

S.No.

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case No. :- CM (M) No. 242/2023
CM No. 7600/2023

Reserved on : 18.12.2023
Pronounced on : 22.12.2023

**Sunil Wali S/o Som Nath R/o House No. 467,
Rajpura Mangotrian, Jammu through Power of
Attorney Holder, Bharat Bushan S/o Dev Dutt
Sharma R/o 94 ext. Janipur Colony, Jammu**

.....Petitioner(s)

Through: Mr. Narinder Kumar Attri, Advocate

Vs

**Maharaj Krishan Raina S/o Shamboo Nath
Raina R/o Quarter No. 42-43, Phase-II Purkhoo
Camp, Jammu**

..... Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

1. The instant petition has been preferred by the petitioner under Article 227 of the Constitution of India and has sought the following relief:

“allow the petition and to set aside the order impugned dated 03.10.2023 passed by the learned Court of City Judge, Jammu, in case titled “Sunil Wali vs. Mahajraj Krishan Raina” in terms whereof the application filed by the petitioner for seeking permission to appear as witnesses for cross examination on the affidavits already filed stands rejected and permission may kindly be granted to appear as well as to produce the witnesses for cross examination with respect to the affidavits which

stands already been filed in the case in the interest of justice.”

BRIEF FACTS OF THE CASE

2. The petitioner is aggrieved of the order passed by the learned Court of City Judge, Jammu dated 03.10.2023 in the suit filed by the petitioner titled Sunil Wali vs Maharaj Krishan in terms whereof the learned trial Court was pleased enough to dismissed the application of the petitioner for appearing as well as leading the evidence. In the month of November 2005, the petitioner had filed the suit for permanent prohibitory injunction restraining the respondent from interfering into the peaceful possession of the plaintiff qua, alienating the plot of land measuring 10 Marlas comprising under Khasra No. 59 min Khata No. 22 min Khewat No. 3 min situated at Village Dhomal Patta Bhor, Jammu before the court of learned District Judge, Jammu and the same stood transferred before the court of learned City Judge, Jammu, however, the said suit stands dismissed in default on 30.12.2010 and was restored later on.
3. The further case of the petitioner is that after the restoration of the suit, the plaintiff submitted evidence affidavit on 29.05.2017 and the case was further listed for cross examination of the witnesses whose affidavits were already submitted before the learned court but the evidence of the petitioner stood closed on 22.09.2017 and thereafter, the defendants evidence was closed vide order dated 14.02.2020.

4. Mr. N K Attri, learned counsel appearing on behalf of the petitioner submits that after closing the evidence of the defendants, the petitioner had filed the application for the permission to appear as well as to produce the evidence and after filing the evidence affidavit, the petitioner secured a job in a private firm M/S Shaheen Fabricators at Sanatnagar Industrial Estate Srinagar due to which neither he could appear nor could produce the witnesses and the detailed application stood filed before the court below.
5. It is further submitted that the court below after hearing the parties vide impugned order dated 03.10.2023 dismissed the said application as a result whereof the instant petition has been filed for quashing the impugned order mentioned (supra).

LEGAL ANALYSIS

6. **Heard learned counsel for the petitioner at length and perused the material available on record.**
7. It is a peculiar case, where the petitioner has filed an application under Section 151 read with Order 18 Rule 4 of the Code of Civil Procedure seeking permission to produce the witnesses for cross-examination, after three years from the date the trial Court has kept the case for final arguments in the year 2020. The petitioner has filed the instant petition under Article 227 of the Constitution of India seeking quashment of Order dated 03.10.2023 passed by the learned Court of City Judge, Jammu,

whereby the said application stood dismissed being misconceived and has been filed at a belated stage.

8. Record reveals that the aforesaid application was filed belatedly and the petitioner has absented himself from the proceedings before the trial Court deliberately with a view to delay the proceedings. The petitioner (plaintiff therein) failed to produce the witnesses for their cross-examination before the trial Court despite being provided numerous opportunities by the Court and ultimately, as per record, vide order dated 15.04.2017, the petitioner (plaintiff therein) was provided last and final opportunity to produce the evidence for examination and finally on 22.09.2017, the Court closed the evidence of the petitioner (plaintiff therein).
9. Record further reveals that after the closure of the evidence, the defendant led evidence and produced the witnesses who were duly cross-examined by the counsel for the petitioner and the case was fixed for final arguments in the year 2020. The specific case which has been advanced by learned counsel for the petitioner is that due to some unavoidable circumstances, the petitioner (plaintiff therein) could not produce himself, nor his witnesses for cross-examination and instead has filed an application at a stage, when the case was fixed for final arguments and that too after three years. The petitioner has placed reliance on Order 18 Rule 3A of the Code of Civil Procedure which, however, is not available to the petitioner as the petitioner has not reserved any right for leading any evidence in rebuttal on those issues where burden of proving lie was on

defendant. Before proceeding further, it would be apt to reproduce **Order 18 Rule 3 of the CPC** as under:

3. Evidence where several issues.-Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Order 18 Rule 3A of the Code of Civil Procedure “Party to appear before other witnesses”

[3-A Party to appear before other witnesses.-Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.

10. From bare perusal of the aforesaid provisions, it is apparent that Order 18 Rule 3 of Code of Civil Procedure provides for reserving of the right for a party beginning on those issues whose burden of proving lie on the other side by reserving his right for the same. Order 18 Rule 3A provides that where a party wishes to appear as a witness at a later stage after any of the witnesses on his behalf are examined, he may be permitted by the Court for reasons recorded for the same.
11. Perusal of the file reveals that the plaintiff has nowhere sought any permission from the trial Court for appearing at a later stage as his own witness under Order 18 Rule 3A of the Code of Civil Procedure. Even otherwise also, the said option to appear at a later stage by all means had to be exercised before the evidence of the plaintiff was closed. In the instant case, the plaintiff did not reserve any right for leading any

evidence in rebuttal on those issues whose burden of proving, lie on defendant. There was no issue in which burden of proving was on the defendant, as such, there was no occasion to the plaintiff to have lead any evidence in rebuttal. Thus, I am of the view that the provision of Order 18 Rule 3A is not applicable in the instant case and accordingly, this court is in agreement with the view expressed by the trial Court in this regard.

12. Record further reveals that the plaintiff did not produce himself, nor his witnesses at all for cross examination despite the trial Court granted number of opportunities and ultimately, the evidence of the plaintiff was closed way back in the year 2017. Thereafter, the plaintiff did not raise any grouse and the counsel for the plaintiff even cross-examined the witnesses of the defendant and ultimately, the file was posted for final arguments in the year 2020. After the case was fixed for final arguments in the year 2020, the petitioner filed the aforesaid application belatedly after three years on false and flimsy ground that the plaintiff has lost contact with his counsel. The said plea of the petitioner is contrary to the record on the ground that his counsel was regularly appearing on his behalf and attending the proceedings in the case pending before the trial Court. This aspect of the matter has been gone in detail by the learned trial Court and findings recorded that the application has been filed belatedly without any rhyme and reason is perfectly justified and in consonance with the record. Thus, the petitioner cannot take shelter under the aforesaid provisions of the Code of Civil Procedure i.e Order 18 Rule 3A CPC and the reasons recorded by the trial Court for dismissing the said

application being misconceived are perfectly justified and cannot be interfered with, more particularly, after the evidence of the defendant was closed and the file was posted for final arguments.

13. It is true that the duty is cast upon the Court by virtue of Order 18 Rule 3A of the Code of Civil Procedure to record reasons before permitting a party to appear as his own witness at a later stage when the witnesses had been cross examined but at the same time it cannot be denied that the rules of procedure are always to be interpreted liberally in order to advance the cause of justice.
14. The reasons recorded by the trial Court to reject an application are justifiable and cannot be interfered with in light of the fact that the petitioner has approached the trial Court by way of aforesaid application after three years from the date the case was fixed for final arguments. Thus, a party cannot be permitted to lead evidence by way of evidence of rebuttal after completion of the evidence by the other party and the rules of procedure including those prescribed in the Code of Civil Procedure are meant to advance the cause of justice, but in the instant case, the rules cannot be made applicable to the aid of the party who did not raise any objection for all along these years, when the said application ought to have been filed.
15. Thus, in light of the aforesaid discussion, this Court is of the view that the order passed by the trial Court which is impugned in the present petition is perfectly legal and justified and in consonance with the spirit and mandate

of Order 18 Rule 3 and 3-A of the Code of Civil Procedure and cannot be interfered with.

16. The instant petition has been filed under Article 227 of the Constitution of India which provides for the power of superintendence over all the Courts and Tribunals throughout the territories in relation to which, it exercises jurisdiction.
17. The power of superintendence is not to be exercised unless there has been:
- a) **An unwarranted assumption of jurisdiction, not vested in a Court or tribunal; or**
 - b) **Gross abuse of jurisdiction; or**
 - c) **An unjustifiable refusal to exercise jurisdiction vested in courts or tribunals.**
18. Judicial pronouncements as to the object and scope of power of the High Courts under Article 227 of the Constitution would leave little scope to interfere with the orders of subordinate courts as a matter of routine, which by no stretch of imagination can be construed as a right of another appeal to the aggrieved party. Nor this power can be invoked to point out an error of law or fact in the Order/judgment impugned. The High Courts in exercise of its power under Article 227 of the Constitution can only interfere with the orders of trial Court to keep Tribunals and Courts subordinate to it, 'within the bounds of their authority'. Thus, the supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. It is only in the eventuality, when the subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction,

which it does have or the jurisdiction, though available, is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. The supervisory jurisdiction cannot be exercised by this Court on mere errors of fact or of law and the Hon'ble Supreme Court consistently has laid down that care, caution and circumspection need to be exercised while exercising supervisory jurisdiction.

19. I am fortified by the law laid down by Hon'ble the Supreme Court in **“Sadhana Lodh Vs. National Insurance Co. Ltd. & Anr, reported as (2003) 3 SCC 524”**:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal.”

20. In **“Shalini Shyam Shetty vs Rajendra Shankar Patil reported as (2010) 8 SCC 329”**, the Hon'ble Supreme Court has observed as under:

"64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High

Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

67. As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly."

21. The Hon'ble Supreme Court in "Estralla Rubber Vs. Dass Estate (P) Ltd., reported as (2001) 8 SCC 97" has held:-

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in

place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand* in AIR Para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case [11]Waryam Singh v. Amarnath. This Court in *Bathutmal Raich and Oswal v. Laxmibai R. Tarte* has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order."

22. The Hon'ble Supreme Court in "*Garment Craft vs Prakash Chand Goel*, reported in (2022) 4 SCC 181" has held:

"15..... The High Court exercising supervisory jurisdiction does not act as a court of first appeal to re-appreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or

tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.”

CONCLUSION:

23. In view of the observations made hereinabove coupled with the settled legal position, I do not find any illegality or perversity in findings recorded by the trial Court in the impugned order dated 03.10.2023 to enable this Court to interfere. As such, **the instant petition is dismissed “in limine”** along with all connected applications and as a necessary corollary, the order impugned dated 03.10.2023 passed by the learned Court of City Judge, Jammu, **is upheld.**

JAMMU
22.12.2023.
Vijay

(Wasim Sadiq Nargal)
Judge

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No