

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

CM(M) No. 237/2023

Tarsem Singh and others

..... petitioner (s)

Through :- Mr. G.S.Thakur Advocate.

**V/s**

Manbir Singh and others

.....Respondent(s)

Through :- Mr. Koushal Parihar Advocate.

**Coram: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

**JUDGMENT**

(27.12.2023.)

1 This is a petition under Article 227 of the Constitution of India seeking quashment of order dated 30.11.2023 passed by the learned Additional District Judge, Jammu (the appellate Court) in case Civil Appeal No. 120/2019 titled 'Manbir Singh and ors vs. Tarsem Singh and others whereby the order dated 26.03.2019 passed by the learned 1<sup>st</sup> Additional Munsiff (Forest Magistrate), Jammu (the trial Court) has been set aside.

**Factual Matrix**

2 The respondents filed a suit for permanent prohibitory injunction restraining the petitioners herein from encroaching/closing of only pathway/lane measuring 6 ft. wide and approximately 120 ft long situated at Deharan Jammu approaching towards the house of the respondents. It was submitted that this was the only pathway leading to the house of the respondents and there was no other way to enter upon the house of the

respondents. In the said suit, the trial Court has granted ad interim order dated 29.10.2015 by directing the parties to the suit to maintain the status quo with respect to the suit property and not to obstruct the way of the respondents by any further construction till next date of hearing which was subsequently vacated on 26.08.2019 and against the said order, the respondents filed an appeal before the appellate Court which vide its order dated 30.11.2023 allowed the appeal and directed the parties to the suit to maintain status quo with regard to the suit land. It is this order of the appellate court which has been challenged by way of this petition.

3 It seems that the petitioners herein have appeared before the trial court and filed their written statement refuting the claim of the respondents/plaintiffs in terms of the averments contained in the written statement filed by them before the trial court.

4. The trial Court, on consideration of the matter and after hearing the learned counsel for the parties, vide its order dated 26.08.2019 observed that the respondents/plaintiffs have failed to make out a strong prima facie case in their favour seeking temporary injunction. Accordingly, application seeking interim injunction was dismissed and the order dated 29.10.2015 whereby both the parties were directed to maintain status quo was vacated. It would be profitable to reproduce the relevant portion of the said order herein:-

*“8. For the aforesaid reasons, this Court is of the considered opinions/applicants have failed to make out a strong prima facie case in their favour seeking temporary injunction. Accordingly, application seeking temporary injunction is dismissed. The order dated 29.10.2015 whereby both the parties were directed to maintain status quo is hereby vacated. The judgments filed by the*

*applicants in support of their claim is not applicable in the present case. Nothing stated in the disposal of this application shall be construed as the expression of opinion on the merits of this case. Application is disposed of and shall form part of the main file.”*

5. Feeling aggrieved of the impugned order passed by the trial Court, the respondents/plaintiffs filed an appeal before the Appellate Court challenging the order dated 26.08.2019 passed by the trial Court by virtue of which an application under order 39 rule 1 and 2 CPC has been dismissed. The appellate Court, after hearing the parties, passed the impugned order dated 30.11.2023 allowing the appeal of the respondents/plaintiffs. The appellate Court observed that the trial Court has committed grave illegality in refusing injunction to the respondents/appellants. The relevant portion of the order is reproduced herein, thus:

*“In the above backdrop it is worthwhile to mention here that the trial Court has committed grave illegality in refusing injunction to the plaintiffs/.appellants and the order passed by the trial Court is not sustainable in the eyes of law and accordingly the impugned order passed by the trial Court is set aside. Accordingly appeal is allowed and the parties to the suit are directed to maintain status quo with regard to the suit lane measuring 6 feetx120 feet falling under khasra No. 369 situated at Deharan Jammu till the final decision of the main suit and the defendants/respondents are restrained from causing any kind of interference in the user of the said pathway by the plaintiffs/appellants.”*

6. Aggrieved of the impugned order passed by the appellate Court, the present petition under Article 227 of the Constitution seeking setting aside of

the same has been filed *inter alia* on the grounds that the impugned order is bad in law; the appellate court has committed the jurisdictional error in disregard of the Apex Court judgments on the point, resulting in gross miscarriage of justice to the petitioners; the rights of the parties have been decided without protecting the *lis* and without giving chance to the parties to contest their claims.

7. Heard learned counsel for the parties and considered the submissions made.

8. The learned counsel for the parties during the course of arguments have reiterated the grounds taken by them in their respective pleadings. The learned counsel for the petitioners referred to and relied upon the judgment of the Supreme Court delivered in case titled **Assistant Collector of Central Excise, Chandan Nagar vs. Dunlop India Ltd and others**. On the other hand, learned counsel for the respondents referred to and relied upon the judgment of this Court rendered in case titled **Krishan Chand vs. Smt. Lajwanti and others** (OW 104 No. 6/2015, decided on 13.09.2023)

9. Since the petition is filed under Article 227 of the Constitution of India, therefore, first of all, this Court has to assess the maintainability of this petition.

10. It is trite proposition of law that the Court is not to exercise its supervisory jurisdiction under [Article 227](#) of the Constitution of India only on the premise that some error has crept in the orders passed by the courts below and one of the parties to the proceedings is to suffer. It is only when there is miscarriage of justice which is apparent from the record that the court exercises its jurisdiction under [Article 227](#) of the Constitution. The court cannot reverse the findings of the court below only also for the

reason that the courts below should have interpreted the facts brought on record in a particular manner. The discretion has to be exercised by the court sparingly and not in an ordinary course. The Apex Court in case titled *Shalini Shyam Shetty v. Rajendra Shankar Patil* reported as **2010 AIR SCW 6387**, has laid down the following principles to be followed by the High Courts in exercising jurisdiction under Article 227 of the Constitution:

*“a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.*

*(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.*

*(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.*

*(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.*

*(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.*

(f) *In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.*

(g) *Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.*

(h) *In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised.*

(i) *High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.*

(j) *It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.*

(k) *The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.*

(l) *On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.*

(m) *The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept*

*to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.*

*(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.*

*(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.”*

11. The Supreme Court has also in case titled ***Radhey Shyam and anr. v. Chhabi Nath and others*** reported as (2009) 9 SCC 610 & AIR 2015 SC 3269 taken the similar view. The relevant extract of the judgment reads thus:

*“Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law”.*

12. The plain reading of the principles laid down by the Hon’ble Supreme Court would make it clear that the petition under Article 227 of the Constitution is subject to high degree of judicial discipline and is not to be taken recourse to for setting right the mere irregularities. The power, however, is not *ipso facto* curtailed to be exercised when it is so warranted. The ‘border line’, therefore, for the purposes of exercising jurisdiction under Article 227 of the Constitution, has been drawn and the jurisdiction, as such, is warranted to be exercised to keep the Tribunals and courts subordinate to it within the bounds of their authority; to ensure that law is followed by such tribunals and

Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them; when there is patent perversity in the orders of Tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted; and is not to be exercised to correct mere errors of law or just because another view than the one taken by the Tribunals or Courts subordinate to it, was a possible view.

13. It is very axiomatic that this court can exercise its power of superintendence vested with it under Article 227 of the Constitution only when the order challenged in the said petition falls within any of the aforesaid categories. The perusal of the orders impugned would make it clear that the trial court as also the appellate court have certainly exercised the jurisdiction that is vested with it and have not also declined to exercise the jurisdiction vested with it. The courts do not also appear to have traversed beyond the bounds of its authority, nor do the impugned orders appear to be perverse so as to cause a manifest failure of justice or the basic principles of natural justice have been flouted. Having said that, the petition in hand against the impugned orders is not maintainable.

14. The contention of the learned counsel for the petitioners that the order impugned has been passed without protecting the *lis* does not carry any weight, in that, the appellate Court has very categorically recorded in its order dated 30.11.2023 that “*Nothing herein said shall affect the merits of the main case which shall be decided on its own merits*”. The suit is yet to be decided and the appellate Court has only passed an order to the effect that the parties are directed to maintain status quo with regard to the suit lane which, in fact, protects the *lis*, therefore, the order impugned does not appear to be perverse as

claimed to invoke the jurisdiction of this court under Article 227 of the Constitution. The judgment rendered in case titled **Dunlop India Ltd.** (supra) relied upon by the learned counsel for the petitioners, is not applicable to the facts of the instant case. The instant case is, however, squarely covered by the judgment rendered in **Krishan Chand's** case (supra) relied upon by the respondents wherein it has been held that this Court while exercising supervisory power under Article 227 of the Constitution of India cannot act as an appellate court or tribunal, nor it can review or re-appreciate the material upon which the inferior Courts have passed the orders. It has been further held that even an error of law or an error of fact cannot be corrected by this Court in exercise of its supervisory jurisdiction. I am, therefore, fortified by the view taken by this Court in the aforesaid case.

15. The instant petition being not maintainable is dismissed. It goes without saying that this court has not expressed any opinion on the merits of the case. The trial court shall decide the matter without getting influenced, in any way, by any of the observations made by this court in this order.

**(MOKSHA KHAJURIA KAZMI)**  
**JUDGE**

Jammu  
27.12.2023  
Sanjeev

Whether order is reportable: Yes