1967 *Present :* **Manicavasagar, J., and Samerawickrame, J.**

PAUL E. DE COSTA & SONS, Petitioners, *and* S. GUNARATNE, Respondent

S. C. 404/66—Application in Revision in D. C. Colombo, 57252/M.

Revision—Decree of Supreme Court not in conformity with judgment—Power of Supreme Court to amend the decree—Courts Ordinance (Cap. 6), s. 37—Civil Procedure Code, s. 189.

Where a decree entered by a District Court and affirmed in appeal by the Supreme Court is not in conformity with the judgment, the Supreme Court can subsequently amend the decree not only under section 189 of the Civil Procedure Code but also by virtue of its own inherent power.

The petitioners carried on business under the name of " Paul E. de Costa and Sons ". A decree of the District Court, which was affirmed by the Supreme Court in appeal, was entered against them to pay a sum of Rs. 60,000 from their personal and private assets. According to the judgment, however, the sum was payable out of the firm's money and not out of the personal property of the partners.

Held, that the decree should be amended by the addition of the stipulation that " the said sum of Rs. 60,000 and interest shall not be recoverable from the personal and private assets of the petitioners save and except to the extent of their interests in the said firm of Paul E. de Costa and Sons ".

APPLICATION to amend a decree of the District Court, Colombo, which was affirmed by the Supreme Court in appeal.

C. Ranganathan, Q.C., with *B. J. Fernando*, for the defendants-petitioners.

E. R. S. R. Coomaraswamy, with *C. D. S. Siriwardene* and *C. Chakradaran*, for the plaintiff-respondent.

Cur. adv. vult.

March 13, 1967. MANICAVASAGAR, J.—

This is an application by way of revision under Section 37 of the Courts Ordinance (Cap. 6 Vol. I of the Legislative Enactments of Ceylon, 1956 Edition) by the petitioners who are in business under the name of Paul E. de Costa and Sons, in which they pray that the decree of the District Court, which was affirmed in appeal, be altered and varied by the addition of the stipulation that " the said sum of Rs. 60,000 and interest shall not be recoverable from the personal and private assets of the petitioners."

Mr. Cocmaraswamy for the respondent took the objection *in limine* to this application on the ground that the Court cannot under Section 37 revise its own decree, for the power to revise is confined to corrections of errors of fact or law committed by the Courts in the first instance, or by a Judge of the Supreme Court sitting alone. We agree with this submission, but this does not conclude this matter : for Mr. Renganathan submitted at the hearing that the Court has the power under Section 189 of the Civil Procedure Code, at any time, either of its own motion or that of any of the parties to correct any error in any judgment or order due to an accidental slip or omission. There is no doubt that the provisions of this section are wide enough to grant the application, having regard to the circumstances that have been brought to our notice : but this power is not confined to Section 189 alone: the Court has the innerent power, if the judgment does not correctly state what it actually decided and intended, to vary its judgment so as to carry out its manifest intention. The law on this point was stated by Lord Watson in the case of *Hatton v. Harris*[1] and it supports the proposition I have just stated :

> " When an error of that kind has been committed, it is always within the competency of the Court, if nothing has intervened which would render it inexpedient or inequitable to do so, to correct the record in order to bring it into harmony with the order which the Judge obviously meant to pronounce."

The question before us is whether the error in the judgment and decree of the District Court, which was affirmed in appeal without any variation, is one to which the principle I have stated applies. It is necessary to briefly relate the facts. By a deed of composition (exhibit X) entered into between the petitioners and the respondent, the latter agreed to accept Rs. 80,000 in lieu of the sum of Rs. 105,000 due to him ; the agreement provided that this sum be paid as follows :—Rs. 18,000 on the day the deed was executed, Rs. 2,000 on or before 30th November, 1961, and the balance Rs. 60,000 within 5 years from the date of the deed, in convenient monthly instalments—the quantum of instalments was specified. The petitioners paid the Rs. 20,000 but defaulted to pay the monthly instalments. The deed stipulated the further terms—

[1] *(1892) A. C. 547 at. p. 560.*

" that the said amount of Rs. 60,000 shall be paid out of the business profits of the said firm 'Paul E. de Costa and Sons' ; the personal and private assets of the partners of the said debtor-firm save and except to the extent of these interests in the said firm of Paul E. de Costa and Sons shall not be followed for the recovery of such sum or any part thereof. "

The respondent sued the petitioners to enforce the agreement, which was pleaded as part and parcel of the plaint, and prayed for judgment in the sum of Rs. 60,000 and legal interest from date of decree. The respondents prayed that the action be dismissed ; they specifically pleaded the terms of the agreement I have quoted, and stated that the firm had no business profits, and therefore they are not liable under the agreement to pay. This plea was an issue between the parties which the trial Judge had to determine, and he in his judgment construed the aforesaid term as follows : he said—

" it is not a condition of the agreement that the Rs. 60,000 shall be paid out of the business profits of the firm. The clear construction is that it should be paid out of the firm money and not the personal property of the partners."

Having made this decision he gave judgment for the respondent as prayed for, but the decree did not state that the personal property of the petitioners was not liable to execution. The petitioners are before us praying that the decree of the District Court, affirmed in appeal, be varied and altered to embody that part of the Judge's finding that the personal property of the petitioners is not liable for the payment of the decretal amount.

We are of the opinion that the omission to include that part of the Judge's finding in the decree is accidental and Section 189 is applicable to this case : but as I said even if this Section has no application, this is a case where the principle I have stated applies and the petitioner's application should be granted.

Mr. Coomaraswamy submitted that no issue was raised at the trial in regard to the question before us : we think there was no need to raise an issue, for the question that recovery of the decretal amount was restricted only to the profits of the firm was not an issue on the pleadings.

The application is allowed but the amendment to the decree will be in terms of agreement (X) and will read " the said sum of Rs. 60,000 and interest shall not be recoverable from the personal and private assets of the petitioners save and except to the extent of their interests in the said firm of Paul E. de Costa and Sons ". The petitioners will have the costs of this application.

SAMERAWICKRAME, J.—I agree.

Application allowed.