

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C.P No. D-457 of 2020**

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DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

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**Fresh case**

1. For order on CMA No.1885/2020
2. For hearing of Main Case.

**17.11.2021**

Mr. Zafar Iqbal Dutt, Advocate for the Petitioner.

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**YOUSUF ALI SAYEED, J.** The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution impugning the order dated 21.10.2019 made by the IXth Addl. District & Session Judge (MCAC) Karachi East, dismissing Civil Revision No.69 of 2018, that had been preferred by the Petitioner against the earlier dismissal of an Applications under Sections 151 and 152, CPC in Civil Execution No.04 of 2013, arising out of Civil Suit No.1350 of 2008 vide order dated 06.04.2018.

Succinctly stated, the respondent No.1 had filed the aforesaid Suit for Declaration, Permanent Injunction, Cancellation Mesne Profit and possession against the Petitioner and others, which was decreed after recording evidence of the parties vide judgment dated 13.10.2012, with a decree dated 20.10.2012 then being drawn up. The execution proceedings then followed. The underlying Application preferred by the Petitioner in that matter sought correction / amendment of the Decree on the ground that mesne profit had been allowed by the court without framing of an issue in that regard. However, as the Suit had been decreed as prayed, the executing Court found that Application under section 152 CPC was not competent for the stated purpose. The relevant excerpts from the order of revisional Court setting out the reasoning that prevailed before the lower fora reads as follows:

“7. Perusal of record shows that respondent No.1 had filed a suit against the applicant which was decreed vide judgment dated 13.10.2012 and decree dated 20.10.2012 thereafter during the pendency of execution application, respondent filed instant application under section 151 and 152 CPC on 13.05.2013 before the trial court after the lapse of more than five months and twenty – three days (173 days) without any explanation. Record further reveals that learned trial court, after framing the issues and recording the evidence decreed the suit of respondent as prayed along with the relief of mense profit. Admittedly, though specific issue in connection with the relief of mense profit was not framed but issue No. 5 empowers the court for awarding the relief claimed to the respondent/ decree holder accordingly.

8. Moreover, learned respective counsel for the applicant filed revision against the order passed on application under Section 151 and 152 CPC. Section 151 pertains to the inherent power of the court whereas section 152 CPC empowers the court to amend the judgment and decree to the extent: of clerical and arithmetical mistakes. For the sake of brevity, I reproduce Section 152 as under;

*Amendment of judgments, decrees or orders -Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accident slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.*

It is settled principle of law that judgment and decree cannot be altered in the preview of section 152 CPC even to the consent of parties. The judgment and decree can only be altered in appeal under Section 96 CPC Section 100 CPC and Section 114 as review. Moreover, I am of the humble view that provision of Section 152 is confined to the extent of correction of typical and arithmetical types of errors mentioned therein. Correction of any other type of error can only be obtained through appeal or review. So, learned counsel for the applicant has miserably failed to bring any cogent material before this court in order to show any irregularity or illegality committed by the trial court. Therefore, impugned order does not require interference, hence point No. 01 answered as negative.”

In support of his contention that such a course of action could have been followed, learned counsel for the Petitioner relied upon the case of Abdul Habib v. Fazal Muhammad and 2 others, 2012 MLD 1856. Having examined that Judgment, we are of the view that it lends no support to the Petitioner's case as the circumstances underpinning that matter were the mirror image of that marking the matter at hand, inasmuch as the Judgment in that case failed to grant a relief that had been claimed and in that context it was held that the same could not be entered in the Decree while exercising powers under Section 152 CPC.

As such, the Petition is bereft of force and fails, hence stands dismissed accordingly.

**Judge**

**Chief Justice**