

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
C.P. No.S-337 of 2013.

DATE	ORDER WITH SIGNATURE OF JUDGE
	For order on office objection. For katcha peshi. For hearing of MA-5693/13.

Date of hearing: 23.09.2014.
Date of decision: 26 .09.2014.

Mr. Muhammad Sachal Awan, Advocate for the petitioner.
Mr. Zahid Hussain Channa, Advocate for the respondent No.3.
==

NAZAR AKBAR J:- The petitioner is aggrieved with the correction of typographical error made by the learned appellate Court in its order dated 7.2.2013 in Rent Appeal No. 18 of 2010.

2. Briefly stated facts are that the respondent No.3 had filed a rent case for ejectment of the petitioner from the premises bearing plot No.166 of Sindh Small Industries Estate Sanghar situated on Sinjhor Road, Sanghar on the ground of sub-letting, addition and alteration, default and personal need. All the issues were decided in favour of respondent No.3 by judgment dated 30.9.2010 in Rent Application No. 01 of 2010. The petitioner preferred First Rent Appeal No. 18 of 2010 which took almost three years when the appellate Court by Judgment dated 07.02.2013 dismissed it on merits. The appellate Court while maintaining the judgment of Rent Controller directed the petitioner to vacate the premises within a period of three months from the date of judgment. However, when the respondent No.3 received certified copy of the judgment he find that in the judgment dated 7.2.2013 instead of "three months" the time given to the petitioner was typed as "three years" and, therefore, the respondent No.3 moved an application under section 152 CPC for

correction of the mistake appearing in the judgment of the appellate court. The learned appellate court realized the typographical error in the judgment and corrected the same by order dated 16.3.2013 as three **months** instead of **years** and correction was made in red ink in the judgment.

3. Respondent No.3 after three months filed an execution application. The petitioner on 12.6.2013 filed instant petition challenging the order dated 16.03.2013 passed by the appellate Court on the application under section 152 C.P.C filed by respondent No.3.

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

5. Learned counsel for the petitioner claims that the provisions of section 152, CPC were wrongly applied as it has changed the basic order whereby three years were granted to the petitioner for vacating the premises was reduced to three months. Mr. Muhammad Sachal Awan, learned counsel for petitioner has relied upon the following case laws:-

- | | |
|----------------------|--|
| (1) 1987 CLC 1682 | Nizam-ud-Din v. Ch. Muhammad Saeed & others. |
| (2) PLD 2000 Kar 258 | Jehanzeb Aziz Dar v. Messrs Maersk Line & others |
| (3) 1998 CLC 456 | Muhammad Yakoob v. Baqar & 2 others. |
| (4) 1992 SCMR 1152 | Khawaja Imran Ahmed v. Noor Ahmad & another. |

6. I have examined each of the case laws and none is applicable in the case in hand. In **1987 CLC 1682** Lahore High Court, held that section 152 of the Code of Civil Procedure, 1908 does not authorize the Court to supplement its judgments, decrees or orders by directions which require application of mind and have the effect of taking away rights which may have otherwise accrued to one party or the other. There is no cavil to this proposition, however, in the case in hand an accidental slip or omission of

three months was corrected and no right had accrued to the petitioner on account of typographical error in the judgment. In **PLD 2000 Karachi 258**, this Court has held that where an issue has been decided by a Court inadvertently by overlooking a judgment of Supreme Court, such order can be corrected by filing an application for review under section 114, CPC and not by application for correction in the judgment. This citation is also not relevant in the given facts of this case since in the impugned order, the court has not made correction on the basis of any case law. Similar is the position with the case law reported in **1998 CLC 456**. In this case the applicant had sought to delete the qualification of pre-emptor which was not allowed since it was not typographical error in the judgment. In the last judgment relied upon by learned counsel for the petitioner reported in **1992 SCMR 1152**, the issue of correction in typographical mistake was not before the Honourable Supreme Court and this citation is totally out of context.

7. On the other hand, learned counsel for the respondent No.3 has contended that the learned first appellate Court when dismissed the appeal had granted three months to the petitioner to vacate the premises at the time of announcing the judgment. However, it was written "three years" due to typographical error in the judgment by the Stenographer which was signed by the Judge inadvertently and, therefore, the Court without any hesitation corrected the typographical error. The learned counsel for the respondent No.3 has relied on the following cases:-

- i) **2007 SCMR 1866** (Khawaja Muhammad Razzak v. Dr. Sultan Mehmood Ghorī & another),
- ii) **1994 SCMR 16** (Muhammad Iqbal v. Sultan Akbar & 2 others)

8. The Honourable Supreme Court in 2007 SCMR 1866 has been pleased to set aside an order of High Court wherein the High Court while dismissing a rent appeal has allowed 18 months time for vacating the premises to the tenant/respondent and substituted it by awarding only 120 days time from the date of the order of High Court by holding that 18 months was not reasonable time. The relevant party of the Judgment is reproduced below:-

“We have considered the submissions of both the parties. While the High Court may be justified in dismissing the constitutional petition of the respondent, there was no lawful warrant for allowing usually long period of eighteen months for vacating the premises, which on the face of record, is most unreasonable and unlawful. In order to maintain a balance between the parties, we would set-aside the order of the High Court to the extent of allowing eighteen months time for vacating the premises and substitute it by awarding 120 days from the date of order of the high Court.

In **1994 SCMR 16** the entitlement of share of respondent was admittedly $\frac{1}{2}$ share in an specific shop but it was re-stated in some paragraph as $\frac{2}{16}$ share in the judgment instead of $\frac{1}{2}$ share through accidental slip or typographical mistake which was subsequently corrected by the first appellate Court in terms of Section 152 CPC and the High Court has maintained the order of appellate Court and Honourable Supreme Court upheld the findings of High Court. Had it not been typographical mistake, the respondent could have lost the valuable share in the property. The learned counsel for respondent No.3 submits that in the present case the typographical error was corrected by the Court and no prejudice caused to the tenant, who has already lost the case before the Rent Controller and the appellate Court. However, under the cover of this constitution petition, the petitioner has enjoyed more than 15 months time

by now and therefore, the mistake/ error of three years instead of three months time given by Court has seriously prejudiced the respondent No.3.

9. Petitioner counsel was unable to satisfy the Court that how the appellate Court can grant three years time to the appellant/petitioner while dismissing his appeal which remained already pending from 2010 to 2013 for almost 2 years and six months. Had it not been a typographical mistake then it was against the fair play and equity needed to be demonstrated by the Court while exercising the discretion available with the Rent Controller / appellate authority to grant a reasonable time for vacating the premises on coming to the conclusion that the landlord has made out a case for ejectment. If the Rent Controller or appellate authority are allowed to grant such unusual long period of time not by mistake but by conscious judicial mind to vacate the premises on dismissal of appeal of tenant, the effect of dismissal of appeal would be nullified. If one court grant three years, the other can grant even thirty years time. The Rent Controller or appellate authority cannot specify an unreasonable period for vacating the premises to a tenant. A reasonable period could be few months keeping in view the circumstances of tenant and nature of tenement and any period beyond few months can only be granted by consent of the landlord. And therefore, period of three years was by all means was accidental slip or typographical error in the appellate Court's order and the appellate court has lawfully corrected the same under section 152 C.P.C, no right was accrued to the petitioner.

10. In view of the above facts and circumstances, this petition is dismissed along with pending applications. Since the petitioner has already enjoyed unreasonable time under the cover of this petition, therefore, it is

hereby ordered that the petitioner should vacate the premises in question on or before 10.10.2014 and in case of failure to vacate the premises in question within stipulated time, the executing Court should issue writ of possession along with police aid without any further notice to the Petitioner.

JUDGE.