JAYALAKSHMI COELHO

v.

OSWALD JOSEPH COELHO

FEBRUARY 28, 2001

[D.P. MOHAPATRA AND BRIJESH KUMAR, JJ.]

Code of Civil Procedure, 1908 :

Section 152—Amendment of Judgments, decrees or orders—Inherent powers—Scope of—Held, power of rectification is confined only to clerical or arithmetical error or accidental slip or omission on the part of the Court—Order or decree should contain or omit something which was intended to be otherwise—No new arguments or re-arguments on merits required for such rectification of mistake.

Rectification of Decree—Agreement between parties for divorce by mutual consent—Petition filed—Only decree for divorce prayed—Decree granted—Subsequently, husband filing application for rectification of decree for failure to ask relief in terms of agreement—Only mandatory injunctions prayed in application—No prayer made either in petition or application for incorporating terms and conditions of agreement—No averment about any accidental slip or omission by the Court—Held, under the facts application for rectification of decree misconceived and liable to be dismissed.

Appellant-wife and respondent-husband entered into an agreement dated 26.7.1991 to dissolve their marriage by mutual consent which also contained clauses settling other issues amicably relating to their properties and custody of child, etc. According to the agreement, flat in which parties had been residing on certain terms and conditions, was to be transferred by wife in the name of husband. Thereafter, petition for divorce by mutual consent was filed by parties wherein relief claimed was specifically for decree for divorce alone which was granted by the Family Court. Thereafter, respondent moved an application for modification of decree on the ground that parties being lay persons failed to ask relief in terms of agreement dated 26.7.1991 while passing of earlier decree and made prayers for grant of mandatory injunction on the basis of the said agreement. The Family Court allowed application for modification and amended decree inserting all clauses of agreement dated 26.7.1991 in amended decree.

A Appellant-wife filed writ petition against the order of Family Court amending earlier decree which was dismissed by the Single Judge and confirmed in appeal by the Division Bench. Aggrieved by the judgment of the Division Bench, wife has filed the present appeal.

Allowing the appeal, this Court

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HELD : 1.1. In terms of Section 152 C.P.C., any error occurring 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 of decree must be properly reflected C therein, otherwise it would only be destructive to the principle of advancing the cause of justice. Hence, an unintentional mistake of the Court which may prejudice cause of any party must be rectified. [215-E-F]

1.2. Such inherent powers would generally be available to all courts D and authorities irrespective of the fact whether the provisions contained under Section 152 C.P.C. 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 E 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 F 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 G 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 re-consideration 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 court may find that it may have committed a mistake in H passing an order in certain terms but every such mistake does not permit

its rectification in exercise of Court's inherent powers as contained under Section 152 C.P.C. It is to be confined to something initially intended but left out or added against such intention. [217-B-F] A

I.L. Janakiram Iyer and Ors. etc. v. *P.M. Nilakanta Iyer*, AIR (1962) SC 633; *Bhikhi Lal and Ors.* v. *Tribeni and Ors.*, AIR (1965) SC 1935 and *Master Construction Co. (P) Ltd.* v. *State of Orissa and Anr.*, AIR (1966) SC 1047, followed. B

State of Bihar and Anr. v. *Nilmani Sahu and Anr.*, [1996] 11 SCC 528; *Bai Shakriben (dead) By Natwar Melsingh and Others* v. *Special Land Acquisition Officer and Anr.*, [1996] 4 SCC 533 and *Dwarkadas* v. *State of M.P. and Anr.*, [1999] 3 SCC 500, relied on. C

The Assam Tea Corporation Ltd. v. *Narayan Singh and Anr.*, AIR (1981) Guwahati 41, approved.

2. In Paragraph 8 of the main petition for dissolution of the marriage it has been averred that the agreement arrived at between the parties may be treated as part and parcel of the petition while passing the order in the case accordingly. The relief however claimed in the petition indicates that specifically decree for divorce alone was prayed for. There was no prayer to the effect that the agreement may be made a part of the decree or the terms and conditions given in the agreement may be incorporated in the decree. Whatever forms part of the petition does not automatically become a part of the decree unless specifically it is so provided. It can only be kept in mind while passing the decree. [219-E; 218-B-C] D E

3. The case of the respondent-husband in paragraph 3 of his application for modification of the decree was that the parties being lay persons without assistance of lawyers had failed to ask for the relief as per the agreement in their prayer clause of petition for divorce. No averment of inadvertence by reason of which court may not have included those terms in the decree has been indicated in the application for modification of the decree. It has not been stated in the application for modification that the court wanted to or intended to pass order about transfer of flat but it was not so ordered due to any clerical error or accidental slip. It is only an effort to improve upon the case as taken up by the respondent in his application. The prayer made in the application for modification of the decree is for grant of orders of mandatory injunctions of different nature F G H

A **and in different terms. There is no prayer therein for incorporating the terms and conditions of the agreement in the decree. So it is not something which can be said to have been left out accidentally earlier. [219-A-B]**

4. There is nothing on the record to indicate that the Family court intended to incorporate the terms and conditions of the agreement in the B **decree. It would have been a different case if it was shown that the Court intended to incorporate those terms but accidentally it slipped or the court forgot to do so. But there is no material on the basis of which intention of the family court can be inferred for incorporating the terms and conditions of the agreement in the decree for divorce on the basis of which it can** C **be said that whatever was intended by the court could not be reflected in the decree. There is not even a whisper about the Memo of Agreement in the narration made in the decree. The application for rectification of decree was totally misconceived and was only liable to be dismissed rather than to incorporate terms and conditions of the agreement in respect of** D **which no prayer was made in the application for modification nor in the original petition for dissolution of marriage more particularly when no accidental slip on the part of the Court was indicated in the application nor the same being substantiated. [219-H; 220-A; H]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3609 of 1998.

E From the Judgment and Order dated 17.2.98 of the Bombay High Court in L.P.A. No. 204 of 1997 in W.P. No. 529 of 1997.

Ms. Indra Jaisingh, Ms. Vanita Bhargava, Rakhi Ray, for Ms. Bina Gupta, for the Appellant.

F A.S. Bhasme and Manoj Kumar for the Respondent.

The Judgment of the Court was delivered by

BRIJESH KUMAR, J. This appeal is preferred against the Judgment and Order dated February 17, 1998 passed by a Division Bench of the Bombay G High Court in Letters Patent Appeal No.204 of 1997. The Court of the Principal Judge, Family Court, Bombay, modified its earlier decree which order was challenged by means of a Writ Petition. The Writ Petition was dismissed upholding the order passed by the Principal Judge, Family Court. The impugned order passed by the Division Bench confirmed the order of the learned H Single Judge giving cause of grievance to the appellant. Hence, the present

appeal.

We have heard Ms. Indra Jaising, learned Senior Counsel appearing for the appellant and Shri A.S. Bhasme, learned counsel appearing for the respondent.

The appellant Jayalakshmi Coelho and the respondent Oswald Joseph Coelho got married on January 6, 1977 in accordance with the Special Marriage Act, 1954. Out of the said wedlock, a female child Neisha Anne Coelho was born on August 1, 1978. Later, however, differences seem to have arisen between the appellant and her husband, ultimately, culminating into, the parties agreeing for dissolution of their marriage and they entered into an agreement to that effect on 26th July, 1991. It is stated in the agreement that it had become impossible for them to live any longer as husband and wife so they had decided to dissolve the marriage by mutual consent. They had also settled other issues amicably relating to their properties and custody of the child etc. in terms as indicated in the agreement.

According to the agreement, the flat in which the parties had been living as husband and wife, on certain terms and conditions, was to be transferred by the wife in the name of the husband. The other matters relating to jewelry, ornaments, utensils, personal belongings etc. had also been mentioned in the agreement as well as about the fixtures and furniture in the house. It also mentioned about the custody of the daughter.

The petition for divorce by mutual consent was filed in the Family Court at Bandra, Bombay on 21.8.1991 under Section 28 of the Special Marriage Act, 1954. Apart from other averments, made in the petition for mutual divorce, in paragraph 8, it was mentioned that Flat No.11 in Mon-Bijou Cooperative Housing Society was purchased by both the parties out of their own funds in the year 1976. Though it was in the name of the appellant yet she was to relinquish her right, title and interest in the said flat in the favour of the respondent, namely, the husband, as per their agreement arrived at earlier on 26th of July, 1991. It was, thereafter, mentioned that the Memorandum of Agreement may be treated as part and parcel of the divorce petition and order be passed accordingly.

However, in paragraph 14 of the petition, only the following reliefs were prayed :-

"(a) that the marriage between the Petitioners solemnized on the 6th day of January, 1977, at Bombay be dissolved by a decree of divorce;

(b) such other reliefs as this Hon'ble Court may deem fit think and proper."

The Family Court granted the decree as follows:-

"DECREE

IN THE FAMILY COURT AT BOMBAY
PETITION NO. AA-1221 OF 1991

Jayalakshmi Coelho
Residing at No.2 Laxmi Bhawan,
Matunga, Bombay ....Petitioner No.1

And

Oswald Joseph Coelho
Residing at No.11, Mon-Bijou
Chimbai Road, Bandra Bombay .....Petitioner No.2

1. Jayalakshmi Coelho and Oswald Joseph Coelho have filed this joint petition under Section 23 of Special Marriage Act, 1954 to get a decree of divorce by mutual consent.

2. Marriage between the petitioners Jayalakshmi and Oswald took place under the provisions of the Special Marriage Act, 1954 at Bombay on 6th January 1977. Thereafter they started dwelling together at Bandra. Their marital life was also fruitful by birth of daughter Neisha Anne Coelho, who was born on 1st August 1978. But it seems that thereafter differences arose between the two and in July 1986, Jayalakshmi left the matrimonial house and went to her parental house. Both the parties decided to take divorce by mutual consent.

3. This petition is coming on 7.3.1992 before Shri S.D. Pandit, Judge, Family Court, Bandra. In presence of Petitioner No.1 and 2, suit is decreed.

ORDER

Marriage between the petitioners Jayalakshmi and Oswald is hereby dissolved by decree of divorce by mutual consent.

No order as to costs."

The respondent, namely, the husband, after passing of the consent decree, as indicated above, moved an application dated June 30, 1992 stating therein that decree by mutual consent was granted to the parties on 7th March, 1992 but the order remained silent on other reliefs which were mentioned in the agreement and in paragraph 8 of the petition relating to transfer of Flat No.11, Mon-Bijou Co-operative Housing Society, 60-D, Chimbai Road, Bombay. According to the agreement dated 26.7.91, the flat was to be transferred in the name of the husband on payment of Rs.1,70,000/- to the wife. But the said prayer was not made for the reason as indicated below in paragraph 3 of the petition for modification of decree:-

> "I say that though all these averments and facts were put on record, in the petition, *both the Petitioners being lay persons, and appearing in this Hon'ble Court without the assistance of any lawyer, failed to ask for relief*, as per the said agreement in their prayer clauses. Consequently the Order passed by this Hon'ble Court remained silent on those reliefs."

It has not been said that the court wanted to or intended to pass order about transfer of flat but it was not so ordered due to any clerical error or accidental slip.

Thereafter, in the application for modification, averments have been made to the effect that the respondent, namely, the husband had been approaching the appellant for making the payment of the balance amount of Rs.1,60,000/-, 10,000/-having been paid earlier, but she had not been accepting the same on one pretext or the other and that she was trying to sell away the flat to some other person. Therefore, it had become necessary to move the application praying for the following relief in para 10 of the application :-

> "(a) That this Hon'ble Court be pleased to modify its order and decree dt. 7th March, 1992 in M.J. Petition No.AA - 1221/91 by including and granting the following prayers :-

A (1) That the Opponent (Original Petitioner No.1) be directed by an order of mandatory injunction to transfer Flat No.11, Mon-Bijou Co-op.Hsg. Society, Chimbai Road, Bandra, Bombay 400 050, to the name of Petitioner No.2 on payment of Rs. 1,60,000/ -, (Rupees One Lakh sixty thousand only) as per the Memoran-
B dum of Agreement dated 26th July, 1991.

(2) That the Opponent Original Petitioner No.1 be directed by an order of mandatory injunction to remove herself and her belong-ings from the said flat No.11, Mon-Bijou Co-op. Hsg. Society, Chimbai Road, Bandra 400 050, forthwith;

C

(3) That it be declared that the custody of minor child Neisha Anne Coelho is granted to the Applicant husband.

(b) Pending the hearing and final disposal of this application the
D Opponent Original Petitioner No.1 be restrained by an order of injunction from disturbing the Petitioner No. 2 in peaceful possession of flat No.11, Mon-Bijou Co-op. Hsg. Society, Chimbai Road, Bandra, Bombay 400 050.

(c) That pending the hearing and final disposal of this Application
E opponent the original Petitioner No.1 be restrained by an order of injunction from selling, parting with possession of or creating any third part rights in the said flat No.11, Mon-Bijou Co-op. Hsg. Society, Chimbai Road, Bandra, Bombay - 400 050.

(d) Interim and ad interim orders in terms of prayer (b) and (c).
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(e) For cost of this Application.

(f) Any other orders that this Hon'ble Court deem fit in the nature and circumstances of the case."

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The application was opposed and an affidavit in reply was filed by the appellant-wife. According to her, no payment was made by the respondent-husband as per the terms of the agreement and the allegation that any draft for payment was prepared and sent to the appellant was false and incorrect. It is not necessary to mention all other averments made in reply, about ownership
H etc. of the flat. It is also denied that in the absence of lawyers, there was any

handicap, as the parties are quite educated. It was, however, also submitted in the reply that the payment of Rs.1,60,000/- was to be made by the husband-respondent to the appellant-wife within 4 months from the date of execution of the Memorandum of Agreement. The agreement was entered into on 26.7.1991 and the decree of divorce was granted on 7.3.1992, after about 7 to 8 months of the agreement, but no payment was made. Raising several other pleas, she prayed for the rejection of the application.

The Family Court, on the aforesaid application, passed an order on 11.11.1992 amending the decree inserting all the Clauses (1) to (11) of the agreement in the amended decree. The order of amendment of the decree first states about the decree passed on 7.3.1992 and makes the amendment observing :-

> "It is hereby ordered and decreed that the consent terms incorporated in Memorandum of Agreement which is the part and parcel of the Petition be included in decree from condition No.1 to Condition No.11."

It is to be noticed that no such prayer was made in the application for incorporating the conditions of agreement in the decree. The prayers were for grant of mandatory injunction.

So far legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 C.P.C., 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 C.P.C. is found on the maxim "*Actus Curiae Neminem Gravabit*" i.e. an act of Court shall prejudice no man (Jenk Cent-118) as observed in a case reported in AIR (1981) Guwahati 41, *The Assam Tea Corporation Ltd.* v. *Narayan Singh and Another*. Hence, an unintentional mistake of the Court which may prejudice cause of any party must be rectified. In another case reported in AIR (1962) S.C. 633 - *I.L. Janakirama Iyer and others etc. etc.* v. *P.M. Nilakanta Iyer* it was found that by mistake word "net profit" was written in the decree in place of "mesne

A 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 and Others* v. *Tribeni and Others,* AIR (1965) S.C. 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 AIR (1966) S.C. 1047 - *Master Construction Co. (p) Ltd.* v. B *State of Orissa and Another* 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 C decree would be a case of unintentional omission or mistake. Such omissions are attributable to the Court who may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits are required for such rectification of mistake. In a case reported in (1999) 3 S.C.C. 500 *Dwarakadas* v. *State of M.P. and Another* this Court has D 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 E not granted the interest pendente lite though such a prayer was made in the plaint but on an application moved under Section 152 C.P.C. 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 C.P.C. by the Courts beyond F 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) Madras 29 and relied on *Maharaj Puttu Lal* v. *Sripal Singh* reported in AIR (1937) Oudh 191: ILR 12 Lucknow 759. Similar view is found to have been taken by this Court in a case reported in G (1996) 11 S.C.C. 528 *State of Bihar and Another* v. *Nilmani Sahu and Another* where the Court in the guise of arithmetical mistake on re-consideration 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 (dead) by Natwar Melsingh and Others* v. *Special Land* H *Acquisition Officer and Another* reported in (1996) 4 S.C.C. 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.

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 C.P.C. 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 some thing 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 re-consideration 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 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 Court's inherent powers as contained under Section 152 C.P.C. It is to be confined to something initially intended but left out or added against such intention.

So far the legal proposition relied upon by the learned Single Judge and the Hon'ble Division Bench deciding the matter in its LPA jurisdiction, we are totally in agreement with the same i.e. an unintentional mistake which occurred due to accidental slip has to be rectified. The question however which requires consideration is as to whether on the facts of the present case and the principles indicated above, it could be said that there was any clerical or arithmetical error or accidental slip on the part of the Court or not.

A Thus coming to the facts of the case it is to be noticed that in Paragraph 8 of the main petition for dissolution of the marriage it has been averred that the agreement arrived at between the parties on 26.7.91 may be treated as part and parcel of the petition while passing the order in the case accordingly. The relief however claimed in paragraph 14 of the petition as quoted earlier B indicates that specifically decree for divorce alone was prayed for. There was no prayer to the effect that the agreement may be made a part of the decree or the terms and conditions given in the agreement may be incorporated in the decree. It may be observed that whatever forms part of the petition does not automatically become a part of the decree unless specifically it is so provided. It can only be kept in mind while passing the decree. The same C seems to be the averment in paragraph 8 of the petition.

Next, coming to the prayer made in the application dated June 30, 1992 for modification of the decree, it is for grant of orders of mandatory injunctions of different nature and in different terms as quoted in the earlier part D of this judgment. Again, there is no prayer for incorporating the terms and conditions of the agreement dated 26.7.1991 in the decree. So it is not something which can be said to have been left out accidentally earlier. Paragraph 3 of the application for modification quoted earlier, indicates a different reason for not passing decree relating to other matters. It is not shown to be on the ground of clerical error or accidental slip on the part of E the Court.

We have also perused the order dated 11.11.1992 passed by the family court allowing the application for modification. It is a lengthy order running into 11 pages at places discussing the merits of the matter as well. Paragraph F 5 of the order reads as follows:

> "It was stated by the appellant that though original petition contain the agreement which was part and parcel of the original petition, in which the terms of the modalities were agreed upon by the parties regarding G the disposal of the matrimonial flat. Inadvertently those terms were not included in decree and therefore the appellant also prays that a decree be suitably amended."

According to the observations of the Court as quoted above the case of the respondent-husband was that it was due to inadvertence that the terms H of the contract were not included in the decree but we find that this was not

the case of the respondent- husband in Paragraph 3 of his application for modification of the order according to which the parties being lay persons without assistance of lawyers had failed to ask for the relief as per the agreement in their prayer clause. Consequently order was silent on those reliefs. No averment of inadvertence by reason of which court may not have included those terms in the decree has been indicated in the application for modification of the decree. It is only an effort to improve upon the case as taken up by the respondent in his application. Again we find that in Para 16 of the order the learned judge of the family court after referring to certain decisions cited by the parties holding some of them to be applicable and others not, held as follows:

"I have already pointed out in the earlier paragraph of my judgment that both the parties intended to get divorce and agreement to that effect was entered into between the parties which form part of the pleading and both parties initially accepted that it should also *form part of the decree*" (underlined by us to emphasize)

It is to be noticed that no such prayer was ever made by the parties that the agreement should form part of the decree. Paragraph 8 of the petition for dissolution of the marriage only averred that the agreement be treated as part and parcel of the petition while passing the order accordingly. We have already adverted to this aspect of the matter in the earlier part of this judgment. The learned judge therefore arrived at the conclusion that it appeared that the predecessor in office has inadvertently forgotten to incorporate the terms and conditions of the agreement in the decree which was an accidental omission. It is against the case as taken up by the respondent in his application vide its Paragraph 3. The unfounded observation of accidental omission on the part of the Court as made by the Family Court seems to have been taken into account by the learned Single Judge in the writ petition and the learned Division Bench deciding the matter in appeal. There is nothing on the record to indicate that the learned judge of the family court intended to incorporate the terms and conditions of the agreement in the decree. It would have been a different case if it was shown that the Court intended to incorporate those terms but accidentally it slipped or the court forgot to do so. But there is no material on the basis of which intention of the family court can be inferred for incorporating the terms and conditions of the agreement in the decree for divorce on the basis of which it can be said that whatever was intended by the court could not be reflected in the

A decree. There is not even a whisper about the Memo of Agreement dated 26.7.91 in the narration made in the decree dated 7.3.92. The respondent's prayer for grant of mandatory injunction, as quoted in the earlier part of this judgment, by way of modification of the decree dated 7.3.1992, has been rightly not granted. The application was thus liable to be rejected instead of
B incorporating the terms and conditions of the agreement in the decree in respect of which no prayer was made in the application for modification of decree.

We may also make a brief mention of one aspect of the matter without meaning to enter into the merits of that question i.e. in regard to the transfer
C of the flat, which seems to be the bone of contention, on payment of Rs.1,70,000/- by the husband-respondent to the wife. Much has been said about it in the application for modification and in reply thereof. The payment was to be made within four months of entering into the agreement, that is to say, by 26th November, 1991. On such payment being made the wife was
D to transfer the property in favour of the husband. The decree has been passed on 7.3.1992. Undisputedly the amount has not been paid to the wife. The payment was ever offered or in time, if at all, is a disputed question between the parties which need not be gone into in these proceedings. But it may possibly have some bearing on the question by reason of which the Family Court did not incorporate the terms of the agreement in the decree or for that
E reason namely payment having not been made the parties may have preferred to keep silent about it before the Family Court on 7.3.1992 while the Court was passing the decree. The main part of the agreement related to divorce by mutual consent as it had become impossible for the couple to live together. This fact alone finds mention in the decree passed by the family court dated
F 7.3.1992. All that we mean to indicate is that there may be other possible reasons for the family court for not incorporating the terms and conditions of the agreement in the decree, or the reason as indicated by the husband-respondent in Paragraph 3 of his application for modification of the decree itself.

G In the above background and looking to the prayers made by the respondent-husband for granting mandatory injunction in our view the application for rectification of decree was totally misconceived and was only liable to be dismissed rather to incorporate terms and conditions of the agreement dated 26.7.1991 in respect of which no prayer was made in the application
H for modification nor in the original petition for dissolution of marriage more

particularly when no accidental slip on the part of the Court was indicated in the application nor the same being substantiated. A

In view of the discussion held above we allow this appeal and set aside the orders passed by the High Court and family court dated 11.11.1992 allowing the application for rectification/modification of the decree dated 7.3.1992. B

In the facts and circumstances of the case there would however be no order as to costs.

A.K.T. Appeal allowed.