

Khandesh Laxmi Vilas Mills Co. Ltd. Vs Graduate Coal Concern

Court: Bombay High Court

Date of Decision: July 4, 1934

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 152

Citation: 154 Ind. Cas. 329

Hon'ble Judges: Murphy, Acting C.J.; Macklin, J

Bench: Division Bench

Judgement

1. This is an application to revise an order of the First Class Subordinate Judge of Jalgaon amending a decree in such a way as to bring the name

of the applicant upon the decree as judgment-debtor. The applicant is a Company known as the Khandesh Laxmi Vilas Mills Company. They

were sued by a concern known as the Graduate Coal Concern on a mortgage. A preliminary decree was passed on the mortgage, and the

plaintiffs at a later stage applied, under Ex. 56, to have the decree made final. The decree was made final under Ex. 86. Then the Graduate Coal

Concern applied in execution proceedings to have the property brought to sale. Notice of the execution proceedings was sent to the Khandesh

Laxmi Vilas Company; but they put in an application alleging that the final decree was not binding upon them inasmuch as they had not been a

party to that decree. This application was heard, and it was decided that the final decree was not binding upon the Khandesh Laxmi Vilas

Company because it could not be said that the decree had been made final against the Company owing to the way in which the Company had

been described. The Graduate Coal Concern then asked for leave to amend their application, Ex. 26, and for the decree to be amended by

inserting the name of the Khandesh Laxmi Vilas Company in clear terms. Both the application for final decree and the final decree itself were

accordingly amended. The Khandesh Laxmi Vilas Company has now applied in revision against those amendments.

2. It is contended that the learned Sub-ordinate Judge had no jurisdiction to amend the final decree at that stage of the proceedings, since he was

functus officio. Moreover, so it is said, the correct procedure would have been to appeal against the finding in the execution proceedings that the

final decree was not binding upon the Khandesh Laxmi Vilas Mills Company. We do not agree. u/s 152 of the CPC the Court has an inherent

power to vary or amend its own degrees or orders so as to carry out its own meaning There is plenty of authority quoted in support of this in Sir

Dinshah Mulla's Civil Procedure Code, and it appears that the Subordinate Judge who heard the application for execution ought to have found

that all that had happened was a mistake on the part of the ministerial servant of the Court in drawing up the decree. The decree was apparently

drawn up in the terms of the interlocutory application, Ex. 56, for a final decree. But it ought to have been drawn up according to the final order of

the Judge himself, which was to the effect that there should be a final decree against the defendants; and it is customary, and indeed obligatory,

upon the ministerial servant of the Court who draws up decrees to take the names of the parties as they appear in the plaint. The applicant

Company was correctly described in the plaint, and all that was necessary was for the final decree to be amended so as to give the names of the

defendants as they were described in the plaint. In effect what the learned Subordinate Judge, whose action is not criticised, has done is to give

effect to Section 152 of the Civil Procedure Code, and to exercise his inherent powers of amending a decree in such a way as to bring it into

conformity with the meaning of the Court which ordered the decree to be passed.

3. We see no reason to interfere, and we discharge the Rule with costs. The stay application also be discharged with costs.