Dwaraka Das vs State Of Madhya Pradesh And Anr on 10 February, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1031, 1999 (3) SCC 500, 1999 AIR SCW 663, 1999 (2) UJ (SC) 895, 1999 (3) ARBI LR 291, 1999 (1) LRI 241, 1999 (1) ADSC 533, 1999 (1) ALL CJ 462, 1999 ALL CJ 1 462, 1999 ADSC 1 533, 1999 (1) SCALE 376, 1999 SCFBRC 90, 1999 (121) PUN LR 820, 1999 (3) SRJ 246, (1999) 1 PUN LR 820, 1999 UJ(SC) 2 895, (1999) 1 JT 375 (SC), (1999) 2 JAB LJ 83, (1999) 1 LANDLR 571, (1999) 2 MAD LJ 49, (1999) 3 MAD LW 367, (1999) 1 ORISSA LR 388, (1999) 3 RAJ LW 379, (1999) 1 SCJ 538, (1999) 3 ARBILR 291, (1999) 1 SUPREME 429, (1999) 2 RECCIVR 56, (1999) 1 SCALE 376, (1999) 1 CURCC 116, (1999) 2 CURLJ(CCR) 41, (1999) 35 ALL LR 472, (1999) 3 CIVLJ 152, (1999) 3 ICC 280, 1999 (2) KLT SN 30 (SC)

Bench: V.N. Khare, R.P. Sethi

CASE NO.:
Appeal (civil) 1209 of 1992

PETITIONER:
DWARAKA DAS

RESPONDENT:
STATE OF MADHYA PRADESH AND ANR.

DATE OF JUDGMENT: 10/02/1999

BENCH:
V.N. KHARE & R.P. SETHI

JUDGMENT:

JUDGMENT 1999 (1) SCR 524 The Judgment of the Court was delivered by SETHI, J. In response to the tenders invited by the respondent-State, the appellant herein was allotted the work for the construction of a hostel for 100 boys at polytechnic Ujjain for which agreement (Ex. P. 22) was executed between the parties on 26th December, 1960. The entire work was required to be completed within 29 months with further condition that 1/4 of the work was to be completed within 5 months, half the work to be completed within 10 months and 3/4 work was to be completed within 15 months. The work order was issued to the appellant on 26th December, 1960 who started construction on 28th December, 1960. The Superintend-ing Engineer is alleged to have obstructed the progress of the work with the result that the work could not be completed within the time schedule. The contract executed between the parties was rescinded by the respon-dents vide letter dated 19.6.61 on the ground that the appellant had not completed even 10 per cent of the work despite lapse of more than 9 months. The appellant however, contended that the termination of the

contract was in breach thereof. He claimed Rs. 20,000 as damages for breach of contract besides claiming other amounts payable by the respon-dent to him. Suit for the recovery of Rs. 32,000 filed by the appellant was decreed with a direction that the appellant would also be entitled to future interest @ 6 per cent per annum.

After the decree of the trial court the appellant filed an application under Section 152 of the C.P.C. praying for awarding of interest from the date of the suit till the date of the decree by correcting the judgment and decree on the ground that non awarding of interest pendente lite was an accidental ommission. The trial court allowed this application and directed the correction of the judgment and decree by awarding interest pendente lite.

Aggrieved by the judgment and decree of the trial court, the respon-dent- State filed the First Appeal No. 86 of 1973 and against the order passed in application under Section 152, Revision application No. 145 of 1974. The High Court vide the order impugned herein partly allowed the appeal by holding the respondents-State liable to pay only a sum of Rs. 4,783.33 to the plaintiff with interest at the rate of 6 per cent per annum. Civil Revision No. 145 of 1974 was allowed and the order of the trial court granting interest pendente lite was set aside.

We have heard learned counsel for the parties and perused the record.

Learned counsel appearing for the appellant has vehemently argued that High Court was not justified in setting aside the order of the trial court passed on 30th November, 1973 by which his client was granted pendente lite interest. It is submitted that the non granting of the interest for the period of litigation was an accidental omission which was rectified by the trial court. In support of his contention he has relied upon the judgments in Jainab Bai and Ors. v. Madhya Pradesh State Road Transport Corpora-tion, [1969] Madhya Pradesh Journal P. 716; Feroz Shah v. State, AIR (1957) Madhya Bharat p. 50; Maharaja Puttu Lal v. Sripal Singh and Ors., AIR (1937) Oudh p. 191 and West Bengal Financial Corporation and Anr. v. bertram Scott (I) Ltd., AIR 1983 Calcutta p. 381.

Section 152 C.P.C. provides for correction of clerical arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the judgments, decrees and orders earlier passed. The correction contemplated are of correcting only accidental omission or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the Section cannot be pressed into service to correct an omission which is intentional, how erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the province of Sections 151 and 152 of the CPC even after passing of effective order in the Us pending before them. No Court can under the cover of the aforesaid sections modify, alter or add to the terms of its original judgment, decree or

order. In the instant case, the trial court had specifically held the respondents-State liable to pay future interest only despite the prayer of the appellant for grant of interest with effect from the date of alleged breach which impliedly meant that the court had rejected the claim of the appellant in so far as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake as was wrongly done by the trial court vide order dated 30th November, 1973. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State.

The reliance of the learned counsel for the appellant on Jainab Bai case (supra) is misplaced inasmuch as in that case the aggrieved party had sought for award of interest after the decree, by filing the application under Section 152 C.P.C. and under Order 47 Rule (1) of the C.P.C. The Division Bench relied upon the decision of Madras High Court in Thirugnanavali Amal v. P. Venugopala, AIR (1940) Madras p. 29 wherein it was held that where a mistake had occurred in the decree inspite of mention of the future interest in the judgment, the Court had the power to rectify the mistake and if it occurred in the decree because of omission of it in the judgment, the mistake could not be corrected. We agree with the view taken by Madras High Court but cannot subscribe to the general observations made by the Madhya Bharat High Court in Jainab Bai's case. In Maharaja Puttu Lal v. Sripal Singh and Ors., AIR 1937 Oudh 191, the court had awarded the mesne profits to the decree holder by correction upon satisfaction that the plaintiff had specifically claimed such profits and its pleader was admitted to have made an oral statement requesting the court to determine the amount of mesne profits in the execution department which was accepted but not mentioned in the decree sheet. Under the facts and circumstances of that case the court held that such being an accidental omission the same could be corrected in exercise of the powers vested in the court under Section 152 of the C.P.C.

In Feroz Shah's case (supra) future interest was allowed by the Court on being satisfied that the omission in the decree was accidental and that no grounds existed for the defendant therein to resist the claim of the decree holder. The West Bengal Financial Corporation's case does not in any way help the appellant inasmuch as in that case the scope of Section 152 was not at all considered as the only point decided was that a plaintiff is entitled as of right to the grant of interest under Section 34 of the C.P.C. In view of what we have held in this case regarding the ambit and scope of Section 152 of the C.P.C., we are of the opinion that view of Madhya Bharat High Court cannot be held to be based upon sound principles.

The claim of the petitioner for payment of Rs. 20,000 as damages on account of breach of contract committed by the respondent- State was disallowed by the High Court as the appellant was found to have not placed the material on record to show that he had actually suffered any loss on account of the breach of contract. In this regard the appellate court observed: "It is not his case that for due compliance of the contract he had advanced money to the labourers or that he had purchased materials or that he had incurred any obligations and on account of breach of contract by the defendants he had to suffer loss on the above and other heads. Even in regard to the percentage of profit he did not place any material on record but relied upon assessment of the profits by the Income Tax Officer while assessing the income of the contractors from building contracts." such a finding of the appellate court appears to be based on wrong assumptions. The appellant had never

claimed Rs. 20,000 on account of alleged actual loss suffered by him. He had preferred his claim on the ground that had he carried out the contract he would have earned profit of 10% on Rs. 2 lacs which was the value of the contract. This Court in A.T. Brij Pal Singh and Ors. v. State or Gujarat, [1984] 4 SCC 59) while interpreting the provisions of Section 73 of the Contract Act, has held that damages can be claimed by a contractor where the government is proved to have committed breach by improperly rescinding the contract and for estimating the amount of damages court should make a broad evaluation instead of going into minute details. It was specifically held that where in the works con-tract, the party entrusting the work committed breach of contract, the contractor is entitled to claim the damages for loss of profit which he expected to earn by undertaking the works contract. Claim of expected profits is legally admissible on proof of the breach of contract by the erring party. It was observed :

> "What would be the measure of profit would depend upon facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid. In this case we have the additional reason for rejecting the con-tention that for the same type of work, the work site being in the vicinity of each other and for identical type of work between the same parties, a Division Bench of the same High Court has accepted 15 per cent of the value of the balance of the works contract would not be an unreasonable measure of damages for loss of profit..... Now if it is well-established that the respondent was guilty of breach of contract inasmuch as the rescission of contract by the respondent is held to be unjustified, and the plaintiff-contractor had executed a part of the works contract, the contractor would be entitled to damages by way of loss of profit. Adopting the measure accepted by the High Court in the facts and circumstances of the case between the same parties and for the same type of work at 15 per cent of the value of the remaining parts of the work contract, the damages for loss of profit can be measured."

To the same effect is the judgment in Mohd. Salamatullah and Ors. v. Government of Andhra Pradesh, AIR (1977) SC 1481. After approving the grant of damages in case of breach of contract, the court further held that the appellate court was not justified to interfere with finding of fact given by the trial court regarding quantification of the damages even if it was based upon guess work. In both the cases referred to hereinabove. 15% of the contract price was granted as damages to the contractor. In the instant case however the trial court had granted only 10% of the contract price which we feel was reasonable and permissible, particularly when the High Court had concurred with the finding of the trial court regarding breach of contract by specially holding that "we therefore see no reason to inter- fere with the finding recorded by the trial court that the defendants by rescinding the agreement committed breach of contract." It follows there- fore as and when the breach of contract is held to have been proved being contrary to law and terms of the agreement, the erring party is legally bound to compensate the other party to the agreement. The appellate court was, therefore, not justified in disallowing the claim of the appellant for Rs. 20,000 on account of damages as expected profit out of the contract which was found to have been illegally rescinded.

The appellate court further slashed the other claims of the appellant and held him entitled to the payment of Rs. 4,783.33 only. The learned counsel for the appellant has been very fair to concede that such finding returned by the appellate court is reasonable and that the appellant would not insist upon the payment of further amount and be satisfied with the amount decreed by the High Court in addition to the sum of Rs. 20,000 claimed as damages.

Under the circumstances this appeal is partly allowed modifying the judgment decrees of the courts below and holding the appellant plaintiff entitled to the grant of decree to the extent of Rs. 24,783.33 with future interest at 6% per annum payable from the date of decree till realization. The parties to bear their own costs in this appeal.