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HIGH COURT OF DELHI : NEW DELHI

CM (M)No. 894/2010 & CM No. 12237/2010

% Judgment reserved on: 16th July, 2010

Judgment delivered on: 21st July, 2010

M/s Delton Cables Ltd.
Delton House, Bharat Ram Road,
24, Daryaganj,
New Delhi-110002.

....Petitioner

Through: Mr. N. K. Kaul, Sr. Adv. with
Mr. Rajesh Gupta and Mr.
Harpreet Singh, Adv.

Versus

1. Sh. Kishore Kumar Sharma.
2. Sh. Ashok Kumar Sharma.
3. Sh. Anup Kumar Sharma.
4. Sh. Vinod Kumar Sharma.

All sons of Sh. Amar Nath Sharma,
R/o 19/2-B, Shakri Nagar,
Delhi-1100007.

....Respondents

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

V.B.Gupta, J.

Present petition has been filed under Article 227 of the Constitution of India, on behalf of the petitioner, in which it is prayed that impugned Order dated 2nd July, 2007, passed by Additional District Judge, Delhi, be set aside. Vide impugned order, application of the petitioner filed under Order 7 Rule 10 and 11 Read with Section 151 Code of Civil Procedure (for short as 'Code') was dismissed. In the application, petitioner itner alia made the prayer to direct the respondents to pay court fee on market value of suit premises and allow him to proceed with the suit only after he has paid the requisite court fee for the relief of possession of suit property in accordance with Section 7 Clause (v) of the Court Fee Act.

2. Brief facts of this case are that respondents herein, filed a suit for recovery of possession, rent etc against the petitioner herein, in the year 1994. Petitioner filed his Written Statement in the year 1996. Parties have led their respective evidence and matter is listed before trial court for final arguments, when present application was filed.

3. It is contended by learned counsel for the petitioner that trial court has mis applied Section 7 (xi) of Court Fee Act, 1870 to the suit whereas in terms of specific pleadings of the plaintiffs/respondents the suit was

governed under Section 7 (v) of the Court Fee Act. The resultant effect of the impugned order is that it erroneously alters the jurisdiction of the suit. In case Section 7 (v) of the Court Fee Act is applied, the suit has to be valued on basis of market value of the suit property which undoubtedly is much more than Rs.20,00,000/- today as well as on the date of filing the suit. The error therefore, attains seriousness since it results in giving jurisdiction to the Court, which otherwise does not have the pecuniary jurisdiction to try and entertain the suit. In support of its contentions, Learned counsel cited following judgments;

1. *Maiden Pharmaceuticals Ltd Vs. Wockhardt Ltd.*
157 (2009) Delhi Law Times 65;
2. *Biswanath Agarwalla Vs. Sabitri Bera and others,*
(2009) 15 Supreme Court Cases 693.
3. *Ravinder Kumar Rishi Vs. Sushma Rishi*
102 (2003) Delhi Law Times 219.
4. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.
5. Article 227 of The Constitution of India reads as under;

“227. Power of superintendence over all courts by the High Court- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

- (a) call for returns from such courts;
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed forces.”

6. In *Waryam Singh and another Vs. Amarnath and another*, AIR 1954, SC 215, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J., in –‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

7. In *Mohammed Yusuf Vs. Faij Mohammad and Ors.*, 2009 (1)SCALE71, Supreme Court held;

“The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

8. In *State of West Bengal and Ors. Vs. Samar Kumar Sarkar, JT 2009 (11) SC 258 Supreme Court held;*

‘10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is an error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.

12. In *Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta (AIR1975SC1297)* this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court’s function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.’

9. In *Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives*, JT 1995(7)SC400, Apex Court observed;

“The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”

10. In light of principles laid down in the above decisions, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned orders is maintainable or not.

11. It is apparent from the record that, petitioner who filed its Written Statement as early as in the year 1996, never took any objection with regard to the Court Fee.

12. Nevertheless record of this case speaks for the conduct of the petitioner, who has been moving one application after the other and his only intention is to delay the proceedings when the matter has reached the stage of final arguments. In this regard, observations made by the trial court in impugned order are very much relevant and the same are reproduced as under;

“I have given my thoughtful consideration to the rival submissions of the counsels for the parties. I have also carefully perused the entire relevant material placed on record and in my considered opinion there is substance in the contentions of Ld. Counsel for the plaintiffs that

the instant application as filed by Ld. Counsel for defendant is nothing but an abuse of the process of law. The application is not only misconceived and unnecessary but also motivated too which has been filed with the sole intention to delay the proceedings which is pending for the last 16 years and in this case the Hon'ble High Court of Delhi has already given directions to dispose this case in the time bound period. I also find myself in agreement with Ld. Counsel for the plaintiff that the defendant is not the rank trespasser but he is continuing in possession after termination of his tenancy by giving the notice and in this circumstances, the suit has been property valued on the basis of this annual rent under the provisions of section 7 clause (xi) of Court Fees Act.

It is well settled proposition of law that the landlord can maintain a suit for ejectment and such a suit will be governed by Section 7 (xi) (cc) Court Fee Act. The suits which are contemplated by Section 7 (v) (e) are suits based on title where a total stranger and usurper has got into the possession of the house initially by an overt act or claims and independent title.

In the instant case the circumstances are not such where a total stranger and usurper has got into the possession of the house initially by an overt act or the independent title has been claimed. Rather, it is a case where the defendant was the tenant and admittedly the notice of the termination of tenancy was issued u/s 106 of Transfer of Property Act. Hence, it cannot be said that the valuation of the suit has not been done properly.

For the said reasons, I do not find any substance in the application. As such, the same is liable to be dismissed and same stands dismissed accordingly.”

13. Under these circumstances, I find that there is no illegality, infirmity or irrationality in the impugned order passed by the trial court. The judgments cited by learned counsel for the petitioner are not applicable to

the facts of the present case. Hence, the present petition under Article 227 of the Constitution of India is not maintainable.

14. Nonetheless, as case is at the stage of final arguments, objections with regard to Court Fee being legal one, the petitioner can take the same during the course of final arguments, if permissible under the law.

15. Copy of this order be sent to the trial court.

CM NO. 12237/2010

16. Dismissed.

21st July, 2010
ab

V.B.GUPTA, J.