

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: August 13, 2013*

+ **CM(M) No.804/2013 & CMs No.12389/2013 & 12390/2013**

SHANKAR GOSWAMI Petitioner
Through Mr.Om Prakash, Adv.

versus

SARITA GOSWAMI Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner has challenged the impugned order dated 16th January, 2013 passed by the Civil Judge whereby the application of the petitioner (defendant in the suit) under Order IX, Rule 7 CPC for setting aside the order dated 12th December, 2011 was dismissed.
2. The suit was filed by the respondent for recovery of possession, damages and mesne profit, who is the owner of the property.
3. The application of the petitioner was opposed by the respondent by stating that even the petitioner was not appearing in the matter on earlier dates also when the matter was listed i.e. 29th July, 2011 and 8th September, 2011 the petitioner did not appear deliberately as some interim directions were issued on the basis of statement made by the respondent on 25th May, 2011 to the effect that she will not interfere in the supply of electricity and water to the petitioner and finally on 12th December, 2011 when the

petitioner did not appear he was proceeded ex-parte. On 28th May, 2012, the petitioner moved the present application when the case was at the stage of examination of PW4.

4. Four reasons given by the trial court while dismissing the application of the petitioner are mentioned in paras 8 to 11 of the impugned order. The same read as under:

“8. Thus in the light of the averments made by the defendant and comparing them with the proceedings of the present case it is apparently clear that the defendant was not able to appear on 12.12.2011 and his stand falls flat to the ground because as discussed above, the defendant was not appearing in the present matter much prior to 12.12.2011. No explanation is given by the defendant for his absence in the present case since 29.07.2011 till 17.11.2011.

9. Secondly the stand taken by the counsel for defendant that he forgot to note down the date of 12.12.2011 in his diary is also of not much help to him because no sufficient explanation is given by the counsel for the defendant that what prevented the defendant himself to appear in the court in the present matter. The argument that he had assured the defendant regarding the present case and therefore the defendant was not appearing is an argument which reflects that the conduct of the defendant is not that of a rational and prudent person who was not worried about the proceedings against him in the court and he was not bothered to enquire regarding his case even after the lapse of four months (i.e. from 12.12.2011 till 10.04.2012) and the mistake of the counsel regarding the noting down of the date is also not sufficient.

10. Thirdly the argument of the defendant that the defendant being a layman could not convey the proper information to his counsel regarding the proceedings of the case is also totally

hollow because even a layman can understand the next date being given in the present case. As the defendant was present on 10.04.2012, he was well versed with the proceedings taking place in his case and it is unbelievable that he had not informed his counsel regarding the evidence being taken over in the present case. Even if for the sake of arguments it is believed that being layman he could not understand the procedure of court but it is apparent that he knew that the case is proceeding further and nothing prevented the counsel for the defendant who is well versed with legal procedure to enquire regarding the next date in the present case and to take appropriate action as per law. Thus, this argument of the counsel for the defendant does not hold force and the same is not acceptable.

11. Fourthly the argument of the counsel for defendant that on 18.05.2012 lawyers were on strike also does not appear to be true because perusal of the proceedings taken place on 18.05.2012 shows that proxy counsel of the plaintiff along with plaintiff and PW5 were present in the court and examination of PW5 was conducted. If the proxy counsel for the plaintiff could appear inspite of lawyers' strike nothing prevented counsel for the defendant to appear in the present case inspite of knowing well the date of hearing. It is also relevant to mention here that even if for the sake of argument it is accepted that lawyers were on strike on 18.05.2012, nothing prevented the defendant himself to appear in the present case. Thus this argument of the counsel for the defendant also cannot save the skin of the defendant.”

5. Scope of interference in a petition under Article 227 of Constitution of India has been discussed in many cases. Some are:

- (i) In ***Waryam Singh and Another v. Amarnath and Anr.***, AIR 1954 SC 45, 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)

I(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.”

- (ii) In ***Mohammed Yusuf Vs. Faij Mohammad and Ors., 2009 (1) SCALE 71, 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”.
- (iii) 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 error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.”
- (iv) In ***Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta (AIR 1975 SCS 1297)*** the 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.”

(v) In *Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives*, JT 1995(7) SC 400, 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.”

6. After having gone through the material placed on record and conduct of the petitioner, it is apparent that the petitioner was trying to delay the proceedings from the very beginning. Even the impugned order has been challenged by the petitioner after the expiry of six months. The same cannot be interfered in the present petition under Article 227 of the Constitution of India.

7. The petition is accordingly dismissed.

(MANMOHAN SINGH)
JUDGE

AUGUST 13, 2013