

Reserved Order

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Modification Application No.235 of 2020

IN

Writ Petition (PIL) No.112 of 2015

Mahendra SinghPetitioner

Vs.

State of Uttarakhand and others Respondents

Mr. Arvind Kumar Sharma, Advocate for the petitioner.

Mr. S.S. Chauhan, Deputy Advocate General for the State.

Mr. T.A. Khan, Senior Advocate assisted by Mr. Vinay Bhatt, Advocate for the applicant in CLMA No.235 of 2020.

Mr. Aditya Pratap Singh, Advocate for the respondent no.3.

Chronological list of cases referred:

1. (1999) 3 SCC 500
2. (2001) 4 SCC 181
3. AIR 1926 PC 136
4. (1896) 1 Ch 673
5. (1885) 30 Ch D 239
6. AIR 1981 Gau 41
7. AIR 1970 Ker. 57
8. AIR 1989 Ker. 68
9. AIR 1924 Cal 895
10. AIR 1967 SC 1440
11. AIR 1960 All 385
12. AIR 1962 SC 633
13. AIR 1966 SC 1047
14. (1996) 3 SCC 212
15. (1996) 5 SCC 647
16. AIR 2005 SC 3136

Reserved on: 15.06.2020

Delivered on: 22.07.2020

Coram: Hon'ble Ramesh Ranganathan, C.J.

Hon'ble Lok Pal Singh, J.

Hon'ble Ramesh Ranganathan, C.J.

This application is filed under Sections 151 and 152 CPC read with Article 226 of the Constitution of India, on behalf of a mosque known as 'Jama Masjid', situated at Bazpur of District Udham Singh Nagar, by the applicant who claims to be a representative of all mutawallies of Waqfs of all mosques in the entire State of Uttarakhand, as he was elected as a member of the Waqf Board by the Mutawallies of all Waqfs in the State of Uttarakhand, from the Mutawalli quota, under Section 14 of the Waqf Act, vide Government Order dated 25.10.2016.

2. The modification sought, by way of this application, is to the order passed in Writ Petition (PIL) No.112 of 2015 dated 19.06.2018', and a direction is also sought to the District Magistrate to permit use of

loudspeakers in places of worships within the limits prescribed in the ‘schedule’ to the Noise Pollution (Regulations and Control) Rules, 2000 (for short the ‘2000 Rules’); and, if the noise level as a result of the use of loudspeakers exceeds the limits specified in the ‘schedule’, for its relaxation upto 10dB(A), or in a total upto 75 dB(A), whichever is less as provided in Rule 5(4) of the Rules. The applicant is mainly aggrieved by mandatory direction No. ‘I’, as detailed in Paragraph No.20 of the order of the Division Bench in Writ Petition (PIL) No.112 of 2015 dated 19.06.2018, which reads as under:-

“(i). The State Government is directed to ensure that no loudspeaker or public address system shall be used by any person including religious bodies in Temples, Mosques and Gurudwaras without written permission of the authority even during day time, that too, by getting an undertaking that the noise level shall not exceed more than 5dB(A) peripheral noise level”.

3. This application is opposed by the petitioner, in Writ Petition (PIL) No.112 of 2015, contending that the applicant does not represent all mutawallies of Waqfs of all mosques in the entire State of Uttarakhand; he is only the mutawalli of a mosque known as ‘Jama Masjid’ situated at Bazpur in District Udham Singh Nagar; the direction issued by the Division Bench, in Writ Petition (PIL) No.112 of 2015 dated 19.06.2018 not to use loudspeakers in religious places like temples, mosques and gurudwaras etc without written permission of the authority, is for betterment of the atmosphere, environment and ecology of the area; if loudspeakers are used, the noise levels would be polluted according to the 2000 Rules; the authorities were not permitting the Imams/Mutawallies of the mosque to use loudspeakers beyond the limit of 5dB(A) peripheral noise level; the authorities are bound by the judgment passed by this Court; 75dB(A) level is for an industrial area, and not for a residential area; all mosques are situated in residential areas; permission cannot, therefore, be granted to use loudspeakers; the order of the Division Bench does not necessitate modification as it would allow frequency of loudspeaker upto 75dB(A) rendering the atmosphere noisy; and the applicant/respondent has no fundamental right to use loudspeakers in places of worship.

4. In the counter-affidavit, filed on behalf of respondent nos.2 and 3, it is submitted that the applicant is not a party to the Writ Petition

and cannot, therefore, move a modification application as it is not maintainable; at the most he can move an application seeking review of the order dated 19.06.2018; the modification application is filed after considerable delay, and is liable to be dismissed on this ground also; if the applicant has any grievance with regards the Government Order dated 04.02.2019, issued in compliance with the order of the Division Bench dated 19.06.2018, he can challenge the same by filing a Writ Petition; the Allahabad High Court had passed an order in Writ Petition (PIL) No.570 of 2020 dated 15.02.2020 which covers this issue; the authorities, under the 2000 Rules, are bound by the Schedule to the Rules, and by Rule 5 which relates to restrictions on the use of loudspeakers/public address systems, and sound producing instruments; the order of the Division Bench addresses concerns regarding the use of loudspeakers or any sound producing instrument; the Division Bench had opined that the Rules had not been effectively enforced by the State Government; with regards use of loudspeakers, in a public area or place, Rule 5(4), which applies to noise levels, should be followed; similarly Rule 5(5) addresses concerns regarding the peripheral noise level of a private sound system; and the modification application is not maintainable.

5. As the present application is filed under Section 152 CPC, it is necessary, at the outset, to take note of the scope and ambit of the said provision. Section 152 CPC provides that "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." Exercise of the power, under Section 152 CPC, contemplates the correction of mistakes by the Court and does not contemplate the passing of effective judicial orders after judgment, as the Court becomes *functus officio* thereafter, and is not entitled to vary the terms of the judgment passed earlier. (**Dwaraka Das v. State of M.P**¹). Section 152 CPC cannot be invoked to modify, alter or add to the terms of the original judgment so as to pass an effective judicial order after judgment is pronounced in the case. (**Dwaraka Das**¹; **Jayalakshmi Coelho v. Oswald Joseph Coelho**²). As correction is of the mistake or omission, which is accidental and not intentional, the merits of the case cannot be gone into. (**Dwaraka Das**¹; **Jayalakshmi Coelho**²).

6. The power of rectification of clerical or arithmetical errors or an accidental slip does not empower the Court to reconsider the merits of the case to come to a different conclusion. Exercise of power under Section 152 CPC should be confined to something initially intended but left out, or added against such an intention. (**Jayalakshmi Coelho**²). Cases in which the Court can interfere, after the passing and entering of the judgment, are: (1) where there has been an accidental slip in the judgment as drawn up, in which case the Court has the power to rectify it, and (2) where the Court itself finds the judgment as drawn up does not correctly state what the Court had actually decided and intended. (**R.M.K.R.M. Somasundaram Chetty vs. M.R.M.V.L. Subramanian Chetty**³; **Ainsworth v. Wilding**⁴). If it be once made out that the order passed does not express the order actually made, the Court has ample jurisdiction to set that right, whether it arises from a clerical slip or not. (**In re Swire, Mellor v. Swire**⁵; **R.M.K.R.M. Somasundaram Chetty**³).

7. The principle behind Section 152 CPC is that no one should suffer due to the mistake of the Court and whatever is intended by the Court, while passing the order, must be properly reflected therein, otherwise it would only be destructive of the principle of advancing the cause of justice. (**Jayalakshmi Coelho**²). The basis of this provision, in Section 152 CPC, is found on the maxim *actus curiae neminem gravabit* i.e. an act of the Court shall prejudice no man. Hence, an unintentional mistake of the Court which may prejudice the cause of any party must be rectified. (**Jayalakshmi Coelho**²; **Assam Tea Corpn. Ltd. v. Narayan Singh**⁶).

8. There are two important principles on the basis of which Section 152 CPC has been enacted. The first, as noted above, is the maxim that an act of the Court shall prejudice no man. The other is that the Court has a duty to ensure that its records are true, and they represent the correct state of affairs. It is because these are considered to be some of the highest duties of Courts that, in Section 152 C.P.C, it has been provided that, even in the absence of any move on the part of the parties, the Court can, of its own motion, make the correction. (**Puthan Veettil Sankaran Nair vs. Poomulli Manakkal Moopil Sthanam Parameswaran Namboodiripad**⁷). This is also the reason why the Court is given the power to correct the records on its own motion, even if the parties to the litigation have not

moved the court for a correction. If the conditions laid down in Section 152 C.P.C. are satisfied, it is obligatory for the Court to order correction. (**Kuruvilla Thomas, Maliakel, Kanjirappally & others vs. State Bank of Travancore**⁸; **Chandra Kumar Mukhopadhyaya v. Sm. S.B. Debi**⁹; **Puthan Veettil Sankaran Nair**⁷). The intention of the law is to make it obligatory for the Court, whenever any mistake is discovered, to correct it, and Section 152 merely emphasises that duty of the Court by saying that it may be done at any time. (**Chandra Kumar Mukhopadhyaya**⁹; **Puthan Veettil Sankaran Nair**⁷).

9. It is true, as is contended on behalf of respondents 2 and 3, that the applicant is not a party to the Writ Petition. Mr. Arvind Kumar Sharma, learned counsel for the petitioner, would also contend that the applicant, therefore, lacks *locus standi* to file the present Writ Petition. On the other hand, Mr. T.A. Khan, learned Senior Counsel appearing on behalf of the applicant, would rely on Section 14(1)(b)(iv) of the Waqf Act, 1995 to submit that the applicant was elected as a Member of the State Waqf Board from an electoral college consisting of mutawallis of the auqaf having an annual income of rupees one lakh and above; and, consequently, he is entitled to move this application on behalf of the mutawalli of the Jama Masjid situated at Bazpur in district Udham Singh Nagar.

10. The question of *locus standi* need not detain us, since the power, under Section 152 CPC, inheres in the Court, which passed the judgment, to correct a clerical mistake or an error arising from an accidental slip or omission, and to vary its judgment so as to give effect to its meaning and intention. (**Samarendra Nath Sinha & another vs. Krishna Kumar Nag**¹⁰). Inherent powers are available to all Courts and authorities irrespective of whether the provisions contained under Section 152 CPC may or may not strictly apply to any particular proceeding. Where it is clear that a mistake had accidentally crept in something which the Court intended to do, due to a clerical or arithmetical mistake, it would only advance ends of justice to enable the court to rectify such a mistake. (**Jayalakshmi Coelho**²). The Court, as a court of record, owes a duty to itself to ensure that its record is free from any blemish or error. It retains the power to correct obvious errors in its own record. (**Jai Narain v. Chhedalal**¹¹; **Puthan Veettil Sankaran Nair**⁷).

11. If the Court finds that the order, as passed and entered, contains an adjudication upon that which the Court in fact has never adjudicated upon, then it has jurisdiction which it will, in a proper case, exercise to correct its record so that it may be in accordance with the order really pronounced. (**In re. Swire, Mellor v. Swire**⁵; **R.M.K.R.M. Somasundaram Chetty**³; **Puthan Veettil Sankaran Nair**⁷). If it is made out that the order, whether passed and entered or not, does not express the order actually made, the Court has ample jurisdiction to set that right, whether it arises from a clerical or accidental slip. (**In re. Swire, Mellor v. Swire**⁵; **Puthan Veettil Sankaran Nair**⁷). An order, even when passed and entered, may be amended by the Court so as to carry out its intention, and express the meaning of the Court when the order was made (**In re Swire, Mellor v. Swire**⁵; **Samarendra Nath Sinha**¹⁰) as this power was always possessed by Courts. (**In re. Swire, Mellor v. Swire**⁵; **Puthan Veettil Sankaran Nair**⁷). As the inherent power, which the Court possesses, must be exercised by it even in a case where none of the parties to the proceedings have invoked its jurisdiction seeking such correction, we may not be justified in refusing to correct an accidental slip or omission in the order of the Division Bench, in Writ Petition (PIL) No. 112 of 2015 dated 19.06.2018, on this score.

12. In Section 152 CPC no time limit is fixed for making an amendment in a judgment which has been occasioned by an accidental slip or error. Such an amendment may be made at any time subject, of course, to equities which may have arisen in favour of the party against whose interest the amendment is to be made. (**Jai Narain v. Chhedalal**¹¹; **Puthan Veettil Sankaran Nair**⁷). An order may be amended by the Court so as to carry out the intention, and express the meaning, of the Court at the time when the order was made, provided the amendment be made without injustice or in terms which preclude injustice. (**In re Swire, Mellor v. Swire**⁵; **R.M.K.R.M. Somasundaram Chetty**³).

13. Clerical or arithmetical mistakes in judgments, or errors arising therein from any accidental slip or omission, may, at any time, be corrected by the Court either on its own motion or on an application by any of the parties. (**L. Janakirama Iyer v. Nilakanta Iyer**¹²; **Samarendra Nath Sinha**¹⁰). If any such error is brought to its notice in any manner

whatsoever, and at any time whatsoever, the Court has the power to correct errors of a clerical nature. To hold otherwise would mean that the Court is powerless even after discovering that a particular sentence in a judgment is grammatically incorrect or absurd. The Court will, however, not make any correction without hearing the parties whose interests are likely to be affected. (**Jai Narain**¹¹; **Puthan Veetil Sankaran Nair**⁷).

14. The power of correction, under Section 152 CPC, can be exercised at any time. The only limitation for its exercise is the scope of the Section within which it functions. Before exercising or refusing to exercise it, the Court should ensure that its records are true. These are two of the important duties of all Courts. (**Puthan Veetil Sankaran Nair**⁷). As the power to correct accidental omissions or slips, in the order passed earlier, inheres in the Court and it is the obligation of the Court, when it comes to know that such a mistake has occurred, to correct it, it matters little that its attention, to the accidental slip or omission, has been drawn after a long delay.

15. It does appear that, in compliance with the order of the Division Bench in Writ Petition (PIL) No. 112 of 2015 dated 19.06.2018, the State Government had issued order on 04.02.2019. Errors arising from an accidental slip can be corrected subsequently, even in a judgment pronounced and signed by the Court. (**L. Janakirama Iyer**¹²; **Samarendra Nath Sinha**¹⁰). The Court is not functus officio with respect to its power to correct its judgment. The fact that the order has already been executed, and is therefore dead, is of no consequence, and of no importance, so far as the question whether the amendment asked for should be allowed or not. The fact that the judgment has been implemented does not take away the inherent power of the Court to allow the amendment asked for in its judgment, if it is fit to be allowed in view of the provisions of Sections 151 and 152 of the Code. (**Puthan Veetil Sankaran Nair**⁷). Consequently, the mere fact that an order was issued by the State Government, in compliance with the earlier order of the Division Bench, would not disable this Court from exercising its inherent powers under Section 152 CPC to correct an accidental error or omission in the order of the Division Bench provided, of course, it is satisfied that there has been an accidental slip or mistake in the order necessitating its correction.

16. On the kind of orders which can be corrected, it must be borne in mind that, while an 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 an accidental slip or omission is an error due to a mistake on the part of the Court which is liable to be corrected. 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. (**Master Construction Co. (P) Ltd**¹³; **L. Janakirama Iyer**¹²; **Jayalakshmi Coelho**²). The accidental slip or omission by the Court may be attributed to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself. The obvious instance is a slip or omission to embody in the order something which the court in fact ordered to be done. (**Master Construction Co. Ltd**¹³). The cause for such a slip or omission may be the Judge's inadvertence or the advocate's mistake. (**Master Construction Co. (P) Ltd.**¹³). The expression "accidental slip or omission" does not, however, permit a party to raise new arguments which he has not advanced at the first instance. (**Master Construction Co. (P) Ltd.**¹³; **L. Janakirama Iyer**¹²; **Jayalakshmi Coelho**²).

17. It must also be borne in mind that, before exercising its power under Section 152 CPC, the Court must be legally satisfied, and arrive at a valid finding, that the order contains or omits something which was intended to be otherwise, that is to say, the Court must have in its mind that the order should be passed in a particular manner, but that intention is not translated into the order due to a clerical or arithmetical error or accidental slip. The facts and circumstances may provide a clue to the fact intended by the Court, but did not accidentally find mention in the judgment, or something which was not intended to be there, stands added to it. (**Jayalakshmi Coelho**²).

18. Bearing the aforesaid principles in mind, let us now examine whether the order of the Division Bench contains an accidental omission warranting exercise of jurisdiction under Section 152 CPC. In its order in Writ Petition (PIL) No.112 of 2015 date 19.06.2018, the Division Bench noted that the petitioner had highlighted the adverse effect of discharge of industrial effluents by the fourth respondent in a playground of a college; he

had contended that letting of untreated chemical/industrial waste/effluents had degraded underground water causing air pollution; hazardous waste had been dumped in the play fields without treatment; the photographs placed on record showed the tremendous damage caused to the environment and ecology of the area; students played in the playground; the District administration could not have permitted this to happen; effluent water was spread over in a larger area of the playground, as well as in the adjoining areas; every citizen, living around the factory, had the fundamental right to have a pollution free environment; it was intriguing that no criminal proceedings had been initiated, under the relevant provisions, against the fourth respondent; and mere issuance of notices from time to time, under Section 33 of the Water (Prevention and Control of Pollution) Act, 1974, was not sufficient compliance.

19. After referring to the provisions of the Environment (Protection) Act, 1986, the Division Bench observed that the third respondent-Pollution Control Board had not taken sufficient measures to check noise pollution emanating either from factories, or from indiscriminate use of loudspeakers/amplifiers even by religious bodies, may be by temples, mosques or gurudwaras. The Division Bench then referred in detail to the provisions of the Noise Pollution (Regulations and Control) Rules, 2000 framed by the Central Government, and noted that, **‘according to Rule 4, the noise level in any area/zone shall not exceed 10dB(A) above the ambient noise standards specified in the schedule’**.

20. After extracting Rules 5 and 5(A) of the 2000 Rules, the Division Bench opined that a loudspeaker or a public address system could not be used except after obtaining written permission from the authority; no loudspeaker or sound amplifier could be used at night time except in closed premises, for communication within, like auditoria, conference rooms etc; **‘the noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source was being used, could not exceed 10dB(A) above the ambient noise standards’**.

21. After referring to the judgments of the Supreme Court, in **Indian Council for Enviro-legal Action and others vs. Union of India & others¹⁴**; **Vellore Citizens’ Welfare Forum vs. Union of India & others¹⁵**; and **Forum, Prevention of Environment & Sound Pollution vs.**

Union of India & another¹⁶, the Division Bench observed that, in **Forum, Prevention of Environment & Sound Pollution**¹⁶, the Supreme Court had held that the right to life includes freedom from noise pollution; a polluter cannot take shelter under Article 19(1)(a) of the Constitution of India; freedom of speech and expression is not an absolute right; and awareness should be created in childhood against use of fire crackers. The Division Bench then held as under:-

“.....Their Lordships have also laid down that the noise level at the boundary of the public place where loudspeaker or public address system or any other noise source is being used shall not exceed 10dB(A) above the ambient noise standards for the area of 75 dB(A) whichever is lower. No person is permitted to beat a drum or tom-tom or blow a trumpet or beat or sound any instruments or use any sound amplifier at night (between 10 p.m. and 6 a.m.) except in public emergencies. The peripheral noise level of privately owned sound system shall not exceed by more than 5dB(A) than the ambient air quality standard specified for the area in which it is used, at the boundary of the private place. The horn cannot be blown/used at night between 10 p.m. to 06 a.m. in residential area except in exceptional circumstances.....”

(emphasis supplied).

22. Rule 5 of the Noise Pollution (Regulation and Control) Rules, 2000, which relates to restrictions on the use of loudspeakers/public address systems and sound producing instruments, reads as under:-

“5. Restrictions on the use of loud speakers / public address system and sound producing instruments.- (1) A loud speaker or a public address system shall not be used except after obtaining written permission from the authority.

(2) A loud speaker or a public address system or any sound producing instrument or a musical instrument or a sound amplifier shall not be used at night time except in closed premises for communication within, like auditoria, conference rooms, community halls, banquet halls or during a public emergency.

(3) Notwithstanding anything contained in sub-rule (2), the State Government may subject to such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or public address system and the like during night hours (between 10.00 p.m. to 12.00 midnight) on or during any cultural or religious festive occasion of a limited duration not exceeding fifteen days in all during a calendar year. The concerned State Government shall generally specify in advance, the number and particulars of the days on which such exemption would be operative.

(4) **The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used shall not exceed 10 dB (A) above the ambient noise standards for the area or 75 dB (A) whichever is lower;**

(5) The peripheral noise level of a privately owned sound system or a sound producing instrument shall not, at the boundary of the private place, exceed by more than 5 dB (A) the ambient noise standards specified for the area in which it is used". (emphasis supplied)

23. The Schedule to 2000 Rules prescribes the Ambient Air Quality Standards in respect of noise and reads as under:-

SCHEDULE

(see rule 3(1) and 4(1))

Ambient Air Quality Standards in respect of Noise

Area Code	Category of Area/Zone	Limits in dB(A) Leq*	
		Day Time	Night Time
(A)	Industrial area	75	70
(B)	Commercial area	65	55
(C)	Residential area	55	45
(D)	Silence Zone	50	40

Note:- 1. Day time shall mean from 6.00 a.m. to 10.00 p.m.

2. Night time shall mean from 10.00 p.m. to 6.00 a.m.

3. Silence zone is an area comprising not less than 100 metres around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority

4. Mixed categories of areas may be declared as one of the four above mentioned categories by the competent authority.

* dB(A) Leq denotes the time weighted average of the level of sound in decibels on scale A which is relatable to human hearing. A "decibel" is a unit in which noise is measured.

"A", in dB(A) Leq, denotes the frequency weighting in the measurement of noise and corresponds to frequency response characteristics of the human ear.

Leq: It is an energy mean of the noise level over a specified period."

24. The upper noise level limit, prescribed by Rule 5 and the Schedule to the 2000 Regulations, can be better explained by way of an illustration. The noise limits for an industrial area during day time, as prescribed in the Schedule to the 2000 Regulations, is 75dB(A). In terms of Rule 5(4), the noise level cannot exceed 10dB(A) above 75dB(A) ie 85dB(A) or 75dB(A) whichever is lower. As 75dB(A) is lower, the noise limits cannot exceed 75dB(A) in an industrial area during day time. Likewise, the noise limits for a residential area during day time, as prescribed in the Schedule to the 2000 Regulations, is 55dB(A). In terms of Rule 5(5) the noise level cannot exceed by more than 5dB(A) the ambient noise standards, ie by more than 60dB(A) in a residential area during day time.

25. From the observations of the Division Bench in its order in Writ Petition (PIL) No.112 of 2015 dated 19.06.2018, made after considering the 2000 Rules and the judgment of the Supreme Court in **Forum, Prevention of Environment & Sound Pollution**¹⁶, it is evident that what was stipulated therein was that the noise level at the boundary of a public place, where loudspeakers are used, shall not exceed 10dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower; and the peripheral noise level of a privately owned sound system or a sound producing instrument shall not, at the boundary of a private place, exceed by more than 5 dB(A) the ambient noise standards specified for the area in which it is used. In terms of the schedule and by use of words **‘shall not exceed 10dB(A) above the ambient noise standards for the area or 75dB(A) whichever is lower’** and **‘the peripheral noise level of a privately owned sound system or a sound producing instrument shall not, at the boundary of the private place, exceed by more than 5 dB(A) the ambient noise standards specified for the area in which it is used’**, the Division Bench intended that the peripheral noise level should not exceed 10dB(A) or 5dB(A) above the ambient air quality standards, in respect of noise as prescribed in the schedule, in public and private places respectively.

26. The Division Bench could not have intended that the noise level in a public place should not exceed 5dB(A), since what has been stipulated, both in the 2000 Rules and in the judgment of the Supreme Court, in **Forum, Prevention of Environment & Sound Pollution**¹⁶, is that the peripheral noise level should not exceed 10dB(A)/5dB(A) above the ambient noise standards for the area (as prescribed in the schedule). The prescription, in Para ‘i’ of the order of the Division Bench, that the noise level should not exceed more than 5dB(A) is not to be found in any of the earlier parts of the said order of the Division Bench, or in the judgments of the Supreme Court referred to therein or in the 2000 Regulations which was relied upon by the Division Bench. It is evident, therefore, that the last words of Paragraph ‘i’ that **“the noise level should not exceed more than 5dB(A) peripheral noise level”** is an accidental error not intended by the Division Bench.

27. It is also evident that, in direction No. 'i', the words 'by' between the words "exceed" and "more"; and the words "above the ambient noise standards specified for the area in which it is used at the boundary of the private place" after the words "5dB(A) peripheral noise level" has been accidentally omitted. Since it is an accidental error which the Court is required to correct on its own accord, Paragraph No. 'i' of the mandatory directions shall stand corrected and, after its correction, shall read as under:-

"i. The State Government is directed to ensure that no loudspeaker or public address system shall be used by any person including religious bodies in Temples, Mosques and Gurudwaras without written permission of the authority even during day time, that too, by getting an undertaking that the noise level shall not exceed by more than 5dB(A) peripheral noise level above the ambient noise standards specified for the area in which it is used at the boundaries of the private place".

28. The question whether or not the applicant can claim a fundamental right for loudspeakers to be used at Mosques, whether the order of the Allahabad High Court in Public Interest Litigation (PIL) No. 570 of 2020 dated 15.02.2020 covers the field, and the validity or otherwise of the Government Order dated 04.02.2019 issued in compliance with the earlier order of the Division Bench, are all matters which are extraneous to proceedings under Section 152 CPC, as the only question, which the Court is required to examine in such proceedings, is whether the order passed by this Court earlier, in Writ Petition (PIL) No. 112 of 2015 dated 19.06.2018, suffers from an accidental slip or omission necessitating its correction in proceedings under Section 152 CPC, and nothing more. The validity of the notice issued by the Station House Officer, Kaladhungi Police Station, Nainital, dated 20.03.2020, and the direction sought to the District Magistrate to permit use of loudspeakers in places of worship, are also extraneous to a modification application under Section 152 CPC. These contentions cannot, therefore, be examined in the present proceedings.

29. With the modification made to direction 'i' as extracted hereinabove, the present application is disposed of.

(Lok Pal Singh, J.)
22.07.2020

(Ramesh Ranganathan, C.J.)
22.07.2020