

(1934) 07 BOM CK 0025

Bombay High Court

Case No: None

Khandesh Laxmi Vilas Mills Co.
Ltd.

APPELLANT

Vs

Graduate Coal Concern

RESPONDENT

Date of Decision: July 4, 1934

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - 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 decrees 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.