

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 33 of 2015**

- Santosh Kumar Pandey S/O Shri Chandrasekhar Pandey Aged About 41 years R/O Nandishwar Mukhya Marg, Ramayan Chowk Ke Pass, Chantidih, Thana- Sarkanda, Bilaspur, Chhattisgarh

---- **Petitioner****Versus**

1. Shivkali Wd/O Girdhari Kashyap Aged About 85 Years
2. Deelip S/O Girdhari Kashyap Aged About 45 Years
3. Rajendra S/O Girdhari Kashyap Aged About 37 Years
4. Pradeep S/O Girdhari Kashyap Aged About 32 Years
5. Satish S/O Girdhari Kashyap Aged About 29 Years
6. Ramesh S/O Girdhari Kashyap Aged About 26 Years

All R/o Hotel Ajeet Ke Pass, Telipara, Thana-Citi Kotwali, Tahsil & Distt.- Bilaspur, Chhattisgarh

---- **Respondents**

Petitioner in Person : Shri Santosh Kumar Pandey

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****01/07/2015**

1. This review petition has been preferred seeking review of the order dated 12-3-2015, passed in WP (227) No.179/2015. In the said writ petition, the petitioner had assailed the order passed by the trial Court, rejecting his application under Order 47 Rule 1 CPC for review of an earlier order passed during pendency of the suit, whereby issues have been struck for adjudication.

2. I have heard petitioner in person at length.
3. It appears, the non-applicants have preferred a suit against the petitioner for declaration and possession pertaining to land situated at village Chantidih, P.H. No.20, Khasra No.269/8, area 0.07decimal=3120 sq. feet. The suit was filed in December, 2003 and the petitioner submitted his written statement in August, 2004. On 4-7-2011, the trial Court framed six material issues for determination.
4. The petitioner preferred WP (227) NO.77/2012 challenging the order passed by the trial Court framing issues on 4-7-2011. The said writ petition was disposed on 6-2-2012 in the following manner:-

“1. By this petition under Article 227 of the Constitution of India petitioner has challenged the legality and propriety of the order dated 4/7/2011 passed by 4th Additional District Judge, Bilaspur, C.G. in civil suit No.47A/2011 whereby after receiving written statement Court below has framed issue.

2. Learned counsel for the petitioner submits that before framing issue Court below was under obligation to provide opportunity of complying provisions contained under Order 10, 11 & 12 of the Civil Procedure Code, 1908, and not by providing such opportunity Court below has committed an illegality.

3. Still parties are at liberty for complying such provisions, with this observation petition stands disposed of.

4. Interim application is dismissed. No order as to costs.”

5. The petitioner thereafter moved an application before the trial Court under Order 47 Rule 1 CPC for recalling the order dated 4-7-2011 and to comply the provisions contained in Order 10 CPC. This review application was dismissed by the trial Court on 22-11-2014, against which the petitioner had preferred WP (227) No.179/15.

6. The above WP (227) 179/2015 came up for hearing on 12-3-2015. This Court after hearing learned counsel for the petitioner passed the following order:-

“Petitioner is aggrieved by the order passed by the trial Court rejecting his application under Order 47 Rule 1 of Code of Civil Procedure, for review of an earlier order passed during pendency of the suit settling the issue for adjudication.

2. The order settling the issues was earlier change before this Court in W.P.(227) No. 77 of 2012. The said writ petition was dismissed on 06/02/2012 with liberty to the parties to comply the provisions contained under Order 10, 11 and 12 of Code of Civil Procedure, 1908. Instead of making any such prayer, the petitioner has moved an application for review.

3. The trial Court has rightly rejected the application for review of the earlier order.

4. No case for entertaining this writ petition is made out, it is accordingly dismissed.”

7. Petitioner would submit that while deciding the writ petition, this Court has not dealt with the relief clause No.10.1 & 10.2 separately. This Court also failed to deal with each of the ground separately and has decided the writ petition without framing issues or questions for determination. This Court further failed to summon the record of the trial Court and ignored the provisions contained in Order 47 Rule 1 CPC and the provisions contained in Order 10, Order 11, Order 12, Order 13 & Order 14 CPC. This Court also failed to take note of or properly comply the earlier order passed in petitioner's writ petition.
8. It is settled law that while exercising jurisdiction under Article 227 of the Constitution of India, this Court is not required to correct every error committed by the trial Court. While hearing such petition, this Court is not required to hold a regular trial by summoning the record or framing the issues for determination. The relief claimed in the earlier writ petition in para

10.1 and 10.2 were in essence calling in question the order passed by the trial Court on 22-11-2014.

9. This Court did not find any ground for entertaining the writ petition in exercise of jurisdiction under Article 227 of the Constitution of India in terms of the principles laid down by the Supreme Court in the matter of **Surya Dev Rai Vs. Ram Chander Rai**¹ and **Shalini Shyam Shetty Vs. Rajendra Shankar Patil**², **Sameer Suresh Gupta through PA Holder Vs. Rahul Kumar Agarwal**³ wherein it has been held that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a 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. It has also been held that supervisory jurisdiction or certiorari jurisdiction is not available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion, it was not necessary for the Court to deal with each and every argument or every words written in the writ petition.

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

10. A party to the litigation cannot be permitted to prevail upon the Court to mention all those arguments whether they are relevant or not. This Court is required to deal with the writ petition keeping in view its jurisdiction over the matter.
11. If for hearing petition under Article 227 of the Constitution of India, records of the trial Court are summoned then every suit before the trial Court would get stayed automatically. Moreover, it is not the practice in this Court to summon the record of trial Court in petitions under Article 227 of the Constitution of India.
12. In the earlier writ petition WP (227) 77/2012, this Court after noting the submissions made by the learned counsel for the petitioner did not quash the order passed by the trial Court. Even otherwise, the said order of the trial Court passed on 4-7-2011 was for settling the issues and had not determined any rights of the parties. Merely, because liberty was reserved in favour of the petitioner for complying the provisions of Order 10, Order 11 & Order 12 of the CPC, it cannot be construed that this Court provided liberty to move the application before the trial Court for review of the order.
13. It is well settled principle of law that under the garb of review petition, the petitioner should not be permitted to argue the entire case afresh, which would amount to convert the review petition into an appeal and the same is not sustainable in law. (See : Meera Bhanjan v. Smt. Nirmal Kumar Cohwdhary⁴, Lily Thomas etc. v. Union of India and others⁵, Ajit Kumar Rath v. State of Orissa and others⁶, Government of T.N. & Others v. M. Ananchu Asari and others⁷, and Kerla State Electricity Board v. Hitech

4 AIR1995 SC 455

5 AIR 2000 SC 1650

6 AIR 2000 SC 85

7 (2005) 2 SCC 332

Electrothermicsm & Hydropower Ltd. and others⁸).

14. In view of the jurisdiction under Order 47 Rule 1 CPC, this Court does not find any substance in this review petition. Accordingly, the review application is dismissed.

Sd/-

Judge

Prashant Kumar Mishra

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8 (2005) 6 SCC 651