

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI
 JCM No. 09 of 2010

<i>Date</i>	<i>Order with signature of Judge</i>
-------------	--------------------------------------

FOR HEARING OF CMA NO. 53/2021

Date of Hg: 25.02.2025.

Mr. Salahuddin Ahmed, Advocate for the petitioner along with Mr. Aman Aftab and Mr. Nadeem Ahmed, Advocates.
 Mr. Muhammad Saleem Mangrio, Advocate for respondents No.1 to 9 along with Mr. Munir Khan, Advocate.

ARSHAD HUSSAIN KHAN, J.- Through this application [CMA 53 of 2021] under Section 152 CPC read with Section 151 of CPC, the petitioners 1 to 5 seek rectification in the order dated **26.07.2011**, passed by this Court in the instant case so as to read that instant JCM is disposed of in terms of the settlement recorded in para-1 of the compromise application [CMA # 250 of 2011] under order 23 Rule 3 CPC. Record shows that counter and rejoinder affidavits have been filed denying the claim of each other. Whereas learned counsel for the respondents at the time of hearing of the application has also filed sur-rejoinder, which upon No Objection of petitioners' counsel is taken on the record.

2. Learned counsel for petitioners 1 to 5 submits that instant judicial miscellaneous application was part of a set of eight judicial miscellaneous applications involving essentially the same contesting parties those were all disposed of on **26.07.2011**, following a settlement between the parties. It is contended that an application under Order 23 Rule 3 CPC was filed in the instant case, which set out the terms of the said settlement. In all the other 07 cases, however, virtually identical applications for simplicitor withdrawal under Order 23 Rule 1 CPC were filed. In all the other cases, therefore, an identical order was passed on **26.07.2011**. He has argued that insofar as the instant case is concerned, an application under Order 23 Rule 3 CPC was filed and the clear intention of the parties was that the instant case was to be disposed of in terms of the settlement of the parties recorded in the

compromise application whereas the remaining cases were to be simply withdrawn but due to accidental mistake by the parties as well as the Court even the instant case was disposed of in the exact same terms on **26.07.2011** as the other seven cases and this accidental error can be corrected at any time by this Court. Learned counsel has contended that possession of all the three properties along with original title documents of the two residential houses were duly handed over to the petitioners 1 to 5 and even mutation of three properties was duly effected in their favour and as far as the two residential houses were concerned, petitioners 4 & 5 have even executed registered transfer deed in favour of their respective successor-in-title. Learned counsel has further argued that the respondents surreptitiously challenged the mutation of all the three properties before the concerned revenue and municipal authorities. They are now taking the stance that instant case was dismissed as withdrawn and that petitioners 1 to 5 do not have any right to mutation of the properties in their favour. As a result, the revenue authorities are presently not recognizing any further mutations in relation to the said properties. Learned counsel further argued that since the municipal authorities were not processing the mutation of the aforementioned residential houses in favour of the successor in title to the petitioners 4 and 5, they preferred CP No.869 of 2017 and CP 870 of 2017 before this Court at Hyderabad seeking that the residential houses be duly mutated in their favour but the said petitions were dismissed on **03.12.2020** with the observations, inter alia, that the High Court in its constitutional jurisdiction cannot rectify any error in the orders passed in JCM No.9 of 2010, and the parties were left at liberty to file a rectification application in the instant case, which would be decided in accordance with the law. Consequently, the petitioner filed the present application. It is urged that the petitioners should not be allowed to suffer on account of an accidental error that went unrealized by the parties as well as the court, nor should the respondents be allowed to take advantage of the same. Lastly, it is prayed that the application may be allowed. In support of his contention, he has relied upon the cases of *Manzoor Hussain and 9 others v. Malik Karam Khan and 2 others* [1991 SCMR 2451], *Messrs Broadtex (Pvt.) Ltd. and 2 others v. Messrs NIB Bank Ltd.* [2016 CLD 217], *Muhammad Ashraf v. Muhammad Irfan Moltani and another* [2014 MLD 625] and *Ghulam*

Muhammad and 4 others v. Abdul Ghaffar and 7 others [2007 MLD 412].

3. On the other hand, learned counsel for the respondents has argued that the underlying application is not maintainable in law and on the facts of this case, which has been filed unlawfully and illegally with an ulterior motive in order to derive illegal gain by abusing the process of this Court. It is contended that the application has been filed after a considerable delay. He has argued that on the face of it, the application is illegal, misconceived and an afterthought inasmuch as none of the grounds mentioned in Section 152 CPC are available to the petitioner. He has further argued that the petitioners 1 to 5 have suppressed true facts from the court; that the sole purpose of filing the present application is nothing but to derive illegal gain by way of blackmailing and unnecessary harassment to respondent No.1-company and its management who are being entangled into unnecessary and unwarranted litigations one after the other. It is further argued that all the said JMs were dismissed as withdrawn as prayed for in the application and not disposed of as alleged. It is also argued that all the orders were passed pursuant to the applications filed separately even in the instant JM the said application for all its practical purposes was for its withdrawal as evident from the contents of para-2 of the same. It is argued that there was no accidental mistake / oversight by any party or on the part of this Court while passing the order dated 26.07.2011, as such the question of its correction by this Court does not arise. He has further argued that instant case was not disposed of in terms of any settlement but as evident from the contents of para-2 of the withdrawal application as well as the order dated 26.07.2011, the instant JM was dismissed as withdrawn. The petitioners cannot lawfully put their own interpretation or understanding suitable and convenience to them against the clear and unambiguous terms of the said application and the order dated 26.07.2011, which was passed in presence of the respective parties and with their consent as well as that of their learned counsel. It is argued that the petitioners by way of fraud have got the properties of respondent No.1 transferred illegally and unlawfully without prior approval and knowledge of respondent No.1. Moreover, respondent No.1 did not hand over vacant physical possession of the three

properties or any of them as alleged. It is also argued that the petitioner got mutated the three properties in their favour illegally and unlawfully by practicing fraud that, too, in the absence of any prior approval or knowledge of respondent No.1, however, after coming to know about such fraud, respondent No.1 took immediate steps and got the said entries cancelled. It is urged that the contents of the application in terms whereof the instant JM was dismissed are very clear and the same are to be understood as per its plain reading. It is contended that there is no error in the order dated 26.07.2011 dismissing the instant JM but it was strictly in consonance with the true intentions of the parties. Moreover, there was no settlement reached in the instant petition but the parties undertook to do certain things in future, which were not materialized on account of willful default on the part of the petitioners. It is also contended that respondent No.1-Company has filed suits for cancellation of the alleged sale deeds executed by petitioner Nos. 4 & 5 in favour of petitioner Nos. 2 and 3 surreptitiously, which are pending adjudication before the court of Ist Senior Civil Judge, at Hyderabad. It is contended that there was an undertaking given on behalf of respondent No.1 to transfer the said properties in lieu of the company's borrowings and not otherwise. The said borrowings as per the audited accounts of respondent No.1 are still outstanding, hence the question of transfer of the properties in favour of the petitioners did not arise. It is urged that the order dated 26.07.2011 does not call for any rectification inasmuch as the same has been passed strictly in terms of para 2 of the application bearing CMA No.250 of 2011 and the petitioners have intentionally concealed such facts in an attempt to mislead the court. Learned counsel for the respondents contended that if a relief is claimed in the application but has not been granted by the court, it must be assumed that it has been refused. He has further argued that, firstly, there is no omission on the part of the Court while disposing of the withdrawal application, as the same was passed after hearing the learned counsel for the parties; and secondly, for the sake of arguments, even if it is assumed that there was an omission on the part of the Court, such an omission made through the Court's positive application of mind, can never be termed as accidental or a mistake apparent on the face of record. Lastly, it is urged that the application being frivolous and vexatious is liable to be dismissed with compensatory costs.

Learned counsel in support of his arguments has relied upon the case of *Ecotec C.N.G. (Pvt.) Ltd. v. Karachi Development Authority and another* [2009 CLC 27].

4. I have heard learned counsel for the parties, perused the record and the relevant laws.

Precisely, the case of the petitioner is that this Court through identical orders dated **26.07.2011** disposed of this case [JCM No. 9 of 2010] along with seven other judicial miscellaneous applications. However, due to accidental slip/omission this case was also disposed of as withdrawn instead of being disposed of in terms of the compromise mentioned in the application, as such, through instant application the petitioner seeks rectification of this accidental error in the order.

5. From perusal of the record, it appears that between the parties, there were 8 JMs [JM No.58 of 2009, JM No.2 of 2010, JM No. 9 of 2010, JM No.10 of 2010, JM No. 12 of 2010, JM No. 17 of 2020, JM No.25 of 2010 and 26 of 2010] pending adjudication before this Court; on **26.07.2011** pursuant to a settlement reached between the parties, in all the other JMs [except JM No.9] applications under Rule 3 of the Companies Court Rules 1997 and Order 23 Rule 1 of CPC were filed, whereas in the instant JCM No.9 an application under Order 23 Rule 3 CPC [CMA 250/2011] mentioning the terms and conditions of the settlement was filed for withdrawal of the aforesaid petitions.

6. It would be conducive to reproduce the relevant paras of both the applications [Application under Rule 3 of the Companies Court Rules 1997 and Order 23 Rule 1 of CPC and Application under Order 23 Rule 3 of CPC] hereunder:

Application under Rule 3 of the Companies Court Rules 1997 and Order 23 Rule 1 of CPC [filed in *JM No.58 of 2009, JM No.2 of 2010, JM No.10 of 2010, JM No. 12 of 2010, JM No. 17 of 2020, JM No.25 of 2010 and 26 of 2010*]

“1. The parties have resolved their disputes as per settlement in J.M No.09 of 2010. It is therefore respectfully prayed that this Honourable Court may be graciously pleased to permit withdrawal of this petition with all listed applications.

2. Ad-interim orders are also respectfully solicited.”

Application under Order 23 Rule 3 CPC [filed in JM No. 9 of 2010],

“1. The petitioners have agreed with the Respondent Company that in lieu of borrowing of the company from the Petitioners the Respondent Company shall in exchange of loan transfer two houses and agriculture land owned by the Respondent Company free from all encumbrances and shall handover peaceful possession and duly transfer the said Agriculture land measuring approximate 5 Acres under survey No.18 and approximate 18 Ghuntas under Survey No.19 both situated at Deh Nareja, Tappo Guddo, District Hyderabad in the name of Mrs. Najma Roshan, Petitioner No.1 and residential houses No.9-A and 10-A measuring 600 Sq.Yds each both situated at main Auto Bhan Road, Unit No.8, Latifabad, Hyderabad in the name of Mrs. Fozia Mohsin, Petitioner No.4 and Mrs. Roohi Naveed, Petitioner No.5 respectively immediately forthwith. The Company shall have no, interest, lien or any proprietary right whatsoever in these properties.

2. That the Petitioners undertake to withdraw the Petition.”

7. And the order dated **26.07.2011** passed on all the aforesaid applications including JCM No.9, is also reproduced for the sake of convenience as follows :

1. Granted.
2. Through listed application filed under Rule 3 of the Companies Court Rules, 1997 read with Order 23 Rule 1 CPC, by the petitioner No.2, request withdrawal of instant JM has been made on the ground that since matter has been resolved through settlement in JM No.09/2010, therefore, instant petition along with listed application may be allowed to be withdrawn. The concerned parties are present along with their counsel and have verified the contents of the listed application. There seems no impediment in the grant of listed application, which is accordingly granted and instant JM along with listed application is dismissed as withdrawn”.

[emphasis supplied]

8. From bare perusal of the Application, being CMA 250 of 2011, filed under Order 23 Rule 3 CPC [**compromise application**] for withdrawal of instant petition-JCM 09 of 2010, it reflects that the application contained the terms and conditions of the settlement reached between the parties, signed by all the parties, their counsel and it was also supported by affidavits of both the parties. Whereas the application under Rule 3 of the Companies Court Rules 1997 and Order 23 Rule 1 of CPC was only signed by the petitioners’ counsel and was supported by the petitioner’s affidavit only. From perusal of the above applications, it clearly reflects that the applications are different in nature and for different purposes; one for the simplicitor withdrawal of

the case whereas another one is for disposal of the case on the basis of settlement. Had it been the intention of the parties to withdraw all the cases simplicitor, there would have been no need to file two different types of applications, nor were all the parties required to sign the compromise application and to file separate respective affidavits in support of the said application.

9. In view of the above, there appears no ambiguity, in understanding the clarity and spirit of the said order dated **26.07.2011**. Moreover, as per the order, all the concerned parties were present before the Court and they also acknowledged the contents of the compromise application. The said fact also authenticates the disposal of the said JCM 09/2010 upon being compromised between the parties in terms of para-1 of the compromise application [CMA 250/2011]. However, in the order dated **26.07.2011**, it appears that there was a genuine and inadvertent omission or error in recording the disposal of JCM No. 9 of 2010 in the same manner as the other JMs, despite a compromise application being on record.

10. Now, the question is whether the said omission in the order could be rectified by exercising the authority under section 152 of the Civil Procedure Code.

Before going into any further discussion in this regard, it would be conducive to reproduce section 152 CPC, which empowers the courts for correction of judgment, decree and orders, which reads as follows :

“152. Amendment of judgments, decrees or orders.- Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental 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.”

A perusal of the above provision, it appears that the court under section 152, C.P.C. is not only competent to correct clerical or arithmetical mistake in the judgment, decree or order but also may correct accidental slip or omission as well. To correct clerical or arithmetical mistake, it means when some mistake either in calculation or numerical figures sneaks in, which figures could be verified from the

record, or where any party, property or fact has been incorrectly described or where some typographical error has sneaked in.

11. In phrase “accidental slip or omission” as used in section 152 C.P.C. means ‘to leave out or failure to mention something unintentionally’. Thus, it could be safely said that it is only where the slip or omission is accidental or unintentional it could be supplemented or added in exercise of jurisdiction conferred under section 152 C.P.C. Such course is provided to foster cause of justice, to suppress mischief and to avoid multiplicity of proceedings.

In the light of above discussion, it can be concluded that the court has jurisdiction to correct the clerical or arithmetical mistakes or errors caused due to accidental slip or omission in a judgment, decree or order. Such power can be exercised at any time. The aim of the procedural provisions is to safeguard the interest of justice instead of defeating the same as it is the basic principle of administration of justice that the courts are sanctuaries of justice.

12. Insofar as the objection of learned counsel that if a relief is claimed in the plaint/application but has not been granted by the court then it must be assumed that it has been refused is concerned, I do not think this argument applies to a case like the present one where there is no express refusal but only an omission to dispose of the application in terms of the compromise.

13. Insofar as the objection with regard to the limitation of the application under section 152 CPC is concerned, in the case of *Raj Bahadur Singh v. Shatranjai* [AIR 1942 Oudh 226] application under section 152, C.P.C. was made for amendment of the judgment and decree and it was observed as follow:

“..... It is also observed in this case that the intention of the law is to make it obligatory on the Court whenever such a mistake is discovered to correct it and section 152 merely emphasizes the duty of the Court by saying that it may be done at any time without limitation.”

14. A full bench of the Supreme Court of Pakistan in the case of *Mst. Forosha v. Fazal Gul and others* [PLD 1983 SC 220] while discussing Section 152 CPC, inter alia, has observed as under:

“The plane reading of the section 152 CPC, leaves no doubt whatsoever that the powers confer on the courts if the case falls within the purview of its provisions, can be exercised at any time and it has accordingly been held that there is no time limit for entertaining an application in that behalf”.

15. The Supreme Court of Pakistan in another case of *Syed Saadi Jafri Zainabi v. Land Acquisition Collector and Assistant Commissioner* [PLD 1992 SC 472], held as under:

“9.....The court has jurisdiction to correct the clerical or arithmetical mistakes or errors caused due to accidental slip or omissions in a judgment, decree, or order. Depending on facts, it confers a wide discretion on the court to correct, (I) clerical, or arithmetical mistake, (II) errors caused due to accidental slips or omissions in the judgment, decree or order. Such power can be exercised at any time. Where the court is bound to grant a relief which the party seeks, or where the court is bound to grant relief even without it being sought by a party and if unintentionally or inadvertently the court does not grant such relief, it would be justified at any time to correct such accidental omission or errors by exercising power under section 152 C.P.C.”

16. It is also well settled that an act of the court should not prejudice any party. Technical objection should not come in the way of dispensation of complete and substantial justice. In this regard, reference can be placed on the case of *Muhammad Shafi and others v. Muhammad Boota and others* [2004 SCMR 1611].

The case law referred to by the learned counsel for the respondents is distinguishable from the facts and circumstances of the case and is, therefore, not applicable in the present case.

17. In view of the foregoing discussion, present application [CMA 53 of 2021] is allowed. The order dated **26.07.2011**, passed in JCM No. 9 of 2010, is hereby rectified to reflect that the case was disposed of in terms of the settlement recorded in CMA No. 250 of 2011 under Order 23 Rule 3 CPC.

It is, however, clarified that this rectification does not determine the validity of any property transactions, mutations, or claims of fraud, which shall be subject to adjudication in separate legal proceedings.

JUDGE