IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

I.A. No. G.A.9 of 2018
(Old No. G.A. No.501 of 2018)
In
C.S.144 of 2016

Square Four Assets Management & Reconstruction Co. P. Ltd & Ors.

Vs.

Orient Beverages Ltd. & Ors.

For the Plaintiffs	:	Mr. S. N. Mookherjee, Sr. Adv.
		Mr. Joy Saha, Sr. Adv.
		Mr. Zeeshan Haque, Adv.
		Mr. Subranil Dey, Adv.
		Ms. Sudipta Paul, Adv.
		Ms. Sharmistha Saha, Adv.
For the Respondent No.1	:	Mr. Kaushik Banerjee, Adv.
For the Respondent No.2	:	Mr. A.K. Chatterjee, Sr. Adv.
		Mr. Anup Kanti Poddar, Adv.
		Mr. Ayan Poddar, Adv.

Ms. Moumi Yasmin, Adv.

Ms. Sampurna Pal, Adv.

Reserved on : 15.09.2021.

Delivered on : 29.09.2021.

MOUSHUMI BHATTACHARYA, J.

1. The second defendant in the suit has filed the present application for appointment of a Surveyor for measuring the area of the suit premises which is a subject-matter of an order passed by a learned Single Judge on 11th July, 2017. The relief claimed in the present application is essentially for modification of the order dated 11th July, 2017.

2. The plaintiff filed an application in the suit under Chapter XIIIA of the Original Side Rules of this Court for final judgment against the defendant no.2 for eviction and recovery of vacant and *khas* possession of an area of 22,500 Sq. ft., equivalent to 31,500 Sq. ft. of super built-up area on the 4th, 5th and 6th floors of the building on the demised premises. The plaintiffs also claimed for final judgment determining the occupational charges and *mesne profits* payable by the defendant no.2 in respect of the said area. The suit is for a decree against the defendant no.2 for eviction and recovery of vacant and *khas* possession of a portion of the demised premises at Chowringhee Road, Kolkata.

3. By the order dated 11th July, 2017, disposing of the application under Chapter XIIIA, the learned Single Judge noted that the defendant no.2 had already delivered up vacant possession of 31,500 Sq. ft. super built-up area on the three floors of the building and further noted that the question before the court was of the quantum of *mesne profits* which were to be awarded to the plaintiffs for the defendants' occupation of the premises from October 2015 to December 2016. The order contains a tabulated statement showing Rs.4,67,99,250/- as the admitted amount which was payable by the defendant no.2 to the plaintiffs. The suit was, accordingly, decreed for Rs.4,67,99,250/- together with interest at the rate of 8% per annum simple interest from the date of the order till payment to the plaintiffs. The balance claim of the *mesne profits* was referred to the Special Referee appointed by the court for determination.

4. According to Mr. Ajay Chatterjee, Senior Counsel appearing for the defendant no.2 / applicant, the order dated 11th July, 2017 contains an erroneous recording that the defendant no.2 delivered up vacant possession of 31,500 Sq. ft. whereas, the said defendant occupied only an area measuring 22,500 Sq. ft. in the 3rd, 4th and 5th floors of the building which would be evident from two documents including the Schedule to the Deed and the Ejectment Notice issued by the defendant no.1 upon the defendant no.2. Counsel urges that the order contains an obvious mistake with regard to the area in occupation of the defendant no.2 which should be read as 22,500 Sq. ft. instead of 31,500 Sq. ft. and that the defendant no.2 should

not be made liable to pay *mesne profits* for an area in excess of 22,500 Sq. ft. Counsel submits that this court has ample power to correct an arithmetical mistake under Section 152 of The Code of Civil Procedure, 1908 and also relies on Order XX Rule 3 of the CPC for that purpose.

5. The prayer for correction of the order is resisted by Mr. S. N. Mookherjee, Senior Counsel and Mr. Joy Saha, Senior Counsel appearing for the plaintiffs who submit that the application is not only belated but that the defendant no.2 has not challenged the decree dated 11th July, 2017. According to counsel, this is not a case which falls under Section 152 of the CPC and that the Minutes of the meeting relied upon by the defendant no.2 has been disputed by the said defendant itself on the lack of authority of the person representing the defendant no.2.

6. Upon hearing learned counsel appearing for the parties and the order passed by the learned Single Judge on 11th July, 2017, this court is of the view that the apparent "*mistake*", as contended on behalf of the defendant no.2 is not one which can be categorised as a mere clerical or arithmetical error. There are several reasons for this. First, the order mentions 31,500 Sq. ft. <u>super built-up area</u> (underlined for emphasis) on the 4th, 5th and 6th floors on the premises at Chowringhee Road at Kolkata, being the area which was delivered up by way of vacant possession by the defendant no.2 to the plaintiffs. The Schedule to the Deed of Assignment dated 9th April, 1979 mentions "a covered area of 22,500 Sq. ft." on the three floors of the building and the Schedule being Annexure F to the plaint also mentions "a

covered area of 22,500 Sq. ft." equivalent to 31,500 Sq. ft. of super built-up area being the 4th, 5th and 6th floors of the building. The order which is impugned in this application also mentions the figure of 31,500 Sq. ft. as being the super built-up area on the three floors which thus matches with the Schedule at Annexure F of the application. The Ejectment Notice dated 4th August, 2015 from the defendant no.1 to the defendant no.3 mentions the figure of 22,500 Sq. ft. but is silent on whether the said figure pertains to the covered area or the super built-up area. Therefore, credence can only be given to the Deed of Assignment and the Schedule thereof which forms the base document between the parties.

7. Second, the Minutes of the meeting held on 4th August, 2017 which records certain corrections to be made in the Order dated 11th July, 2017 including that 31,500 Sq. ft. is to be read as 29,250 Sq. ft. mentions a different figure to that of the Schedule 'C' to the Deed. Weightage cannot also be given to the Minutes by reason of the fact that the defendant no.2 has contended that the person representing the said defendant at the meeting did not have the authority to represent the defendant no.2.

8. The prayer for modification of the decree must also be rejected on a more significant issue. The order recording that 31,500 Sq. ft. of super built-up area has already been delivered up by the defendant no.2 in favour of the plaintiffs clearly reflects an understanding between the parties on the area mentioned therein where the defendant no.2, represented by counsel, accepted the figure of 31,500 Sq. ft. The suit was decreed for

Rs.4,67,99,250/- together with interest on that basis for determination. The present application was made on 16th February, 2018, seven months after the order. The defendant no.2 did not take any steps for challenging the order within the statutory framework of the procedure which was available to the defendant no.2. The defendant no.2 had every opportunity to approach the learned Judge who passed the order dated 11th July, 2017 for suitable modification or variation thereof which was also not done.

9. Section 152 of The Code of Civil Procedure applies to clerical and arithmetical mistakes in judgments, decrees or orders or errors arising from any accidental slip or omission which may be corrected by the court any time after passing of the order either on its own motion or on the application of any of the parties who seeks such correction. The language of Section 152 is based on the presumption that the mistakes are of a clerical nature without touching upon the merits of the matter or being capable of altering the effect of the order by changing the liabilities or obligations of the parties before the court. Order XX Rule 3 of the CPC carves out an exception for cases governed by Section 152 but mandates that once a judgment has been pronounced in open court and signed, the judgment shall not be altered or added to. The dictum, hence, is clear that a judgment of a court cannot be disturbed or unsettled save and except for correction of mistakes which are obvious in the sense of being clerical in nature where the court is not called upon to engage in the substance of the dispute or embark on a protracted hearing on the issue of correction. The aforesaid idea finds strength from the

decision of the Supreme Court in *State of Maharashtra vs. Ramdas Shrinivas Nayak; AIR 1982 SC 1249* where the Supreme Court, in the irreplaceable words of Justice Chinnappa Reddy, held that statements of fact as to what transpired at the hearing and recorded in the judgment of the court are conclusive of the facts stated and cannot be contradicted by affidavit or otherwise. The court reinforced the principle that matters of judicial record are unquestionable and cannot be open to doubt. The Supreme Court also advised that it is incumbent upon the party who seeks correction of a recording in a judgment to approach the court while the matter is still fresh in the minds of the judges.

10. In the present case, four years have passed since the order of the learned Single Judge, who is a sitting judge of this court. There does not appear to have been any attempt made on the part of the applicant / defendant no.2 to seek corrections or clarifications of the order as is being urged before this court today. The defendant no.2 also had the recourse provided under Chapter XVI Rule 32 of the Original Side Rules of this court – Speaking to the minutes of a decree or order – which the defendant no.2 also did not avail of.

11. It should also be mentioned that the alteration of the figure of the area is not in the nature of an accidental slip or omission by the court which can be corrected at any time after pronouncement of the order. The salutary practice of a court becoming *functus officio* after a judgment has been delivered is for the benefit of litigants who rely upon the certainty of orders

for an effective implementation thereof. There must also be closure of proceedings so that parties can take the next course of action. Litigants cannot remain in a limbo as to the finality of orders and judgments. *Samarendra Nath Sinha vs. Krishna Kumar Nag; AIR 1967 SC 1440*, relied on behalf of the defendant no.2 involved an arithmetic error made by the court by reason whereof Section 151 of the CPC was relied upon and the court was of the view that errors arising from such omissions can be subsequently corrected even after a judgment has been pronounced and signed by the court. The present case, however, is not one where the so-called mistake in the judgment and order dated 11th July, 2017 can be reduced to a mistake through inadvertence or oversight and hence capable of being corrected under Section 152 of The Code of Civil Procedure.

12. By reason of the above, this court is not inclined to allow the relief claimed in G.A. No. 501 of 2018, including for appointment of a Surveyor for measuring the portion of the suit premises which was in occupation of the petitioner. The application is accordingly dismissed without any order as to costs.

Urgent Photostat certified copy of this Judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities

(Moushumi Bhattacharya, J.)