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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 12.10.2023

+ CM(M) 425/2022 & CM APPL. 5634/2023
 AMAN ASSOCIATES PVT. LTD Petitioner
 Through: Ms. Aakanksha Kaul, Mr. Samarjit
 Chauhan, Advocates
 versus
 CDR. G.M. AGNIHOTRI Respondent
 Through: None

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CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA
J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 10.03.2022 passed by the Civil Judge – 08, Central District, Tis Hazari Courts, Delhi ('Trial Court') in M. No. 138/2020 filed in suit No. 491/2002, titled as '**Aman Associates Pvt. Ltd. v. G.M. Agnihotri**', whereby the Trial Court dismissed the application filed by the Petitioner under Section 152 of the Code of Civil Procedure, 1908 ('CPC'), seeking rectification of judgment and decree dated 11.08.2004.
2. The Petitioner was the plaintiff and Respondent was the defendant in the civil suit.
3. For the sake of convenience, the parties are being referred to by their original rank and status before the Trial Court.
4. The civil suit was filed by the plaintiff seeking specific performance and recovery of damages on the basis of the agreement to sell ('ATS') dated 21.10.1988 with respect to defendant's share in property bearing no. 1E/2,



Jhandewalan, New Delhi ('suit property'). The copy of the ATS dated 21.10.1988 was duly enclosed with the plaint as Annexure P-2.

4.1. The defendant never entered appearance before the Trial Court and was proceeded ex-parte in the suit. The plaintiff led ex-parte evidence and proved the ATS dated 21.10.1988 in accordance with law.

4.2. The Trial Court after perusing the pleadings and the evidence led by the parties concluded that the plaintiff is entitled to the reliefs sought in the suit. The Trial Court therefore, vide judgment and decree dated 11.08.2004 granted the relief of specific performance of the ATS and awarded damages of Rs. 50,000/- with interest, and decreed the suit.

4.3. The decree sheet was drawn up on 11.08.2004 which was subsequently amended. The amended decree sheet was drawn up on 04.06.2005.

5. At this stage however, the plaintiff on a perusal of the judgment dated 11.08.2004 and decree dated 04.06.2005 realised that, the Trial Court at certain portions mentioned incorrect date of the ATS as 16.05.1988/15.05.1988, even though the correct date of the ATS is i.e., 21.10.1988. Pertinently, the correct date i.e., 21.10.1988 also finds mention in the said judgment.

Similarly, in the decree dated 04.06.2005, the date of the ATS was incorrectly referred to as 16.05.1988.

6. It was in these circumstances that the plaintiff filed an application on 25.11.2008 under Section 152 of CPC for rectification of the date of the ATS in the judgment dated 11.08.2004 and the decree dated 04.06.2005.

7. The Trial Court, however, vide its impugned order dated 10.03.2022 has dismissed the said application.



8. Notice in this petition was issued to the Respondent on 09.05.2022. Since service could not be affected on the Respondent through ordinary process, the Petitioner was permitted to serve the Respondent through publication vide order dated 16.03.2023. However, none has appeared on behalf of the Respondent.

9. Learned counsel for the Petitioners states that the ATS dated 21.10.1988 was duly filed before the Trial Court. She states that the said ATS was admitted in evidence and marked as Exhibit P-2. She states that the ATS was duly proved in accordance with law by PW-1 i.e., Mr. T.R. Anand and PW-2 i.e., Sh. Sarabjeet Singh. She states that the suit was filed for specific performance of the said ATS dated 21.10.1988 and the said date duly finds mention in the plaint.

9.1. She states that the mention of the date of ATS as 15.05.1988 in the prayer clause of the plaint was inadvertent and a typographical error. She states that therefore, the error crept in the judgment dated 11.04.2004 when the Court directed preparation of decree sheet, in the final paragraph of the judgment.

9.2. She states that since the primary document itself was placed before the Trial Court and the suit was decreed by the Court after perusing the said ATS, the corrections sought by the Petitioner was within the jurisdiction of the Trial Court under Section 152 of CPC.

10. Learned counsel for the Petitioner for the assistance of this Court has placed on record a copy of the plaint wherein the reference to the correct date of ATS has been highlighted in pink colour and reference to the wrong date has been highlighted in yellow colour. The said document is marked for the purpose of reference as 'Mark X'.



10.1. Similarly, she has also placed on record for the reference of the Court, a copy of the ex-parte judgment dated 11.08.2004 and decree dated 04.06.2005 wherein the correct date of ATS has been highlight in pink colour and the wrong date of the ATS has been highlighted in yellow colour. The said document is marked for the purpose of reference as 'Mark Y'.

10.2. She has finally also placed on record a copy of the judgment dated 11.08.2004 and the decree dated 04.06.2005 wherein the wrong date(s) of the ATS has been highlighted in yellow colour and has been corrected to reflect the correct date of ATS i.e., 21.10.1988, which correction has been duly cross signed by the counsel for the Appellant. The said document is marked for the purpose of reference as 'Mark Z'.

10.3. The said documents Mark X, Mark Y and Mark Z are taken on record.

11. This Court has perused the record and considered the submissions of the counsel for the Petitioner. The ATS dated 21.10.1988 has been filed as Annexure R-6 to this petition and the same duly records the date as 21.10.1988. The suit was admittedly filed for specific performance of the said ATS and the Trial Court by its judgment dated 11.08.2004 held that the said ATS was duly proved by the plaintiff in accordance with law.

11.1. A perusal of the plaint and the judgment dated 11.08.2004 shows that the wrong mention of the date of the ATS at certain places in the judgment and the decree is evidently a typographical error. Admittedly there was no ATS dated 15.05.1988/16.05.1988 placed on record and therefore, the mention of the said dates was ex-facie an error.

12. In these facts, therefore, in the opinion of this Court, the said error in the judgment dated 11.08.2004 and the decree dated 04.06.2005 should be permitted to be corrected as it is in consonance with the primary document



i.e., ATS dated 21.10.1998.

13. The learned counsel for the Petitioner has relied upon the judgment in ***Angle Infrastructure Pvt. Ltd. v. Ashok Manchanda & Ors., 2016 SCC OnLine Del 1534***, which is apposite and reads as under:

“(a) Whatever is intended by the court while passing an order or decree must be properly reflected therein and no party should be permitted to suffer due to mistake of the court.

(b) An arithmetic mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing while an error arising out of or occurring from accidental slip or omission is an error due to a careless mistake on the part of the court, all of which are liable to be corrected.

(c) An unintentional mistake which may prejudice the cause of any party must be rectified.

(d) No new arguments or re-arguments or reconsideration on merits should be required for rectification of such mistakes.

(e) Liberal use of the provisions under Section 152 of CPC by courts beyond its scope should not be permitted.

(f) Inherent power under Section 152 of the CPC is generally available to all courts and authorities irrespective of as to whether the provisions under Section 152 of the CPC may or may not strictly apply to a particular proceeding. Before exercise of the power under Section 152, the court must be legally satisfied and arrive at a valid finding that the order or the decree contains or omits something which was intended to be otherwise.

(g) The intention of the court that an order or decree should be passed in a particular manner is not translated into the decree or order due to clerical, arithmetical error or accidental slip.

(h) The power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to find that a better order could have been passed i.e. to say there should not be reconsideration of merits.

(i) On consideration, the court may find that it may have committed a mistake in passing an order but every such mistake does not permit rectification in exercise of the court's inherent powers. It is to be confined to something initially intended but left out or added against such intention.

(j) Such errors can be corrected at any time by the court either on its own motion or on the application of any of the parties.

(k) Power of the court to amend its orders so as to carry out the intentions and express the meaning of the court at the time when the order was made, is subject to the only/imitation that the amendment can be made without injustice or on terms which preclude injustice.

(l) In cases where mistakes have arisen by reason or inadvertence, the court has ample power under Section 152 to correct such mistakes.



*(m) It is perfectly open to an appellate court exercising its power of appeal in relation to decree under appeal to correct the necessary mistakes.
 (n) It is trite that after passing of a judgment, decree or order, the same becomes final subject to further remedies prescribed under law in respect of the same and the very court or a tribunal cannot and, on mere change of view, is not entitled to vary the terms.
 (o) 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.””*

14. In view of the aforesaid facts, the petition is allowed and the impugned order dated 10.03.2022 is set aside. The Trial Court is directed to correct the date of the ATS in the judgment dated 11.08.2004 and decree dated 04.06.2005. For sake of clarity, it is reiterated that the correct date of the ATS is 21.10.1988.

15. For the ease of reference of the Trial Court, the portion of the judgment and decree which require corrections are duly reflected in the document placed on record before this Court and marked as ‘Mark Z’. The Registry is directed to send a copy of this order to the Trial Court along with a certified colour copy of the documents marked as Mark X, Mark Y and Mark Z. s

16. The Petitioner as well will be at liberty to obtain a certified copy of the documents marked as Mark X, Mark Y and Mark Z and place them before the Trial Court.

17. With the aforesaid directions, the present petition is allowed. Pending application, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 12, 2023/msh/aa

Click here to check corrigendum, if any