

Neutral Citation No. - 2024:AHC:161696

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 8833 of 2023

Petitioner :- Rotex Automation Limited

Respondent :- Asco Numatics (India) Pvt. Ltd. And 2 Others

Counsel for Petitioner :- Shreya Gupta, Suvansit Kumar Jaiswal, Vipul Raj Gautam

Counsel for Respondent :- Ankush Tandon, Sudeep Harkauli

Hon'ble Saral Srivastava, J.

1. Heard Ms. Shreya Gupta and Sri Vipul Raj Gautam, learned counsels for the petitioner, Sri Naveen Sinha, learned Senior Counsel assisted by Sri Sudeep Harkauli, learned counsel for respondent no.1 and Sri Ankush Tandon, learned counsel for respondent no.2.

2. The petitioner, who is defendant no.2 in the Original Suit No.4 of 2022 (Asco Numatics (India) Pvt. Ltd. Vs. Rotex Automation Limited) instituted by respondent no.1, has assailed the order dated 31.05.2023 passed by the District Judge, Mathura whereby the learned Judge has transferred the Original Suit No.4 of 2022 before the Commercial Court, Agra.

3. The facts, in brief, are that respondent no.1 instituted Original Suit No.4 of 2022 against the petitioner praying for a decree of permanent prohibitory injunction restraining the petitioner from using the patented system namely 'A Safety and Availability Manifold System' Patent No.IN310797 and for rendition of accounts. The suit has been instituted on 25.03.2022.

4. It is stated in the plaint that respondent no.1 applied for grant of patent 'A Safety and Availability Manifold System' vide application No.1828/CHE/2014 dated 07.04.2014 to the Controller General of Patents, India. According to respondent no.1, the said application was duly examined by the Indian Patents Office, and the said patent titled as 'A Safety and Availability Manifold System' was granted on 03.04.2019 (hereinafter referred to as 'patented system') after following the due process of law under the Patents Act, 1970.

5. It is further stated that on the date of filing the suit, the said patented system is in force. It is further stated that patented system is commercially known as 'Redundant Valve Systems'. The respondent no.1 has stated advantages of the patented system in paragraph 8 of the plaint and main objects of the patented system in paragraph 9 of the plaint.

6. The further plaint case was that petitioner is a registered company under the Companies Act, 1956 and engaged in the business of manufacturing, selling and installing Fluid Control Systems, Positioners and Electrohydraulic Actuators for the customers in the field of Petrochemical, Oil and Gas, etc. According to plaint case, the proforma respondent no.3 (defendant no.3) was an ex-employee of respondent no.1. The respondent no.3 was employed as a Senior Engineer Customer Service with respondent no.1 from 26.04.2010 till his resignation on 30.06.2016. Thereafter, respondent no.3 joined the petitioner.

7. It is further stated that on 16.05.2019, the representative of respondent no.1 namely Mr. Vijay Jawade and Mr. Ramkumar visited the plant/refinery of respondent no.2 (defendant no.2), who is respondent no.1's customer, to hold discussion regarding the respondent no.1's products used by respondent no.2. It is further stated that during the course of discussion, the respondent no.2's representative Mr. R.N. Charles Sargunraj, Instrumentation Manager informed the respondent no.1 representative that a system has been installed at the refinery of respondent no.2 which is identical to the respondent no.1's patented system. The respondent no.1's representative, thereafter, requested Mr. R.N. Charles Sargunraj to allow him to inspect the said system installed by the petitioner in the premises of respondent no.2.

8. It is further stated that upon inspection of the system, Mr. Jawade, the representative of respondent no.1, learnt that the system installed in the premises of respondent no.2 had features identical to the features of the claims in the respondent no.1's patented system. The respondent

no.1, thereafter, conducted further investigation and visited petitioner's website, brochure and its LinkedIn profile. The respondent no.1 further alleged that infringing system being manufactured, sold and used by the petitioner clearly and squarely falls within the scope of respondent no.1's Patent No.IN310797 and is entirely based upon the patent specifications of the respondent no.1.

9. It is further averred in the plaint that petitioner has made infringing system with a view to take advantage of popularity, goodwill and reputation of the respondent no.1's invention and patented system.

10. On the basis of aforesaid allegation, the relief for prohibitory permanent injunction was sought by the respondent no.1.

11. In the said suit, the petitioner filed an application 25C under Order 7 Rule 11 of C.P.C. contending inter-alia that perusal of suit reveals that the dispute constitutes a commercial dispute, therefore, the suit is not cognizable by the Civil Court and is cognizable by Commercial Court. The further assertion in the application was that the suit has been deliberately undervalued by the respondent no.1.

12. The said application 25C was decided by the Trial Court by order dated 20.09.2022. Relevant extract of the order dated 20.09.2022 is reproduced herein below:-

“Conclusion:

From the above discussion, it is clear that plaintiff has filed the suit seeking permanent injunction restraining the defendant from infringing the patented invention. The defendant no.1 has submitted application under order 7 rule 11 CPC, 1908 with averment that pleading and prayer of plaintiff in suit is about patent infringement and which categorically fall within the definition of 'commercial dispute' as defined in CCA, 2015. It is settled position of law that court has to mainly focus on plaint averment for disposal of such application. It is matter of great concern that in this suit the huge investment about R&D is described, but commercial/monetary facts are not mentioned. It is not simple suit of civil nature but commercial dispute in which valuation of subject matter has its own importance.

In this plaint the plaintiff has not described any amount/value of commercial transactions in the suit. At the finality of the trial he is bound to divulge commercial transactions and all necessary facts to calculate the rendition of account. There may be possibility that subject matter of suit falls in the category of “commercial dispute with specified value”. At that point of time, there will be procedural deadlock because the provision of CPC, 1908 which is followed

earlier in this suit, is contrary to scheme of CCA, 2015. It is paramount concern of the court to visualize such situation as proactive measure at this very stage so that he should not take advantage of such unreasonable practices.

In light of above legal provisions and judicial pronouncements, the court concludes that the suit is related to patent act, which comes in purview of commercial dispute, here plaintiff has neither disclosed valuable commercial transaction nor given any valid reason for it. He deliberately under-valued the suit and calculated the valuation of subject matter in arbitrary and unreasonable manner. It is settled principle of equity "He who seeks equity must come with clean hand". The court is duty bound to look into the matter so that plaintiff can not avail undue advantage regarding the subject matter of suit. In the light of above facts and circumstances of the case the application no.25C is likely to be allowed with order mentioned below.

ORDER

The application no.25C is allowed. The suit is undervalued and hence as per order 7 rule 11 CPC, 1908, plaintiff is directed to seek proper amendments in plaint with respect to the valuation clause for subject-matter of suit within ten days from today. The next date to be fixed on 30.09.2022."

13. After the order dated 20.09.2022 passed by the Trial Court, the respondent no.1 amended the plaint and valued the suit at Rs.10 lacs. After amending the plaint, the respondent no.1 filed an application-54Ga under Order 7 Rule 10-A of C.P.C. praying therein that parties may be directed to appear before the Commercial Court on the date fixed. The application 54Ga under Order 7 Rule 10-A of C.P.C. reads as under:-

"महोदय,

उपरोक्त मुकदमे में न्यायालय के आदेशानुसार वाद में वांछित अनुतोष के संदर्भ में वादपत्र में संशोधन के पश्चात न्यायालय हाजा को वाद के श्रवण करने का क्षेत्राधिकार न होने के कारण न्यायालय हाजा से वादपत्र आदि को नियमानुसार वापिस लिया जा कर न्यायालय कॉमर्शियल कोर्ट आगरा के समक्ष प्रस्तुत किया जाना है।

न्यायहित में न्यायालय कॉमर्शियल कोर्ट आगरा में उभयपक्षों की उपस्थिति हेतु तिथि निर्धारित की जा कर उभयपक्ष को संदर्भित निर्धारित की गई तिथि का नोटिस दिया जाना अति आवश्यक है। अतः गुजारिश है कि उभयपक्षों को न्यायालय कॉमर्शियल कोर्ट आगरा में उपस्थिति हेतु तिथि निर्धारित करके उभयपक्षों को सूचित किया जावे।"

14. Before any order could be passed on application 54Ga, it transpires from the record that respondent no.1 filed an application before the District Judge, Mathura for transferring the Original Suit No.4 of 2022 from Civil Court, Mathura to the Commercial Court,

Agra. The record further reveals that the District Judge, Mathura sought a report from the Additional District Judge before whom the said suit was pending, who also gave a report recommending for transfer of suit to the competent Court. Consequently, the District Judge, Mathura, by order dated 31.05.2023 transferred the Original Suit No.4 of 2022 to the Commercial Court, Agra. The order dated 31.05.2023 is impugned in the present petition.

15. Challenging the aforesaid order, Ms. Shreya Gupta, learned counsel for the petitioner has contended that the impugned order is illegal and without jurisdiction. It is contended that there was inherent lack jurisdiction with the Civil Court to try the lis of the suit, therefore, the Court had no option but to dismiss the suit. In this respect, she has placed reliance upon the Full Bench judgement of this Court in the case of **Ananti Vs. Chhannu and Others 1929 (1) ALJ 940**.

16. She further contends that the Commercial Court is not a Court subordinate to the Court of District Judge. It is submitted that the Court of District Judge and Commercial Court are of coordinate jurisdiction, therefore, District Judge lacked jurisdiction under Section 24 of C.P.C. to transfer the case to a Court of coordinate jurisdiction i.e. Commercial Court.

17. In other words, it is contended that the District Judge could have transferred the case from one Court to other Court which comes under his jurisdiction, but he does not have the power to transfer a case to a Court for which he does not have any administrative control, and therefore, the impugned order cannot be sustained in law. In this respect, she has placed reliance upon the judgement of Andhra Pradesh in the case of **Manchukonda Venkata Jagannadham Vs. Chettipalli Bullamma and Others AIR 2011 AP 104**.

18. In alternative, she further contends that in the present case, the proper course for the Court is to return the plaint to the respondent no.1, who could present it before the competent Court i.e. Commercial Court inasmuch as transfer of suit from Civil Court to Commercial Court will

cause serious prejudice to the petitioner for the reason that in case of transfer of a case from Civil Court to Commercial Court, the date of institution of the suit shall relate back to the date of institution of suit before the Civil Court, and if that be so, the right to file written statement of the petitioner would close in view of amendment in the First Schedule to the Code of Civil Procedure by Commercial Courts Act, 2015.

19. In other words, it is contended that if the institution of suit on transfer to Commercial Court relates back to the date of institution of suit before the Civil Court, the period of 120 days prescribed for filing written statement has already expired, thus, the opportunity of the petitioner to file written statement stands closed by reason of amendment in Order 5 Rule 1 and Order 8 Rule 1 of C.P.C.

20. She further contends that rights of the petitioner shall be prejudiced by transfer of case from Civil Court to Commercial Court inasmuch as, as per Section 12-A of the Commercial Courts Act, 2015 (hereinafter referred to as 'Act, 2015'), the suit could be instituted only after pre-institution mediation and settlement has failed between the parties, and in case of such transfer, there was no pre-institution, mediation and settlement between the parties which impairs serious rights of the petitioner as petitioner would not get any opportunity for pre-institution mediation and settlement as contemplated under Section 12-A of the Act, 2015. She has placed reliance upon the judgement of Apex Court in the case of ***Patil Automation Private Limited and Others Vs. Rakheja Engineers Private Limited (2022) 10 SCC 1*** on the question of compliance of Section 12-A of the Act, 2015.

21. She further contends that in the instant case, the District Judge has exercised the power under Section 24 of C.P.C., but he did not comply with the requirement of principles of natural justice inasmuch as no notice was given to the petitioner to contest the application of transfer and thus, impugned order having been passed in violation of principles of natural justice cannot be sustained in law. In this respect,

she has placed reliance upon the judgements of Apex Court in the cases of *Jitendra Singh Vs. Bhanu Kumari and Others* 2009 SCC (1) 130 & *Vivekananda Nidhi and Others Vs. Asheema Goswami (Smt)* 2000 (10) SCC 23.

22. Per contra, Sri Naveen Sinha, learned Senior Counsel for the respondents would contend that so far as the judgement of this Court in the case of *Ananti (supra)* with respect to power under Section 24 read with Order 7 Rule 10-A of C.P.C. is concerned, the ratio laid down in the said judgement is not applicable in the facts of the present case inasmuch as in the case of *Ananti (supra)*, the Court was considering questions referred therein and while dealing with those questions, the High Court observed that there was lack of inherent jurisdiction with the Court, therefore, the Court had no option but to dismiss the suit. However, it is not so in a case where the Court did not have pecuniary jurisdiction or territorial jurisdiction.

23. It is contended that in the present case, it is not that there was lack of inherent jurisdiction with the Civil Court to try the suit. It is submitted that the Civil Court is vested with the power to try the commercial dispute provided the valuation of the suit is below Rs.3 lacs. It is contended that in the present case, since the Court while deciding the application 25C concluded that suit has been undervalued by the respondent no.1, therefore, it directed the respondent no.1 to amend the plaint. So, it is contended that it is a case where the Court did not have pecuniary jurisdiction which led transfer of case from Civil Court to Commercial Court and not because of the reason that there was lack of inherent jurisdiction with the Court to try the lis between the parties.

24. He further submits that in the present case, an ad-interim application alongwith suit was filed on the date of presentation of suit, and reading of Section 12-A of the Act, 2015 discloses that Section 12-A of the Act, 2015 contemplates only a situation where a party does not seek an urgent interim relief under the Act. Therefore, he submits that

Section 12-A of the Act, 2015 is not attracted in the present case.

25. He further submits that even if presuming that Section 12-A of the Act, 2015 is attracted and injunction application has been filed only to circumvent or bypass Section 12-A of the Act, 2015, in such an event, it is always open to the petitioner to raise objection before the Commercial Court that the suit is not maintainable for want of compliance of Section 12-A of the Act, 2015, and it deserves to be dismissed.

26. He further submits that the Apex Court in the case of ***Yamini Manohar Vs. T.K.D. Keerthi 2024 (5) SCC 815*** has held that even in cases where the Court did not grant interim relief when the plaint is taken up for registration/admission/examination, it will not justify dismissal of commercial suit under Order 7 Rule 11 of C.P.C.

27. He further contends that this Court may not interfere in the impugned order in exercise of power under Article 227 of the Constitution of India inasmuch as the impugned order does not cause any prejudice to the petitioner.

28. To elaborate the said submission, he submits that the fact that the suit is cognizable by Commercial Court is not disputed by the petitioner which is also evident from the application filed by the petitioner under Order 7 Rule 11 of C.P.C. wherein the petitioner has averred that the Civil Court lacks inherent jurisdiction to try the suit as the manner in which the suit has been framed discloses that the lis between the parties is commercial in nature and facts stated in the plaint constitutes commercial dispute, therefore, in such view of the fact, the transfer of case from Civil Court, Mathura to Commercial Court, Agra does not prejudice any of the rights of the petitioner. Therefore, the petition deserves to be dismissed by this Court. In this respect, he has placed reliance upon the judgements of Apex Court in the cases of ***Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil (2010) 8 SCC 329***, ***Garment Craft Vs. Prakash Chand Goel (2022) 4 SCC 181*** as well as judgement of this Court in the case of ***Ram Roop and Others***

Vs. Bishwa Nath and Others AIR 1958 All. 456.

29. He further contends that in the present case, no progress has been made in the Civil Court, Mathura inasmuch as pleadings are yet to be exchanged and issues are yet to be framed and further the injunction application is yet to be considered, therefore, if the case is transferred today, no prejudice will be caused to the petitioner.

30. He further submits that provision restricting the rights of petitioner to file written statement within the prescribed time in view of the amendment in Order 5 Rule 1 and Order 8 Rule 1 of C.P.C. by the Act, 2015 would get attracted only from the date the suit has been registered by the Commercial Court, therefore, the limitation to file written statement would run from the date the suit has been registered with the Commercial Court. He further submits that in the present case, an interim order granted by this Court was operating in the case, therefore, the period of interim order is to be excluded for the purpose of counting the period for filing the written statement, and if that period is excluded, the petitioner may file written statement within the time contemplated under Order 5 Rule 1 read with Order 8 Rule 1 of C.P.C. amended by Act, 2015.

31. I have considered the rival submissions of the parties and perused the record.

32. So far as the contention of learned counsel for the petitioner based upon the Full Bench judgement of this Court in the case of ***Ananti (surpra)*** that since there was lack of inherent jurisdiction with the Court to try the suit, therefore, Trial Court could only reject the plaint and power under Order 7 Rule 10-A of C.P.C. could not be exercised by the Court to return the plaint is concerned, this Court may note that learned counsel for the petitioner has relied upon following paragraphs on page 507 of the judgement which are reproduced herein below:-

“The plaintiff chooses his forum and files his suit. If he establishes the correctness of his facts he will get his relief from the forum chosen. If, as happened in the Patna case quoted above, he frames his suit in a matter not warranted by the facts, and goes for his relief to a court which cannot grant him relief on the true facts, he will have his suit dismissed. Then

there will be no question of returning the plaint for presentation to the proper court, for the plaint, as framed, would not justify the other kind of court to grant him the relief. But we are told that although the plaintiff has chosen his forum rightly, the defendant, if he so wishes, may, merely be saying something in his defence.— something the correctness of which he need not take the trouble to establish,— oust the jurisdiction of the court and compel the plaintiff to go to another court.

Where the plaintiff chooses his forum and the defendant denies the jurisdiction of the court to hear the case, two questions arise, viz:

- 1. Whether, on the allegations made in the plaint, the suit is cognizable by the court, and*
- 2. Whether, on the true state of facts, on facts alleged and established by the defendant, the suit should be tried by the court.*

Where it is found that, on the allegations made in the plaint, the suit is cognizable by the court, it will have to proceed to find whether the facts alleged in the plaint are established or not. If it is found, on a trial on the merits so far as this issue of jurisdiction goes, that the facts alleged by the plaintiff are not true and the facts alleged by the defendant are true, there will be two kinds of orders to be passed. If the jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be returned for presentation to the proper court. If, on the other hand, it is found that, having regard to the nature of the suit, it is not cognizable by the class of court to which the court belongs, the plaintiff's suit will have to be dismissed in its entirety. The reason will be that on the un-amended plaint the revenue court would have no jurisdiction to hear this suit. Of course, if the court allows the plaintiff, even at a late stage of the case, to amend his plaint so as to convert the suit into one against a person claiming as a landholder or through a landholder, the plaint can be returned for presentation to the revenue court.”

33. In the said case, plaintiff instituted a suit in the Court of Munsif of Haveli, Banaras alleging that her husband Jangi separated from his brother Deo Saran twenty years prior to institution of suit, and that the plaintiff's husband died more than ten years before institution of the suit and plaintiff for the last ten years had been in possession over her husband's occupancy holding as his heirs. The plaintiff alleged that defendants, who are descendants of Deo Saran, interfered with the crops grown by her on her own land and, eventually, took possession of her holding. Consequently, she sued for recovery of possession and for recovery of mesne profits.

34. In the written statement, the defendants took a stand that Deo Saran and plaintiff's husband Jangi were joint, and that Jangi having died as a joint member of the family, the defendants were the tenants of

the holding and plaintiff had no right. The defendants also pleaded that the suit was not cognizable by the Court of Munsif.

35. In the aforesaid factual controversy, the two questions which have been reproduced above were referred to the Bench. While answering the aforesaid two questions, the Court laid distinction and provided consequences between the cases where there was lack of inherent jurisdiction with the Court, and in cases where question of jurisdiction is relating to territorial limit or pecuniary jurisdiction.

36. In the formal cases where Court lacks inherent jurisdiction to try a suit, it has been held that the Court had no option but to dismiss the suit in entirety, but in a case where the Court lacks territorial jurisdiction or pecuniary jurisdiction, the plaint is to be returned for presentation to the proper Court.

37. Now, the Court proceeds to consider the argument of learned counsel for the petitioner in the light of aforesaid principle laid down by this Court in the case of *Ananti (surpra)*.

38. In the instant case, the suit as framed reveals that it is commercial dispute. The facts stated in the plaint constitute commercial dispute is not denied by the learned counsel for the petitioner.

39. Now, after introduction of Act, 2015, the suit as framed if constitutes commercial dispute, will be cognizable by Commercial Court, if valuation of the suit is above Rs.3 lacs in view of Section 12-A of the Act, 2015. However, if the valuation of the suit is below Rs.3 lacks, the regular Civil Court is competent to try the suit.

40. In the instant case, the suit had been valued below Rs.3 lacs, and on objection being raised by the petitioner by filing an application under Order 7 Rule 11 of C.P.C. that the suit had been undervalued, the Trial Court allowed the application under Order 7 Rule 11 of C.P.C. by order dated 20.09.2022, and directed the plaintiff/respondent to amend the plaint.

41. In compliance of the order of the Trial Court, the plaintiff/respondent amended the plaint and valued it at Rs.10 lacs. The order of the Trial Court passed on application under Order 7 Rule 11 of C.P.C. of the petitioner has attained finality as the same has not been challenged by any of the party. Thus, the petitioner is bound by the finding of the Trial Court granting an opportunity to the plaintiff/respondent to amend the plaint and correct the valuation of the suit.

42. In compliance with the order of the Trial Court dated 20.09.2022, the plaint has been amended and suit has been valued at Rs.10 lacs. So it is not a case where there was lack of inherent jurisdiction to try commercial dispute with Civil Court rather the Civil Court could decide the suit of commercial nature of the valuation upto Rs.3 lacs and if the valuation of the suit is above Rs.3 lacs, the suit is cognizable by Commercial Court. So, it is a case of lack of pecuniary jurisdiction and not a case where Trial Court lacked inherent jurisdiction to try a suit. Therefore, in view of principle of law enunciated by this Court in the case of *Ananti (surpra)*, the Trial Court could return the plaint since the Trial Court lacked pecuniary jurisdiction to try the suit, and it is not a case where Trial Court lacked inherent jurisdiction to try the suit. In such view of the fact, the Trial Court is not supposed to dismiss the suit rather Trial Court was supposed to return the plaint. Therefore, the contention advanced by the learned counsel for the petitioner that since Trial Court lacked inherent jurisdiction to try the suit, therefore, suit of the plaintiff/respondent should have been dismissed is misconceived.

43. Now, so far as the issue that whether District Judge has power under Section 24 of the C.P.C. to transfer the case to Commercial Court as the Court of District Judge and Commercial Court are of coordinate jurisdiction and further, no opportunity of hearing was given to the petitioner by the District Judge before passing the order of transfer is concerned, in this respect, it is pertinent to note that the petitioner has also asserted in his application under Order 7 Rule 11 of C.P.C. that suit

is cognizable by Commercial Court, therefore, there is no quarrel between the parties that suit as framed by the plaintiff/respondent is cognizable by Commercial Court. In such view of the fact, even if presuming that it may be a case where District Judge did not have power to transfer the case to the Commercial Court as the Court of District Judge and Commercial Court are of coordinate jurisdiction and order impugned had been passed without opportunity of hearing, the order impugned has not caused any prejudice to the petitioner in view of the fact that petitioner admits the fact that the suit as framed by the plaintiff/respondent is cognizable by Commercial Court.

44. The petitioner has approached this Court under Article 227 of the Constitution of India and law is settled that Court in exercise of power under Article 227 of the Constitution of India should interfere with an order passed by the subordinate Court if it causes grave injustice to the party.

45. This Court in the case of **Ram Roop (supra)** has succinctly explained the scope and applicability of Article 227 of the Constitution of India. Paragraph nos.36 & 37 of the said judgement are reproduced herein below:-

“36. The principles relating to the scope and applicability of Article 227 of the Constitution which emerge from a consideration of the cases discussed above appear to be these :

- 1. The superintendence referred to in Article 227 of the Constitution includes judicial superintendence.*
- 2. The power conferred by the Article is wide but not unlimited. The exercise of the power is discretionary and relief under the Article cannot be claimed as a matter of right. The principles regulating the exercise of the power are generally speaking the same as the principles on which writs can be issued under Article 226 but in a sense the power under Article 227 is wider as the High Court can sometimes issue directions in the exercise of that power which it could not do under Article 226.*
- 3. The power under the Article can be exercised even in those cases in which no appeal or revision lies in the High Court.*
- 4. The power should not ordinarily be exercised if any other remedy is available to the aggrieved party even though the pursuing of that remedy may involve some inconvenience or delay.*
- 5. The power should not be used to correct mere errors of fact or law. Error of law may include a wrong decision on a question of*

jurisdiction.

6. *The power is to be used sparingly only in appropriate cases in which the conscience of the Court is pricked and it feels that immediate interference is called for as it is necessary to keep the Subordinate Courts or Tribunals within their bound or to prevent some outrageous miscarriage of justice and grave results would follow if the power is not exercised. Whether a particular case is of this kind or not will depend on its own facts and circumstances. Such cases cannot obviously be exhaustively catalogued.*

37. *It follows from the above principles that if this case is found to be an appropriate one it is certainly open to this Court to interfere with the order which the applicants seek to challenge. The mere fact that the order was not revisable under Section 115 will not be sufficient to prevent the exercise of the powers of this Court under Article 227 of the Constitution. The applicants cannot, however, say that this Court is bound to interfere simply because a question of jurisdiction has been wrongly decided. Even if it be conceded that the decision of the learned munsif on the question of jurisdiction is erroneous in law, as is contended by the applicants, it is obvious that it will be open to the applicants to question its correctness in appeal if the case is ultimately decided against them. The case has no extraordinary features of its own which can attract the application of Article 227. There is no question of miscarriage of justice or gross dereliction of duty. It is also not a case where it is necessary to keep the Munsif within his bounds. He had jurisdiction to deal with the case and on the question whether the suit was triable by them or not he had jurisdiction to arrive at a right as well as a wrong decision. It is therefore not a case which calls for interference in the exercise of this Court's powers under Article 227.*

46. Sri Naveen Sinha, learned Senior Counsel for the respondents has placed judgement of Apex Court in the case of ***Surya Dev Rai Vs. Ram Chander Rai and Others 2003 (6) SCC 675*** wherein Apex Court has elaborated the supervisory jurisdiction under Article 227 of the Constitution of India in paragraph 22 and has detailed the difference between a writ of certiorari under Article 226 of the Constitution of India and under Article 227 of the Constitution of India.

47. The correctness of the judgement of ***Surya Dev Rai (supra)*** was doubted by the Apex Court in the case of ***Radhey Shyam & Another Vs. Chhabi Nath & Others 2009 (5) SCC 616***. At this juncture, it would be relevant to refer to paragraph 32 of the judgement of referring order in the case of ***Radhey Shyam (supra)*** wherein Apex Court noted that it had no disagreement with the distinction between Article 226 and Article 227 of the Constitution of India pointed out in ***Surya Dev Rai's*** case, the Apex Court doubted the correctness of ratio laid down in the case of ***Surya Dev Rai (supra)*** that judicial orders passed by Civil Court

can be examined and corrected/reversed by the Writ Court under Article 226 in exercise of its power under a writ of certiorari. Paragraph no.32 of the judgement of **Radhey Shyam (supra)** is reproduced herein below:-

“32. The essential distinctions in the exercise of power between Articles 226 and 227 are well known and pointed out in Surya Dev Rai (2003) 6 SCC 675 and with that we have no disagreement. But we are unable to agree with the legal proposition laid down in Surya Dev Rai (2003) 6 SCC 675 that judicial orders passed by a civil court can be examined and then corrected/reversed by the writ court under Article 226 in exercise of its power under a writ of certiorari. We are of the view that the aforesaid proposition laid down in Surya Dev Rai (2003) 6 SCC 675, is contrary to the ratio in Mirajkar AIR 1967 SC 1 and the ratio in Mirajkar AIR 1967 SC 1 has not been overruled in Rupa Ashok Hurra (2002) 4 SCC 388). ”

48. So, the disagreement in **Radhey Shyam's** case was only with respect to proposition of law laid down by the Apex Court in the case of **Surya Dev Rai (supra)** whether the Court can issue a writ under Article 226 against a challenge to an order passed by the Civil Court. The Apex Court in the case of **Radhey Shyam (supra)** overruled the judgement of **Surya Dev Rai (supra)** to the extent it held that writs can be issued under Article 226 of the Constitution of India against challenge to an order passed by the Civil Court. However, the Larger Bench of the Apex Court in the case of **Radhey Shyam and Another Vs. Chhabi Nath and Others AIR 2015 SC 3269** did not overrule the scope of Article 227 of the Constitution of India elaborated in paragraph 22 of the judgement of Apex Court in the case of **Surya Dev Rai (supra)**. Paragraphs 22 & 27 of the judgement of **Surya Dev Rai (supra)** relevant in the context of the present case are reproduced herein below:-

“Supervisory jurisdiction under Article 227

22. Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by clauses (2) and (3) of Article 227 with which we are not concerned hereat. It is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of

superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

27. In *Chandrasekhar Singh vs. Siva Ram Singh* (1979) 3 SCC 118, the scope of jurisdiction under Article 227 of the Constitution came up for the consideration of this Court in the context of Sections 435 and 439 of the Criminal Procedure Code which prohibits a second revision to the High Court against decision in first revision rendered by the Sessions Judge. On a review of earlier decisions, the three-Judge Bench summed up the position of law as under :-

(i) *that the powers conferred on the High Court under Article 227 of the Constitution cannot, in any way, be curtailed by the provisions of the Code of Criminal procedure;*

(ii) *the scope of interference by the High Court under Article 227 is restricted. The power of superintendence conferred by Article 227 is to be exercised 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;*

(iii) *that the power of judicial interference under Article 227 of the Constitution is not greater than the power under Article 226 of the Constitution;*

(iv) *that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as the court of appeal; the High Court cannot, in exercise of its jurisdiction under Article 227, convert itself into a court of appeal.”*

49. In paragraph no.47 of the judgement of ***Shalini Shyam Shetty*** (*supra*) the Apex Court has defined the distinction between Article 226 and Article 227 of the Constitution of India. Paragraph no.47 of the said judgement is reproduced herein below:-

*“47. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields. Another distinction between these two jurisdictions is that under Article 226, High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. (See *Surya Dev Rai Vs. Ram Chander Rai and Others* 2003 (6) SCC 675, SCC p.690, para 25 and also the decision of the Constitution Bench of this Court in *Hari Vishnu Kamath vs. Ahmad Ishaque and Others* AIR 1955 SC 233)”.*

50. Paragraph nos.15 & 16 of the judgement of Apex Court in the case of ***Garment Craft (supra)*** is also relevant in the context of the present case wherein Apex Court has held that power under Article 227 of the Constitution of India is exercised sparingly in appropriate cases. Paragraph nos.15 & 16 of the said judgement are reproduced hereinbelow:-

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, 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.”

16. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd.* (2001) 8 SCC 97 has observed:-

“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.”

51. So under Article 227 of the Constitution of India, this Court in its supervisory jurisdiction can pass any order which may not only quash or

set aside the impugned proceeding, judgement or order, but it may also make such direction as the facts and circumstances of the case may warrant, and in appropriate cases, the High Court may substitute such a decision of its own in place of the impugned decision.

52. In the instant case, it is worth noticing that the impugned order does not prejudice the petitioner since according to petitioner, the suit is cognizable by Commercial Court and learned District Judge has transferred the case to Commercial Court.

53. It is submitted by the learned counsel for the petitioner that prejudice to the petitioner is occasioned by the impugned order inasmuch as Section 12-A of the Act, 2015 talks of pre-institutional mediation and settlement and in the present case, the suit had been instituted without following the pre-institutional mediation and settlement as contemplated under Section 12-A of the Act, 2015 and in this respect, she has placed reliance upon the judgement of Apex Court in the case of ***Patil Automation Private Limited (supra)***.

54. To the aforesaid submission, it is submitted by Sri Naveen Sinha, learned counsel for the respondents that on the date when the suit had been instituted, the plaint was accompanied with an interim injunction application and respondents urgently needed hearing of the interim application.

55. He submits that reading of Section 12-A of the Act, 2015 discloses that Section 12-A of the Act, 2015 is attracted only where suit does not contemplate any urgent relief under this Act, therefore, Section 12-A of the Act, 2015 is not attracted, and no prejudice is caused to the petitioner.

56. In the case of ***Patil Automation Private Limited (supra)***, Apex Court held that plaint is liable to be rejected for non-compliance of Section 12-A of the Act, 2015 in cases where no interim relief has been contemplated, therefore, this judgement is of no help to the petitioner as in the present case, the respondent has filed an interim relief application alongwith plaint on the date of filing of suit as they needed interim

relief in the case.

57. At this juncture, it would be worth to notice paragraph nos. 5, 7, 10 and 12 of the judgement of Apex Court in the case of **Yamini Manohar (supra)** wherein Apex Court held that when a plaint is filed under the Act, 2015 with a prayer for urgent interim relief, the Commercial Court should examine the nature and subject matter of the suit and prayer for interim relief. Paragraph nos.5, 7, 10 and 12 of the judgement of Apex Court in the case of **Yamini Manohar (supra)** are reproduced herein below:-

“5. Section 12-A of the CC Act does not contemplate leave of the court, as is clear from the language and words used therein. Nor does the provision necessarily require an application seeking exemption. An application seeking waiver on account of urgent interim relief setting out grounds and reasons may allay a challenge and assist the court, but in the absence of any statutory mandate or rules made by the Central Government, an application per se is not a condition under Section 12-A of the CC Act; pleadings on record and oral submissions would be sufficient.

7. In the present case, it is an accepted fact that an urgent interim relief has been prayed for and the condition that the plaint “contemplates” an urgent interim relief is satisfied. Therefore, the impugned judgment/order of the Delhi High Court dated 8-5-2023, which upholds the order of the District Judge (Commercial Court)-01, South District at Saket, New Delhi dated 6-2-2023, rejecting the application under Order 7 Rule 11 of the Code, is correct and in accordance with law.

10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject-matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12-A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order 7, Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order 7 Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely: (i) prima facie case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

12. The words “contemplate any urgent interim relief” in Section 12-A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must “contemplate”, which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be

sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12-A of the CC Act is not defeated.”

58. It further held that non-grant of interim relief at the initial stage cannot be a ground to dismiss the suit under Order 7 Rule 11 of C.P.C. as at times the interim relief can be granted at subsequent stage during the pendency of the suit. Therefore, in view of the law propounded by the Apex Court in the case of **Yamini Manohar (supra)** coupled with the fact that respondent has filed an application for interim relief alongwith plaint, the suit at this stage cannot be dismissed for want of compliance of pre-institutional mediation and settlement by the respondent as contemplated under Section 12-A of the Act, 2015.

59. However, it is open to the petitioner to raise such plea at the time of hearing of interim application, and respondent can demonstrate before the Commercial Court that the interim application is a camouflage to circumvent Section 12-A of the Act, 2015, and if respondent succeeds in doing so, the Commercial Court may pass appropriate order depending upon the facts and circumstances of the case, but at this stage, non compliance of Section 12-A of Act, 2015 does not prejudice the petitioner.

60. So far as the contention of learned counsel for the petitioner that the period of filing written statement is 120 days by virtue of amendment in Order 5 Rule 1 and Order 8 Rule 1 of C.P.C. by the Schedule of the Act, 2015, and in the present case, 120 days period contemplated by the Act, 2015 to file written statement has expired, therefore, petitioner would suffer serious prejudice is concerned, in this respect, it is pertinent to note that Sri Naveen Sinha, learned Senior Counsel for the respondents has rightly pointed out that from the date the suit is transferred and registered with the Commercial Court that will be the date and from then onwards the procedure contemplated under the Act, 2015 will apply and not before that. He is also right in submitting that the period of stay order granted by this Court staying the further proceedings of the case shall stand excluded for the purpose of counting the period of 120 days for filing written statement.

61. However, as already held that this Court in exercise of power under Article 227 of the Constitution of India can pass any order to subserve the interest of justice, and considering the fact that case has been transferred by the District Judge on the application of respondent/landlord, this Court deems it appropriate in the facts of the present case that suit before the Commercial Court shall be deemed to be registered from the date the order passed by this Court in the present petition is filed before the Commercial Court, and period of 120 days for filing written statement as provided under Order 5 Rule 1 C.P.C. and Order 8 Rule 1 of C.P.C. amended by the First Schedule of the Act, 2015 shall start to run from the date of production of certified copy of this order before the Commercial Court, and this Court is of the view that aforesaid direction redresses the prejudice of the petitioner.

62. Thus, in view of the aforesaid discussion, the present petition under Article 227 of the Constitution of India is ***dismissed*** subject to observations made above. There shall be no order as to costs.

Order Date :-1.10.2024

Sattyarth