

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 7113 OF 2022

Smt. Niranjana W/o Vinod Gajbhiye
Age : 35 Years, Occ. Housewife,
R/o Plot No. 104, Wathoda Layout,
Nagpur

...Petitioner

// VERSUS //

Smt. Alka W/o Shailesh Vaidya,
Age : 36 Years, Occu – Housewife,
R/o At – Bhidbhushi Tola, Post
Navegaon Bandh, Tah. - Arjuni
Morgaon, District Gondia

... Respondent

Shri S.N.Nandeshwar, Advocate for the petitioner.
Shri Nitin Burgat, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 2nd MAY, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. In the present writ petition, the order below exhibit 33 dated 6th September, 2022 and order below exhibit 39 dated 3rd October, 2022 passed by the 11th Joint Civil Judge, Senior Division, Nagpur, rejecting the application Exhibit 39 for correction of typographical error in the cross-examination, is under challenge.

3. The petitioner is the plaintiff in a suit filed for declaration and permanent injunction vide Regular Civil Suit No. 1038 of 2019. In the

said suit on 9th November, 2021 cross-examination of plaintiff was recorded on the next date i.e. 10th November, 2021. When the recorded cross-examination of plaintiff was uploaded, an application for correction of typographical error in the cross-examination of the plaintiff was moved, the same came to be rejected, which was the subject matter in the writ petition no. 123 of 2022 before this Court.

4. This Court vide order dated 15th June, 2022 after observing that there is some discrepancy in the roznama which gives credence to the suspicion raised on behalf of the petitioner about the correction and modification of the order dated 23rd November, 2021, remanded the matter to decide the application afresh on its own merit. Thereupon, the impugned order was passed rejecting the application Exhibit 33, hence this petition.

5. It is the case of the petitioner that in first line of paragraph 7 of the cross-examination of the plaintiff recorded on 9th November, 2021, it was recorded that “it is not correct that on 18th December, 2010, the plaintiff’s grand mother prepared a will-deed and in pursuance to the same, the suit property was given to the plaintiff”. It is submitted that it wrongly recorded, as the answer was otherwise. The alleged mistake gave cause to the plaintiff to move an application Exhibit 33 for correction of said mistake recorded in the cross-examination of the plaintiff. Thus, the whole controversy in the present matter revolves around whether the alleged statement was wrongly recorded or it is rightly recorded by the trial Court and whether it requires correction.

6. Before proceeding further, it is necessary to examine the powers of the Court to correct it. For this purpose, it would be beneficial to go through the judgment of the Co-ordinate Bench of this Court in the case of Hansabai Shripati Bhosale Vs. Parubai Gopal Bhosale since deceased through her legal heirs Tanaji Gopal Bhosale and others¹ which reads thus:

5] The Civil Courts are vested with inherent powers and also general powers to rectify the mistake or error in the proceedings or judgment or decree under sections 151, 152, and 153 of the Code so as to do justice between the parties. The Civil Court proceedings are initiated, conducted, monitored and decided by human beings and in such complex process error/mistake is likely to occur. To anticipate all types of possible errors or mistakes and to lay down a specific legislation by categorizing such mistakes / errors is a hard task. The need is met by the enactment of this triangle of sections by empowering the Court with inherent or general powers....

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8. In the case of Aziz Ullah Khan and Ors. Vs. Collector of Shahjahnpur 1972 ILR (LIV) 800, Allahabad High Court held as under :

The language of Section 152 of the Civil Procedure Code is wide enough to cover the correction of mistakes made by the parties themselves as well as mistakes made by the court or by its ministerial officers. Further, the section is not restricted to mistakes which had an origin not anterior to the filing of the suit.

Although section 152 can only apply in terms to the amendment of decrees and not to the amendment of the plaint, sale certificate and

1 2009(5) Mh.L.J.500

dakhalnama, the power of the Court to make corrections is not confined to section 152. Extensive powers may be exercised also under sections 151 and 153. The present case was eminently a case in which the court should exercise its inherent power and correct the accidental slip, as the correction was necessary for the ends of justice.

7. From the above referred observations, it is evident that the language of Section 153 is in wide terms and confers powers on the Court to correct errors in any proceeding at any stage in order to determine the real question. Thus, keeping in view of aforesaid legal position, I proceed further to examine the case of the petitioner on merit. The objection raised by the petitioner/plaintiff about the statement made in the cross-examination of the plaintiff reads thus:

“हे म्हणणे चुकीचे आहे की, 18.12.2010 रोजी माझ्या आजीने मृत्युपत्र तयार केले व त्या अनुषंगाने मला दावा मिळकत दिली.”

If the case of the respondent is accepted that the said statement of the plaintiff was rightly and properly record and there is no mistake committed in the recording of the same by the trial Court, then a question arises why the subsequent cross-examination was made on the same point by the defendant. The subsequent cross-examination depicts that the defendant was trying by giving numerous suggestions to the plaintiff to create suspicion as regards the will-deed. The last three lines of the cross-examination go contrary to the objected portion of cross-examination. The last three lines of cross-examination of the plaintiff read thus:

“हे म्हणणे चुकीचे आहे की, दावा मिळकत हडप करण्याच्या दृष्टीकोनातून मी खोटे दस्तावेज, मुत्युपत्र व इतर दस्त तयार केलेले आहे. हे म्हणणे चुकीचे आहे की, मी खोटे दावा दाखल केला असुन खोटी साक्ष देत आहे.”

8. Thus, if paragraph 7 of the cross-examination of the plaintiff is read as a whole, I find substance in the case of the plaintiff that paragraph 7 of the cross-examination of the plaintiff needs correction as sought by the petitioner.

9. From the impugned order, it appears that the Court has not properly considered the application moved by the petitioner and also did not appreciate the case of the plaintiff by reading cross-examination of the plaintiff as a whole particularly paragraph 7 as a whole.

10. It is to be noted that this Court in a specific term directed the trial Court while remanding the matter to decide the application afresh, however, instead of deciding the application afresh, the trial Court has observed that whatever grievance the plaintiff has, that grievance can be considered at the time of argument considering entire evidence given by the witness and that point can be argued by the concerned party at the time of final hearing. The learned trial Court has erroneously further observed that there is no provision at all to make the correction in the evidence.

10. In the circumstances, the order of rejection of application Exhibit 33 is erroneous and it needs to be quashed and set aside with

direction to the trial Court to decide the said application afresh by taking into consideration the observations made in the present order.

11. It is needless to record that the challenge to the order below Exhibit 39 does not survive as order dated 6th September, 2022 passed below Exhibit 33 is quashed and set aside. However, the liberty is granted to raise the said challenge to the order below Exhibit 39 if the petitioner fails after afresh decision on exhibit 33. Accordingly, I pass the following order.

- i. Writ petition is partly allowed;
- ii. Order below Exhibit 33 dated 6th September, 2022 passed in Regular Civil Suit No. 1038 of 2019 is hereby quashed and set aside;
- iii. Application Exhibit 33 is remanded back to the learned trial Court for decision afresh on its own merits after taking into consideration the observations made in the present order.

[ANIL S. KILOR, J.]