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Netai Chandra Saha Vs. Naba Kumar Saha

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Court : Kolkata

Decided On : Feb-05-1999

Reported in : (1999)1CALLT440(HC)

Judge : Bijitendra Mohan Mitra, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 2(14), 47, 151 and 152 - Order 21, Rule 11

Appeal No. : Civil Revisional Jurisdiction C.O. No. 1122 of 1988

Appellant : Netai Chandra Saha

Respondent : Naba Kumar Saha

Advocate for Def. : Mr. Dipak Sengupta and ;Mr.Amitabha Ganguly, Advs.

Advocate for Pet/Ap. : Mr. Sadananda Ganguly and ;Mr. Proydot Banerjee, Advs.

Disposition : Application allowed

Judgement :

B.M. Mitra, J.

1. The present revisionaf application is directed against Order No. 141 dated 20.2.88 passed by the 1st court of Munslf at Berhampore in Title Execution Case No. 4 of 1979 arising out of Title Suit No. 237 of 1971. This court while perusing

the Impugned order has sought for production of the connected petition filed in the trial court on which such Impugned order has been passed and in deference to the desire of this court, the same has been made available. From the prayer portion of a cryptic petition filed before the trial court it appears that there is a composite amalgam of prayer for amendment of the plaint of the connected suit as. well as amendment of the application for decree on, fnter alia, the plea for exclusion of another room in the decree which is supposedly not found there in the decree. The attention of this court has been drawn toannexure 'A; namely, where schedule has been described and it appears that two rooms are specifically mentioned in the schedule of the connected plaint but averments Jn the connected petition appear to be on the footing that in lieu of two rooms, they have been converted into three rooms. This court at the initial door-step is faltering to interprete the nature of the petition and it has been submitted by Mr. Sengupta, the learned advocate appearing on behalf of the opposite parly, that in substance the said petition filed in the trial court on which the Impugned order has been passed should be read as a composite application under section 151 and section 152 of the Code of Civil Procedure. This court cannot but express its difficulties and to that the answer was from Mr. Sengupta reminding the court of inarticulate nature of drafting contained in Mofussll pleadings. It is worthwhile to keep in view the well-known decision of the apex court reported in : AIR 1976 SC461 where the apex court has observed that court should make liberal construction of pleadings keeping in view the inarticulate nature of drafting and low level of literacy of the litigant public. This court hereby proceeds on the basis of the said guideline as laid down by the apex court and makes its endeavour to instigate the sense hidden behind the prayer of the connected petition filed in the trial court.

2. It appears from the perusal of the order Impugned that the learned trial court has interpreted the petition as a petition under section 152 of the Code of Civil Procedure and this court is made to analysis the premise formulated by the trial court. It is worthwhile to remember the provisions contained in section 152 of the Code of Civil Procedure Itself which provides for correction of clerical or arithmetical mistake or any error in Judgments, decrees or orders. The Jural expression 'order' is comprehended under the definition clause of section 2(14) of the Code of Civil Procedure which means the formal expression of any decision of

a civil court which is not a decree. The question before this court as to whether that meaning has come in the particular definition of the Code of Civil Procedure is required to be ascribed to the meaning of the expression 'orders' as contained in section 152 when it is preceded by the prefix of a preposition 'or'. Here, if the totality is to be comprehended, It trends to cover judgments, decrees or orders and when orders come as alternative to the decrees, they may obviously mean the orders which are passed in the suit and not after the suit. Therefore, the question which crops up for consideration is as to whether an application for amendment in execution proceeding of an order is capable of being rectified in compliance of section 152 of the Code of Civil Procedure which can be corrected only arising out of an application from Order 21 Rule 11 of the Code of Civil Procedure. Here, if section 152 is to be application for, that is to be applied in the arena of execution arising within the ambit of the conspectus of Order 21 Rule 11 of the Code of Civil Procedure but it may not make inroad in the controversy in the suit which finally dropped down as soon as decree has been passed adjudicating the controversy. Therefore, this court wants to draw a clear line of water-shed of definition between correction made under section 152 in the realm of the suit and in the realm of the execution application contemplated under Order 21 Rule 11 of the Code of Civil Procedure and the respective field and their arena are completely different. There is no scope for provision of section 151 of the Code of Civil Procedure within the dimension of the suit into the domain of execution. Therefore, this court feels that section 152 without going intothe question of necessity of construction of section 152 whether a decree can be corrected in execution proceeding under the fabric of conspectus of Order 21 Rule 11 by section 152 even if it be assumed that It is a clerical error or 'accidental slip. If there is an accidental slip in the domain of the execution that can be definitely corrected but how far correction can be made which are cropped in the decree Itself. It is well-known that the Supreme Court reiterated on times without number which has become an epithet that the decree is executable per see. Section 47 of the Code of Civil Procedure contemplates that only question of executablllty satisfaction and nullity of the decree for inherent lack of Jurisdiction to pass the decree can be canvassed while ascertaining the same under the provisions of section 47. If a decree is sought to be corrected then the prayer keeps its head by making a sensible reference which may not be equated

to that of an omnibus reference where litigant craves leave to amend the plaint. There cannot be justaposltlon of the amendment of the plaint, amendment of the decree and amendment of the execution. If the same is allowed that will arrogate into the domain of compartmentallsatlon of different stages of proceeding and Civil Procedure Code contemplates different stages, namely, the stage in the suit as well as the stage in the execution proceeding. Therefore, sections 151 and 152 of the Code of Civil Procedure have different application for different stages, namely, for the stage of the suit as well as for the stage of the execution. Therefore, this court feels that prayer portion of the connected petition makes the petition itself misconceived and as such it will be a futile to go into the question of construction of section 152 any further because even assuming section 152 applies, it applies at different stages, namely, at the stage of the suit as well as at the stage of the execution. So far as the other point raised by Mr. Sengupta is concerned, i.e., about section 151 of the Code of Civil Procedure. Section 151 confers inherent power of the court for achieving twin purposes, namely, for ends of Justice and to prevent abuse of the process of the court. This is not mentioned for the abuse of the court as because of parry litigant has not taken particular caution at the relevant stage and therefore, the court is not responsible as the court is going to proceed for execution in terms of the decree. So far as the expression 'ends of justice' is concerned, though there is tendency to use it as volatile expression having an omnibus dimension but in a given para meterla where Civil Procedure Code holds the field. The ends of Justice are to be achieved by the process of Civil Procedure Code. Civil Procedure Code prescribes a particular mode either for amendment of the plaint or for correction of decree or for correction of execution proceeding. Therefore, there are alternative avenues redressal as forecast for which Civil Procedure Code has been made the handmade of Justice as otherwise the court cannot reach the destination of Justice without the aid of procedure which is known as primarily hand-made of justice in civil adjudication. Accordingly, this court feels that the learned trial court has misdirected Itself in appreciation of the nature of the application and as such has acted with material Irregularity in passing the impugned order. Accordingly, the order impugned is liable to be set aside.

The revisional application thus stands allowed.

3. Application allowed

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