appeal is directed against the judgment and decree dated 18th June 1998 thereby passing decree in terms of prayer clause (a) of the plaint on application for speaking to minutes. Prayer clause (a) of the plaint reads as under:

“(a) that the defendants be ordered and decreed to forthwith deliver to the plaintiffs vacant and peaceful possession of the said premises viz. Plot No.28-B situate at Coal Depoxt, Bombay, and more particularly described in Exhibit “A” hereto;.”

2. The facts giving arise to the filing of appeal are as under. The

respondent No.1 is the original plaintiff who has filed suit bearing No.6957 of 1975 before the learned City Civil Court, Mumbai seeking relief of possession, arrears of compensation.

3. Since the defendant failed to appear before the learned City Civil Court in spite of service of summons, learned City Civil Court, Mumbai by judgment and decree dated 2nd March, 1998 passed decree in terms of prayer clause (b) (c) and (h). Prayer clause (b), (c) and (h) read as under:

“(b) that the defendants be ordered and decreed to pay to the plaintiffs Rs.2932.68 p. being the arrears of compensation as per particulars Exhibit “C” to the plaint and Rs.21.19 p. being the Interest due as shown in particulars Exhibit “D” to the plaint total amount to Rs.2953.87 p.;

(c) that the defendants be ordered and decreed to pay to the plaintiffs further compensation from 1st September 1975 for the wrongful use and occupation of the said premises at the rate of Rs.977.56 p. per month till vacant possession of the said premises is given to the plaintiffs;

(h) for costs of this suit and interest on the principal amount decreed at 6% per cent from the date of the suit till realization.”

4. The plaintiff filed a praecipe before the learned City Civil Court seeking decree in terms of prayer clause (a). The said praecipe to pass decree in terms of prayer clause (a) was rejected by the learned Judge, City Civil Court by order dated 4th May, 1998, mainly on the ground that the work of subject matter of suit was not assigned to the said Judge. The praecipe was also rejected on the ground that the Court become *functus officio*.

- 5.** It appears that again the matter was moved for speaking to the minutes of order dated 2nd March, 1998 and by the impugned judgment the learned Judge, City Civil Court, Mumbai by order dated 18th June 1998 passed decree in terms of prayer clause (a).
- 6.** Points arise for consideration in this appeal are: (i) whether City Civil Court has power to pass substantive decree on a praecipe for speaking to minutes; and (ii) whether the City Civil Court was justified in passing decree for possession particularly when the earlier judge had rejected such request holding that the Court had become *functus officio*.
- 7.** Learned advocate for the appellant submitted that the scope of praecipe for speaking to the minutes was restricted to arithmetical or clerical error. Grant of substantive relief in proceedings where praecipe for speaking to the minutes was restricted to the arithmetical or clerical error. Therefore, he submitted that the impugned judgment and decree suffers from manifest error of law.
- 8.** Per contra, learned advocate for the plaintiffs (respondent no.1) submitted that the appellant has no locus to file this appeal as he has no independent right to hold the property. He submitted that the appellant has already initiated substantive proceedings under Order 21 Rule 97 of the Code of Civil Procedure, 1908. The appellant's right to hold the property in question would be decided in separate proceedings and, therefore, appeal at his instance is not maintainable as he was not party to this suit. He submitted that since the property is not protected under the provisions of the

Maharashtra Rent Control Act, 1999, at the most the appellant can claim right of sub-tenant, if he desires. Assuming he is sub-tenant, he was not a necessary party as there was neither statutory nor contractual relationship between the plaintiffs and the appellant. He, therefore, submitted that the appeal deserves to be dismissed.

9. I have given anxious consideration to the submissions made on behalf of both the sides.

10. The objection of right to challenge the decree in the absence of the appellant being party to the suit, in my opinion, stands concluded in view of order of this Court in Civil Application No.3115 of 2019. This Court on 15th October, 2019 by detailed reasons allowed the application of the appellant seeking leave to file appeal. This Court has assigned detailed reasons for allowing the said application and in absence of challenge to the said order dated 15th October, 2019, in my opinion, at this stage an objection as regards right of the appellant to challenge the decree in question has no merit.

11. The question regarding power of the learned Civil Court to pass substantive decree on the request for speaking to the minutes is well settled. The application for correction of decree can be filed under section 152 of the Code of Civil Procedure, 1908. Such power of the Court to correct the judgment and decree cannot be equated with the power of review. Under the guise of speaking to the minutes, substantive relief cannot be granted. The correction contemplated under section 152 of the Code of Civil Procedure, 1908 is to the extent of only accidental omissions or mistakes by

the Court while passing the judgment and decree. Such power cannot be claimed for getting substantive relief which was not granted under the decree.

12. In the facts of the case the plaintiff had moved learned City Civil Court seeking relief in terms of prayer clause (a) of the plaint. The learned City Civil Court by order dated 4th May, 1998 rejected such application holding that the Court had become *functus officio*. Once such application was rejected, it was not open for the City Civil Court to consider such application.

13. The plaintiffs had remedy to take out appropriate proceedings challenging the judgment and decree dated 2nd March 1998. Therefore, in my opinion, the learned City Civil Court could not pass decree for possession on the request for speaking to the minutes.

14. For the aforesaid reason, the impugned judgment and decree dated 18th June, 1998 passed by the learned Judge, City Civil Court, Bombay challenged in the appeal cannot be sustained.

15. The judgment and decree dated 18th June 1998 passed by the learned Judge, City Civil Court, Bombay modifying order dated 2nd March, 1998 passing decree in terms of prayer clause (a) stands set aside.

16. The first appeal is allowed in above terms. No costs.

17. It is made clear that this Court has not adjudicated the right, title and interest of the appellant to occupy the suit property.

(AMIT BORKAR, J.)