

## RAJASTHAN HIGH COURT

Laj Kaur

Vs.

Shanti Devi

Civil Misc. Application No. Nil of 2004

(Shiv Kumar Sharma, J.)

09.12.2005

### JUDGEMENT

**Shiv Kumar Sharma, J.**

1. In Civil Second Appeal No. 192/1981 following substantial question of law was formulated on July 17, 1981:-

"Whether the lower appellate Court entertained the appeal after expiry of the prescribed period of limitation?"

This Court considered the question and allowed the appeal of the landlord on October 17, 1997 while granting six months' time to the tenant to vacate the suit premises.

2. An application seeking review of the said order was filed by the tenant on April 7, 1998, which was dismissed in default on October 1, 1999. Thereafter the tenant filed instant Misc. Application on April 27, 2004 under Sections 151 and 152 of the Civil Procedure Code seeking amendment in the judgment dated October 17, 1997 rendered in Second Appeal No. 192/1981.

3. It is contended by Mr. A. K. Bhargava, learned counsel for the tenant- applicant that on October 17, 1997 the tenant and his counsel could not appear before this Court and the landlord did not place correct facts before this Court. Since the material facts were concealed, the judgement dated October 17, 1997 is required to be recalled. Reliance is placed on *S. P. Chengalvaraya Naidu v. Jagannath* <sup>1</sup> *Mangi Lal v. State of Rajasthan* <sup>2</sup> *Shri Paresar v. Municipal Board, Mount Abu* <sup>3</sup> *Sushil Kumar Mehta v. Gobind Ram Bohra* <sup>4</sup> *Beli Ram v. Chaudhri Mohammad Afzal* <sup>5</sup> *Asharfi Lal v. Koili* <sup>6</sup> and *Collector, Land Acquisition, Anantnag v. Mst. Katiji* <sup>7</sup>

4. Per contra, Mr. R.S. Bhadauria, learned counsel for the landlord canvassed that

once a point was decided it cannot be reviewed on the ground that view so taken was erroneous. Learned counsel placed reliance on *Surendra Kumar Vakil v. Chief Executive Officer, M. P* <sup>8</sup>

5. I have pondered over the rival submissions and weighed the material on record.

6. Under Section 152, Indian Penal Code clerical or arithmetical mistakes in judgments, decrees or orders or errors arising there from may at any time be corrected by the Court either of its own motion or on application by any of the parties. The section is based on two important principles : (i) that an act of the Court shall prejudice no man, and (ii) that Courts have a duty to see that their records are true and they represent the correct state of affairs. So even in the absence of any move by the parties the Court can suo motu make the correction. But the power under Section 152 is confined only to the kind of mistakes, errors, slips or omission mentioned therein. If the decree or order is sought to be varied in any other manner, it can be done only by review under order 47 or appeal.

7. In so far as applicability of Section 151 is concerned, it is well settled that inherent powers of the Court are not exercisable when a specific provision exists in the Code itself. Section 151 merely furnishes legislative recognition of an age-old and well established principle that every Court has inherent power to act *ex debito justitiae* to do the real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court.

8. Coming to the facts of instant matter, I notice that landlord's second appeal was admitted on July 17, 1981 and when it came up for hearing on October 17, 1997 i.e. after 16 years and three months, the tenant and his counsel did not appear. This Court proceeded to hear the appeal and allowed it on the ground that the lower appellate Court wrongly disposed of the appeal in favor of the tenant. This Court observed that the first appeal was filed by the tenant after expiry of period of limitation without explaining cause for delay and without filing application under Section 5 of the Limitation Act. The tenant thereafter filed application seeking review of the judgment dated October 17, 1997 but the application was dismissed on April 7, 1998. In my opinion instant application under Sections 151 and 152, Civil Procedure Code is not maintainable. I find no merit in the submissions of learned counsel for the applicant-tenant.

9. Consequently, the application stands dismissed without any order as to costs. The interim order passed during the pendency of application is vacated.  
Application dismissed.

Cases Referred.

1. (1994 DNJ SC 7): (AIR 1994 SC 853)
2. (1997 (2) RLR 755): (1998 AIHC 1818)
3. (1996 (1) RLR 649): (1997 AIHC 1897)
4. (1990) 1 SCC 193
5. (AIR 1948 (35) Privy Council 168)
6. (1995) 4 SCC 163: (AIR 1995 SC 1440)
7. (AIR 1987 SC 1353)
8. (AIR 2004 SC 3088)