



2024:DHC:9461



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 17th September, 2024**
Pronounced on: 9th December, 2024

+ I.A. 1612/2024 in ARB. P. 1432/2022

ADO INDIA PVT. LTD.Petitioner

Through: Ms. Ritu Singh Mann and Mr.
Dheeraj K. Garg, Advocates

versus

ATS HOUSING PRIVATE LIMITEDRespondent

Through: Mr. Kunal Kher, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

I.A. 1612/2024

1. The instant application under Sections 152 and 153 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter as the “CPC”) has been filed on behalf of the applicant/petitioner seeking the following reliefs –

“(i) the work Order No. WOJPR/0006/16-17 be deemed to read as WOJPR/00061/16-17 at all places that it occurs in the notice dated 21.10.2022, List of Dates and Events filed with the Petition, in Paragraphs Nod. 6, 9, 10, 16, 17, 21 & 22 and prayer clause of the petition, and

(ii) the Work Order number in the last line of paragraph No. 3 of the order dated 24.03.2023 be corrected to read as WOJPR/00061/16-17, and

(iii) the Work Order number in the sixth line of paragraph 5 of the order dated 24.03.2023 be corrected to read as

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*WOJPR/00061/16-17, and
(iv) the Work Order number in paragraph 18(i) of the order dated 24.03.2023 be corrected to read as Work Order. No. WOJPR/00061/16-17 instead of WOIPR/0006/16-17, and
(v) any other order that this Hon'ble Court may deem fit and proper in the above facts be passed.”*

FACTUAL MATRIX

2. The instant application has been filed in the captioned petition, which was filed on behalf of the applicant under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter as the “Act/Arbitration Act”) seeking appointment of arbitrator for adjudicating upon the disputes between the applicant and the respondent.
3. The applicant is a duly registered company which deals with the business of manufacturing UPVC windows and doors and providing installation services thereto. On the other hand, the respondent is registered with the Registrar of Companies, Delhi and is engaged in the business of construction and development of buildings.
4. The parties herein entered into an agreement/Work Order dated 20th October, 2016, wherein, the respondent engaged the services of the applicant for their project “ATS PRISTINE” situated at SC 01/A-1, Sector – 150, Noida, Uttar Pradesh. The terms and conditions for the execution of the work as well as the payment thereto have been mentioned in the said Work Order.
5. Thereafter, a dispute arose between the parties when the applicant demanded the payment of Rs. 32,85,732/-, which was allegedly not paid by the respondent, as the same emerged from a separate invoice and not part of the said Work Order.



6. Subsequently, the applicant preferred a Claim Petition before the Micro, Small and Medium Enterprises (hereinafter as the “MSME”) Council for redressal of the dispute between the parties, however, the applicant realised that the said Work Order was executed prior to its registration as an MSME and accordingly withdrew the petition before the learned MSME Council vide email dated 1st December, 2022, while reserving its right to invoke the arbitration clause 1.18 of the Standard Terms and Conditions of the said Work Order.

7. Accordingly, the applicant served a notice dated 21st October, 2022 onto the respondent, thereby, notifying the invocation of the aforesaid arbitration clause and initiation of arbitration proceedings. Upon failure of the respondent to respond to the aforesaid notice, the applicant filed the captioned petition seeking appointment of an arbitrator for the redressal of their disputes.

8. This Court vide order dated 24th March, 2024, appointed Mr. Vineet Dhanda, Advocate as an arbitrator in the instant case for the resolution of disputes between the parties which is arising out of the said Work Order.

9. During the arbitration proceedings before the learned Arbitrator, at the stage of admission and denial of the documents, the respondent denied to admit the aforesaid Work Order as a document, citing that an incorrect Work Order number, i.e., Work Order no. “WOJPR/0006/16-17” instead of “WOJPR/00061/16-17” was specified in the list of the documents as well as the Statement of Claim filed by the petitioner.

10. Consequently, the applicant filed an application under Order VI Rule 17 of the CPC before the learned Arbitrator for rectification of the



typographical error of the said Work Order number and vide order dated 1st November, 2023, the learned Arbitrator directed the applicant to file an appropriate application before this Court for amendment of the Work Order number.

11. Accordingly, the instant application has been filed by the applicant.

PLEADINGS BEFORE THIS COURT

12. The relevant portion of the application is as under:

“2. That is stated that inadvertently, the Work Order number in the petition as well as in the prayer clause of the petition was typed as WOJPR/0006/16-17 instead of WOJPR/00061/16-17. The aforesaid inadvertent typographical error in the work order number has occurred in paragraphs Nos. 6, 9, 10, 16, 17, 21 and 22 of the petition as well as in the prayer clause and the List of Dates and Events. The typographical error also occurs in the notice dated 21.10.2022, a copy of which has been filed along with the Petition.

3. That a copy of the Work Order bearing the correct number was also placed on record along with the petition before this Hon’ble Court. A reply was duly filed by the Respondent herein, where no objection was taken as to the typographical error in the petition or the Notice dated 21.10.2022. relating to the Work Order number.

7. In terms of the order dated 24.03.2023, the Petitioner filed its Statement of Claim before Mr. Vineet Dhanda, Advocate, the Sole Arbitrator appointed by this Hon’ble Court. In the arbitration proceedings, at the stage of admission/denial of documents, the Respondent herein refused to admit or deny the Work Order stating that the Work Order number mentioned in the list of documents as well as in the Statement of Claim was incorrect.

8. In view of the objection raised through the Ld. Arbitrator by the Respondent herein, the Petitioner herein moved an application for amendment of the Statement of Claim seeking to correct the typographical error in the Work Order number



in the Statement of Claim. A copy of Application filed by the Petitioner herein before the Ld. Arbitrator seeking amendment is annexed hereto as **Document No. 2.**

9. The amendment Application of the Petitioner herein was opposed by the Respondent herein stating that the mandate of the Ld. Arbitrator, in terms of the order dated 24.03.2023, was only with respect to Work Order No. WOJPR/0006/16-17 and not Work Order No. WOJPR/00061/16-17. A copy of reply to the Application filed by the Respondent herein before the Ld. Arbitrator seeking amendment is annexed hereto as **Document No. 3.**

11. In view of the aforesaid order dated 01.11.2023 passed by the Ld. Sole Arbitrator, the Petitioner herein is moving the instant Application for (i) correction/modification such that the work Order No. WOJPR/0006/16-17 be read as WOJPR/00061/16-17 at all places that it occurs in the notice dated 21.10.2022, List of Dates and Events filed with the Petition, in Paragraphs Nos. 6, 9, 10, 16, 17, 21 & 22 and prayer clause of the petition, and (ii) correction in paragraph Nos. 2, 5 and 18(i) of the order dated 24.03.2023 such that the work Order No. WOJPR/0006/16-17 be read as WOJPR/00061/16-17.”

13. Countering the instant application, the respondent filed its reply to the same and the relevant extracts of the same are as follows:

Preliminary Objections/Submissions

“1. The Petitioner invoked the arbitration and filed the Petition before the Hon'ble Delhi High Court with respect to the Work Order No. WOJPR/0006/16-17 dated 20.10.2016. It is submitted that the Learned Arbitrator has been appointed to adjudicate the disputes which are arising out of the said Work Order and not the Work Order No. WOJPR/00061/16-17. Hence, the contention of the Petitioner at this stage that there is a typing error and the Petitioner is seeking the correction of the said error is entirely misplaced. In case the Petitioner is seeking to enforce its alleged claims regarding the Work Order No.



WOJPR/00061/16-17 then the Petitioner is required to invoke the arbitration in terms of the said work order and follow the due process for the appointment of the arbitrator, and not by terming the change as a typing error and changing the entire nature and scope of the proceedings. Hence, there is no merit in the present application of the Petitioner and the present application of the Petitioner ought to be dismissed.

2. The Respondent seek to draw the attention of the Hon'ble Court to the order of the Hon'ble Delhi High Court dated 24.03.2023. Vide the said Order the Hon'ble Tribunal has been constituted to adjudicate the disputes between the parties which have arisen from the Work Order No. WOIJPR/0006/16-17 dated 20.10.2016. It is thus the submission of the Respondent that the Hon'ble Tribunal is concerned with the adjudication of the disputes which arise out of the said Work Order No. WOIJPR/0006/16-17 and not the Work Order No. WOIJPR/00061/16-17. Hence, the present application of the Petitioner is required to be dismissed. The Hon'ble Court has decided the Petition of the Petitioner based on the notice which is issued by the Petitioner followed by the averments made by the Petitioner in the Petition and the prayer made in the Petition. The Petitioner is seeking to replace the Work Order by changing the number and is terming the same as a correction and the said statement of the Petitioner is itself erroneous, illegal, and unfounded. There must be a dispute raised regarding the work order for which the Petitioner shall thereafter approach the Hon'ble Court for the appointment of the arbitration. In the present case the Petitioner has not invoked the arbitration with respect to Work Order No. WOIJPR/00061/16-17 and has not approached this Hon'ble Court with respect to the said Work Order No. WOIJPR/00061/16-17. Hence, there is no error in the order dated 24.03.2023 which is sought to be corrected, or which can be corrected. The Petition has been disposed off and after the disposal of the Petition there cannot be any change



in the Petition. Hence, the present application of the Petitioner is required to be dismissed.

3. The Section 152 and 153 of the CPC are not applicable to the rectification and correction in the Petition. Further, there is no error in the order dated 24.03.2023 and hence the said Section 152 and 153 of the CPC are not applicable to the given facts and circumstances. Hence, the present application of the Petitioner is required to be dismissed.”

Paragraph wise reply:

“3. In reply to contents of paragraph 3, it is submitted that the Petitioner placed on record the wrong work order and the Petitioner should have filed the Work Order No. WOJPR/0006/16-17. The Respondent in the interest of justice, and in bonafide, did not raise the objection that the wrong work order was filed. However, the Petitioner should have filed the correct work order i.e. Work Order No. WOJPR/0006/16-17. Further, the Respondent could not have taken any objection if the Petitioner raised the dispute and sought the reference of the dispute arising out of the Work Order No. WOJPR/00061/16-17 to arbitration. There is no dispute raised by the Petitioner with respect to the Work Order No. WOJPR/0006/16-17.

4. In reply to contents of paragraph 4, the response of the Respondent is a matter of record. It is further denied that the said response was with respect to the averments of the Petitioner qua the Work Order No. WOJPR/0006/16-17 and not Work Order No. WOJPR/00061/16-17. The response of the Respondent qua the Work Order No. WOJPR/0006/16-17 cannot be imputed for the Work Order No. WOJPR/00061/16-17. It is further submitted that the Petitioner raised the claim and invoked the disputes qua the Work Order No. WOJPR/00061/16-17 and not the Work Order No. WOJPR/0006/16-17. It is also submitted that the Respondent never denied the averment of the Petitioner qua the Work Order No. WOJPR/0006/16-17 and not the Work Order No. WOJPR/00061/16-17 as there were no averments of the Petitioner in the Petition regarding the Work Order



No. WOJPR/00061/16-17 so there was no occasion for the Petitioner to deal with the said Work Order No. WOJPR/00061/16-17.

5. In reply to contents of paragraph 5, the submissions of the Respondent as above are reiterated and reaffirmed, and the allegations of the Respondent to the contrary are denied and disputed by the Respondent. It is reiterated that the Petitioner raised the claim and invoked the disputes qua the Work Order No. WOJPR/00061/16-17 and not the Work Order No. WOJPR/00061/16-17. It is also submitted that the Respondent never denied the averment of the Petitioner qua the Work Order No. WOJPR/00061/16-17 and not the Work Order No. WOJPR/00061/16-17 as there were no averments of the Petitioner in the Petition regarding the Work Order No. WOJPR/00061/16-17 so there was no occasion for the Petitioner to deal with the said Work Order No. WOJPR/00061/16-17.”

SUBMISSIONS

(On behalf of the applicant)

14. Learned counsel appearing on behalf of the applicant submitted that the dispute arose between the applicant and the respondent out of the Work Order bearing no. WOJPR/00061/16-17. However, the applicant has committed a typographical error in typing the impugned Work Order number and instead the same was typed as “WOJPR/0006/16-17” in the pleadings of the captioned petition as well as the order dated 24th March, 2023 passed by this Court in the captioned petition.

15. It is further submitted that the respondent has objected to admit the Work Order as a document at the stage of denial or admission of the documents, however, did not raise any objection during the pendency of the captioned petition. The said conduct of the respondent reveals that the



respondent was aware about the fact that the arbitration is invoked pertaining to the actual Work Order.

16. It is submitted that during the proceedings before the learned Arbitrator, the respondent objected the Work Order to be admitted as a document stating that the Order dated 24th March, 2023 was passed with respect to the Work Order bearing no. WOJPR/0006/16-17 and therefore, rectification pertaining to the same cannot be sought by the applicant.

17. It is submitted that the applicant filed an application under Order VI Rule 17 of the CPC before the learned Arbitrator seeking rectification of the incorrect Work Order number mentioned in the petition, however, the same was not allowed vide order dated 1st November, 2023 stating that the applicant is required to file an appropriate application before this Court for seeking rectification of the order dated 24th March, 2023.

18. It is submitted that as per the order passed in **Smt. Kamalavva Vs. Veerabhadrappa**¹ by the Karnataka High Court and the judgment passed by the Punjab and Haryana High Court in **Gulazara Singh Vs. Devinder Singh**², the Courts can rectify inadvertent errors such as arithmetic and clerical errors in the orders, decree, judgments as well as the pleadings, as per the powers conferred under Sections 152 and 153 of the CPC.

19. It is further submitted that the rectification sought by the applicant is merely a typographical error, which is caused inadvertently, and the same would not change or impact the nature of the petition or the order dated 24th March, 2023 passed by this Court.

¹ 2014 SCC OnLine Kar 1080.

² 2004 SCC OnLineP&H 582.



20. In view of the foregoing submissions, it is prayed that the instant application may be allowed.

(On behalf of the respondent)

21. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant application submitting to the effect that there is no requirement of rectifying any error as prayed for and the instant application is liable to be dismissed.

22. It is submitted that the invocation notice dated 21st October, 2022 was issued with respect to the Work Order bearing no. WOJPR/0006/16-17 and based on the said notice, the captioned petition was filed by the applicant. In view of the same, this Court passed an order dated 24th March, 2023 and appointed an arbitrator for the dispute arising out of the Work Order number WOJPR/0006/16-17. Therefore, the said order passed by this Court is correct and cannot be rectified as the applicant has invoked the arbitration based on the Work Order bearing no. WOJPR/0006/16-17 and not WOJPR/00061/16-17.

23. It is submitted that the provisions of Sections 152 and 153 of the CPC cannot be made applicable to the instant case as there is no error committed in the order dated 24th March, 2023.

24. In view of the foregoing submissions, it is prayed that the instant application, being bereft of any merits, may be dismissed.

ANALYSIS AND FINDINGS

25. Heard learned counsel for the parties and perused the record.

26. It is the case of the petitioner that there was an inadvertent typographical error in Work Order number mentioned in the pleadings of the captioned petition as well as the order dated 24th March, 2023,



wherein it was specified as WOJPR/0006/16-17 instead of WOJPR/00061/16-17. Moreover, the respondents have not objected the veracity of said Work Order during the proceedings of the captioned petition, which clearly indicates that the respondent was aware that the arbitration was invoked pertaining to the said Work Order. Furthermore, the rectification of the said typographical errors will not alter or impact the meaning of the pleadings of the captioned petition as well as the contents of the order dated 24th March, 2023.

27. Rebutting the same, the respondent herein contended that the rectification of the alleged typographical errors cannot be made under Section 152 and 153 of the CPC due to its non-applicability in the instant case. Moreover, the rectification of the alleged typographical errors will lead to impacting the subject matter and contents of the pleadings of the captioned petition and order dated 24th March, 2023. It is the further case of the respondent that the arbitration has been invoked with respect to the Work Order bearing no. WOJPR/0006/16-17 and the order dated 24th March, 2023 has been passed based on the said Work Order, therefore, no error has been committed by this Court while passing the said order and rectification of the same is not required.

28. Taking the aforesaid arguments into consideration, the question for adjudication before this Court is whether this Court, under Section 152 and 153 of the CPC, can rectify the Work Order number which is alleged to be wrongly mentioned in the Order dated 24th March, 2023 as well as the pleadings of the captioned petition.

29. However, before answering the aforesaid issue, it is pertinent for this Court to firstly deal with the issue of applicability of the CPC



provisions to the captioned petition which was filed under Section 11(5) of the Act.

Applicability of CPC provisions in the instant case

30. As mentioned earlier, the captioned petition was filed under Section 11(5) of the Act which is the provision that allows the parties to a dispute to approach the Court for appointment of the arbitrator if the parties failed to make a unanimous decision.

31. At this juncture, it is pertinent to mention the respondent's contention that Section 152 and 153 of the CPC are not applicable to the instant case for rectification of the pleadings of the captioned petition filed under Section 11(5) of the Act. It was further contended that this Court passed the order dated 24th March, 2023 based on the contents of the pleadings of the captioned petition as well as the notice dated 21st October, 2022, which are filed as per the provisions of the Arbitration Act.

32. Both the Arbitration Act as well as the CPC deal with the procedural aspects of dispute resolution, wherein the former is a special legislation, and the latter is a general legislation. Therefore, it is pertinent for this Court to delve into the objective of the Act in order to distinguish its applicability to a given case.

33. The enactment of the Arbitration Act was necessitated due to the high rise in the demand of choosing an alternate dispute forum so as to enable the resolution of disputes between the parties as quickly and efficiently as possible. The Arbitration Act came into being with an objective of providing an alternate dispute mechanism for speedy and timely redressal of disputes between the parties, as opposed to the general



Courts which usually consumes more time due to the practicality purposes.

34. On the other hand, the CPC provides a blanket procedural mechanism for all those disputes which fall within the ambit of civil nature. In other words, the CPC was enacted in order to provide a thorough procedure for redressal of civil disputes irrespective of the subject matter and its nature.

35. It is a well settled principle of law that when there is a discrepancy between the general and special law, the special law prevails over the general law and the said principle finds its origin in the legal maxim *generalia specialibus non derogant*. Therefore, one can ascertain the applicability of law based on facts and circumstances of the same, as it differs with case to case.

36. However, pertaining to the instant case, a question arises as to which law will be made applicable when the provisions of the special law are silent regarding a certain procedural aspect which is already dealt with by the general law?

37. As an answer to the said question, this Court finds it pertinent to refer to the case of ***State of Arunachal Pradesh v. Ramchandra Rabidas***³, whereby, the Hon'ble Supreme Court, while dealing with the discrepancy between the Motor Vehicles Act, 1988 and the Indian Penal Code, 1860, subjectively analysed the case and held that both the enactments are individual and separate in itself, however, since the former enactment (special law) is silent on a specific offence and punishment, which is already covered within the purview of the latter

³ (2019) 10 SCC 75.



enactment (general law), the latter enactment will be made applicable in governing the said factual situation due to absence of any recourse in the special legislation. The relevant extracts of the said judgment are as follows:

“6. In our view there is no conflict between the provisions of IPC and the MV Act. Both the statutes operate in entirely different spheres. The offences provided under both the statutes are separate and distinct from each other. The penal consequences provided under both the statutes are also independent and distinct from each other. The ingredients of offences under both statutes, as discussed earlier, are different, and an offender can be tried and punished independently under both statutes. The principle that the special law should prevail over the general law, has no application in cases of prosecution of offenders in road accidents under IPC and the MV Act.

7. It is pertinent to mention that there is no provision under the MV Act which separately deals with offences causing death, or grievous hurt, or hurt by a motor vehicle in cases of motor vehicle accidents. Chapter XIII of the MV Act is silent about the act of rash and negligent driving resulting in death, or hurt, or grievous hurt, to persons nor does it prescribe any separate punishment for the same; whereas Sections 279, 304 Part II, 304-A, 337 and 338 IPC have been specifically framed to deal with such offences.

*12. The legislative intent of the MV Act, and in particular Chapter XIII of the MV Act, was not to override or supersede the provisions of IPC insofar as convictions of offenders in motor vehicle accidents are concerned. Offences under Chapter XIII of the MV Act cannot abrogate the applicability of the provisions under Sections 297, 304, 304-A, 337 and 338 IPC. The offences do not overlap, and therefore, the maxim of “*generalia specialibus non derogant*” is inapplicable, and could not have been invoked. The offences prescribed under IPC are independent of the*



offences prescribed under the MV Act. It cannot be said that prosecution of road traffic/motor vehicle offenders under IPC would offend Section 5 IPC, as held by the High Court, insofar as punishment for offences under the MV Act is concerned.”

38. The deviation from the established principle of law i.e., *generalia specialibus non derogant* is observed by the Division Bench of this Court in the case of **Asmita Agarwal v. Enforcement Directorate and Ors.**⁴. In the said case, the conflict was between the application of the Foreign Exchange Regulation Act, 1973, which is a special enactment, and the Code of Criminal Procedure, 1973, which is a general enactment, wherein the observed as follows –

“8. ... The fact of the matter is that once the special legislation or enactment like FERA is silent with regard to certain procedure like where to investigate a woman, one cannot but have to have recourse to the code. Admittedly FERA is silent in this respect regarding investigating a woman for a minor under the FERA, therefore, we are of the view that the provisions of Section 160 of the Code would apply in the facts of this case.”

39. Bearing the aforementioned observations in mind, advertent to the instant case, it is pertinent to reiterate that Sections 152 and 153 of the CPC provides powers to the Court to rectify its own errors, which are arithmetic or clerical, and amend any proceedings at any stage, if it deems fit, respectively. On the other hand, in the Arbitration Act, the power to rectify the errors in an arbitral award is bestowed upon the Arbitral Tribunal under Section 33 of the Act.

⁴ 2001 SCC OnLine Del 1254.



40. However, in the instant case, the rectification is being sought in the order dated 24th March, 2023 passed by this Court, wherein the order is neither an arbitral award nor this Court was a Arbitral Tribunal and hence, Section 33 of the Act cannot be made applicable in the instant case. Therefore, since the Arbitration Act provides no resolution for the rectification of the impugned Work Order number in the order dated 24th March, 2023 and the pleadings of the captioned petition, the general provisions envisaged in the CPC i.e., Sections 152 and 153 of the CPC will be applicable, if the instant case satisfies the criteria laid down therein.

41. The Arbitration Act and the CPC are two separate and independent enactments and their governance over the respective cases is very well demarcated. It is not the question before this Court with respect to the discrepancy between the applicability of provisions of the CPC and Arbitration Act, as it is a settled principle of law that the provisions of the special law override the provisions of the general law. Instead, the question before this Court is pertaining to the silence of a particular procedural or substantial aspect in the special law, which is already in existence and dealt under the general law.

42. Therefore, in the given case, there is no discrepancy between the applicability of the two enactments i.e., CPC and Arbitration Act, however, the persisting issue herein is the silence regarding the rectification of the errors, especially arithmetic or clerical, in the orders and petitions under the Arbitration Act, which does not fall within the ambit of Section 33 of the Act. However, the same being already dealt under Sections 152 and 153 of the CPC, it necessitates the applicability of



provisions of the general law to the instant case. Moreover, upon perusal of the Arbitration Act, no express bar on Civil Courts has been imposed.

43. In light of the foregoing discussions, this Court is of the view that Section 152 and 153 of the CPC can be made applicable in the instant case seeking rectification of errors in the order dated 24th March, 2023 and the pleadings of the captioned petition.

44. Therefore, the contention of the respondent regarding the applicability of Section 152 and 153 of the CPC is, hereby, rejected.

Rectification of the impugned Work Order number

45. Now advertent to the main issue of this case i.e., the rectification of the Work Order in the order dated 24th March, 2023 and the pleadings of the captioned petition under Sections 152 and 153 of the CPC.

46. For the purpose of convenience and clarity, it is pertinent to reproduce Section 152 and 153 of the CPC, which is as follows –

“Section 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.”

“Section 153: General power to amend.
The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit ; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.”

47. Section 152 of the CPC specifically provides for the rectification of any arithmetic or clerical errors made by the Court due to accidental slip



or omission thereto in its orders, decrees or judgments. The said error can be corrected by the Court either by its own motion or by way of an application filed by the parties seeking such rectification.

48. On the other hand, Section 153 of the CPC bestows a general power onto the Court to amend any proceeding in the suit as it may think feasible for the purpose of determining the actual issue raised in the said proceeding.

49. Upon perusal of these provisions, it is observed that the terms used therein such as ‘*by its own motion*’ and ‘*as it may think fit*’ clearly indicates that the power bestowed upon the Courts under these provisions are discretionary in nature which is to be exercised carefully and sparingly as it attracts judicial scrutiny.

50. Although Sections 152 and 153 of the CPC are two separate provisions, wherein the former deals with the rectification in orders etc. and the latter deals with the amendment of the proceedings at any stage, the objective behind these provisions are similar, that is, not to cause any party prejudice due to unintentional mistakes of the Court.

51. At this juncture, it is pertinent to understand the scope of Section 152 of the CPC, which was elaborately discussed in the case of ***Jayalakshmi Coelho v. Oswald Joseph Coelho***⁵, wherein the Hon’ble Supreme Court observed that the mistakes, which are accidental and not intentional, requires to be corrected by the Courts, so far as the same does not affect or modify the meaning of the effective judicial order passed by the Court. The relevant portion of the judgment is as follows:

⁵ (2001) 4 SCC 181.



“13. So far as the legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 CPC, any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the court. The principle behind the provision is that no party should suffer due to mistake of the court and whatever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice. A reference to the following cases on the point may be made:

The basis of the provision under Section 152 CPC is found on the maxim actus curiae neminemgravabit i.e. an act of court shall prejudice no man (Jenk Cent-118) as observed in a case reported in Assam Tea Corpn. Ltd. v. Narayan Singh [AIR 1981 Gau 41] . Hence, an unintentional mistake of the court which may prejudice the cause of any party must be rectified. In another case reported in L. Janakirama Iyer v. P.M. Nilakanta Iyer [AIR 1962 SC 633] it was found that by mistake the words “net profit” were written in the decree in place of “mesne profit”. This mistake was found to be clear by looking to the earlier part of the judgment. The mistake was held to be inadvertent. In Bhikhi Lal v. Tribeni [AIR 1965 SC 1935] it was held that a decree which was in conformity with the judgment was not liable to be corrected. In another case reported in Master Construction Co. (P) Ltd. v. State of Orissa [AIR 1966 SC 1047 : (1966) 17 STC 360] it has been observed that arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the court liable to be corrected. To illustrate the point, it has been indicated as an example that in a case where the order may contain something which is not mentioned in the decree would be a case of unintentional omission or mistake. Such omissions are attributable to the court which may say something or omit to say something which it did not intend to say or omit. No new arguments or



rearguments on merits are required for such rectification of mistake. In a case reported in *Dwaraka Das v. State of M.P.* [(1999) 3 SCC 500] this Court has held that the correction in the order or decree should be of the mistake or omission which is accidental and not intentional without going into the merits of the case. It is further observed that the provisions cannot be invoked to modify, alter or add to the terms of the original decree so as to in effect pass an effective judicial order after the judgment in the case. The trial court had not granted the interest pendente lite though such a prayer was made in the plaint but on an application moved under Section 152 CPC the interest pendente lite was awarded by correcting the judgment and the decree on the ground that non-awarding of the interest pendente lite was an accidental omission. It was held that the High Court was right in setting aside the order. Liberal use of the provisions under Section 152 CPC by the courts beyond its scope has been deprecated. While taking the above view this Court had approved the judgment of the Madras High Court in *Thirugnanavalli Ammal v. P. Venugopala Pillai* [AIR 1940 Mad 29 : (1939) 2 MLJ 751] and relied on *Maharaj Puttu Lal v. Sripal Singh* [AIR 1937 Oudh 191 : ILR 12 Luck 759]. Similar view is found to have been taken by this Court in a case reported in *State of Bihar v. Nilmani Sahu* [(1996) 11 SCC 528] where the Court in the guise of arithmetical mistake on reconsideration of the matter came to a fresh conclusion as to the number of trees and the valuations thereof in the matter which had already been finally decided. Similarly in the case of *Bai Shakriben v. Special Land Acquisition Officer* [(1996) 4 SCC 533] this Court found omission of award of additional amount under Section 23(1-A), enhanced interest under Section 28 and solatium etc. could not be treated as clerical or arithmetical error in the order. The application for amendment of the decree in awarding of the amount as indicated above was held to be bad in law.

14. As a matter of fact such inherent powers would generally



be available to all courts and authorities irrespective of the fact whether the provisions contained under Section 152 CPC may or may not strictly apply to any particular proceeding. In a matter where it is clear that something which the court intended to do but the same was accidentally slipped or any mistake creeps in due to clerical or arithmetical mistake it would only advance the ends of justice to enable the court to rectify such mistake. But before exercise of such power the court must be legally satisfied and arrive at a valid finding that the order or the decree contains or omits something which was intended to be otherwise, that is to say, while passing the decree the court must have in its mind that the order or the decree should be passed in a particular manner but that intention is not translated into the decree or order due to clerical, arithmetical error or accidental slip. The facts and circumstances may provide clue to the fact as to what was intended by the court but unintentionally the same does not find mention in the order or the judgment or something which was not intended to be there stands added to it. The power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to find that a better order or decree could or should be passed. There should not be reconsideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought the court may find that it may have committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification in exercise of the court's inherent powers as contained under Section 152 CPC. It is to be confined to something initially intended but left out or added against such intention.”

52. Upon perusal of the foregoing extracts, it is ostensibly clear that Section 152 of the CPC can be invoked only when there is an arithmetic or clerical error committed by the Court while passing its order so as to



not cause any prejudice to the parties therein due to the mistakes committed by the Court. However, it is further clarified that by way of exercising its powers under Section 152 of the CPC, the Court cannot revisit and review the order and contents therein, by altering the intent and meaning of the order passed by the Court. The said limitation to Section 152 of the CPC was expressed by the Hon'ble Supreme Court in the case of ***State of Punjab v. Darshan Singh***⁶. The relevant extracts of the same are as follows:

“12. Section 152 provides for correction of clerical or 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 passing of 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, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very court or the tribunal cannot and, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefore and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions 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 as if

⁶ (2004) 1 SCC 328.



it is looking into it for the first time, for which the proper remedy for the aggrieved party, if at all, is to file an appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of the Code even after passing of effective orders in the lis 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. Similar view was expressed by this Court in *Dwaraka Das v. State of M.P.* [(1999) 3 SCC 500] and *Jayalakshmi Coelho v. Oswald Joseph Coelho* [(2001) 4 SCC 181] .

13. The basis of the provision under Section 152 of the Code is founded on the maxim “*actus curiae neminem gravabit*” i.e. an act of court shall prejudice no man. The maxim “is founded upon justice and good sense; and affords a safe and certain guide for the administration of the law”, said Cresswell, J. in *Freeman v. Tranah* [12 CB 406 : 138 ER 964] (ER p. 967). An unintentional mistake of the court which may prejudice the cause of any party must and alone could be rectified. In *Master Construction Co. (P) Ltd. v. State of Orissa* [AIR 1966 SC 1047 : (1966) 17 STC 360] it was observed that the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the court, liable to be corrected. To illustrate this point it was said that in a case where the order contains something which is not mentioned in the decree, it would be a case of unintentional omission or mistake as the mistake or omission is attributable to the court which may say something or omit to say something which it did not intend to say or omit. No new arguments or



rearguments on merits can be entertained to facilitate such rectification of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case.”

53. As discussed earlier, Section 152 of the CPC pertains only for the purpose of rectification of errors in orders, decrees, judgments etc. passed by the Court, whereas Section 153 of the CPC deals with the general power of the Court in amending any proceedings of the suit, at any stage, if it deems fit.

54. In the instant case, the applicant sought not only for the rectification of the error in the order dated 24th March, 2023 but also in the pleadings of captioned petition, on the basis of which the said order was passed by this Court.

55. Here, it is pertinent to mention the judgment of the Division Bench of the Punjab and Haryana High Court in the case of **Gulzara Singh v. Devinder Singh (Supra)**, which is relied by the applicant herein. In the said case, it was held by the Court that while exercising powers under Section 152 and 153 of the CPC, it is not necessary to first amend the pleadings in order to correct the decree. The relevant paragraph of the judgment is as follows:

“3. Now the question arises is whether the mistake in the judgment and decree which has arisen not account of any mistake of the court but in view of the mistake in the plaint can be corrected in exercise of the powers under Sections 152 and 153 of the Code. This question has been dealt with by a Division Bench of this Court in Pritam Singh's case wherein it has been held that a court can under Section 152 of the Code of Civil Procedure amend clerical error in



decree although the error may have first occurred in the pleadings and it is not necessary to first amend the pleading in such a case”

56. Therefore, having discussed the scope of this Court’s power for rectification of errors, advertent to the facts of the case, the applicant sought for the rectification of the Work Order number, which was incorrectly mentioned in the order dated 24th March, 2023 as well as the pleadings of the captioned petition as “WOJPR/0006/16-17” instead of “WOJPR/00061/16-17”.

57. With respect to the said prayer, the contention of the respondent is that the applicant has invoked arbitration vide notice dated 21st October, 2022 with the Work Order bearing no. WOIJP/0006/16-17. Moreover, the captioned petition has also been filed based on the notice given to the respondent and accordingly, this Court vide order dated 24th March, 2023 appointed an arbitrator to resolve the issue arising out of the said Work Order i.e., bearing no. WOIJP/0006/16-17. Therefore, it is contended that this Court has not committed any error and if the applicant seeks to resolve the dispute arising from the Work Order bearing no. WOIJP/00061/16-17, then it should have invoked the arbitration with the actual Work Order number.

58. From the aforesaid discussion on the rectification of the error, the position of law can be summed as *firstly*, the error is set to be an arithmetic or clerical error; *secondly*, the said error must be made in the order, decree, judgment passed by the Court, and *thirdly*, the said error must have been made unintentionally or accidentally. Therefore, the



factor of intention plays a significant role in exercising the powers conferred on the Court under Sections 152 and 153 of the CPC.

59. It is observed by this Court that the respondent did not object to the incorrect Work Order number which was mentioned at every stage of the proceedings before this Court under Section 11(5) of the Act. Upon perusal of the reply to the captioned petition as well, it is made out that the respondent has not contested or objected the incorrect Work Order number being mentioned in the pleadings of the petition, not even at the stage of passing of the order dated 24th March, 2023. However, the said objection was only taken at the time of admission or denial of the documents before the learned Arbitrator.

60. At this juncture, it is pertinent for this Court to peruse the Work Order dated 20th October, 2016, which is filed as Document No. 5 in the List of Documents along with the captioned petition which is available on record. Upon perusal of the said Work Order, it is observed that the terms and conditions mentioned in the captioned petition align with those mentioned in the said document. However, most importantly, the document reflects the Work Order number bearing no. WOJPR/00061/16-17.

61. Therefore, considering the conduct of the respondent for the duration of the proceedings of the captioned petition as well as the Document no. 5 i.e., Work Order, it is appropriate to assume that both the parties were aware of the fact that the dispute arises out of the Work Order bearing no. WOJPR/00061/16-17. Moreover, there is no submission or document on record with a Work Order bearing no.



WOJPR/0006/16-17 to create any confusion or misconception amongst the parties.

62. Moreover, it is observed that the respondent's contention that the arbitration has been invoked with respect to the incorrect Work Order and that no rectification of the same is required is that the Work Order because if rectified it will affect the authenticity of the order dated 24th March, 2023. However, the said contention is flawed as the rectification of the incorrect Work Order, will not cause any alteration to the effect of the order dated 24th March, 2023 and in fact, the rectification will further enhance the effectiveness of the said order.

63. Furthermore, as already discussed earlier, the objective behind promulgation of Sections 152 and 153 of the CPC is to ensure that the Court can rectify its own mistakes, either arithmetic or clerical, in order to give meaning to the order, thereby, keeping the interest of justice and the parties in consideration. However, if the Courts are disabled of this power conferred by the said provisions, then for every arithmetic or clerical mistake, the parties will have to undergo the tedious procedure before the Courts for resolution of the dispute all over again which not only waste the judicial time but also the resources of the parties.

64. Therefore, considering the foregoing discussions, this Court is of the view that the rectification sought by the applicant pertaining to the Work Order number is merely a clerical error. Moreover, by rectifying the same, the intent expressed in the pleadings of the captioned petition as well as the order dated 24th March, 2024 will not be affected, and no prejudice shall be caused to the respondent.



CONCLUSION

65. Summarily stated, this Court has taken the contentions of the respondent into consideration, wherein, it was submitted that the provisions of the CPC cannot be applied to the instant case and that the rectification of the alleged typographical errors cannot be made in the pleadings of the captioned petition as well as the order dated 24th March, 2023 as the arbitration was invoked vide notice dated 21st October, 2022 based on the Work Order number bearing WOJPR/0006/16-17 and not WOJPR/00061/16-17 which the petitioner seeks to be inducted.

66. Addressing the issue of applicability of the CPC provisions to the instant case, this Court has observed that the rectification of the typographical error can be sought under Section 152 and 153 of the CPC due to the absence of any specific provision pertaining to the rectification of the pleadings and order passed by the Courts *qua* the Arbitration Act.

67. Furthermore, while dealing with the issue of rectification of the pleadings of the captioned petition as well as the order dated 24th March, 2023, this Court is satisfied that the errors made by the petitioner are *bona fide* and merely clerical, and, therefore, rectifying the same would not impact or affect the effectiveness of the said order, the pleadings of the captioned petition as well as the merits of the dispute. Moreover, it is observed that the said Work Order was filed as Document no. 5 to the captioned petition (in the list of documents filed by the petitioner), which is available on record, and the same reflects the actual Work Order number, i.e., WOJPR/00061/16-17. The same concludes that the respondent was well informed about the arbitration having been invoked for the resolution of disputes arising out of the Work Order no.



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WOJPR/00061/16-17 and evidently the typographical errors are *bona fide*.

68. In view of the aforesaid, this Court is inclined to allow the instant application and accordingly, the following directions are passed by this Court:

The Work Order bearing no. WOI/PR/0006/16-17 is deemed to be read as WOI/PR/00061/16-17 in the following paragraphs/places –

- a. At all places in the notice dated 21st October, 2022;
- b. List of Dates and Events filed in the captioned petition;
- c. Paragraph nos. 6,9,10,16,17,21,22 and prayer clause of the captioned petition; and
- d. Paragraph nos. 3,5,18(i) of the Order dated 24th March, 2023.

69. In view of the foregoing, the instant application is disposed of, alongwith any pending applications.

70. The judgment be uploaded on website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 9, 2024
gs/mk/ryp