

Reserved On: 29-09-2016

Delivered On: 20-10-2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-10-2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.2874 of 2016

and

CMP No.14576 of 2016

A. Ramanathan

... Petitioner

vs

M/s Tamarai Mills Ltd
A Public Limited Company,
Incorporated under the Companies
Act, 1956, having its registered Office
at D.No.383, Kamaraj Road,
Uppilipalayam (PO),
Coimbatore-641015

.... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order passed in I.A.No.958 of 2012 in O.S.No.529 of 2012 dated 21.03.2016 on the file of the learned IV Additional District Judge, Coimbatore.

For petitioner : Mr.R. Singaravelan
Senior Counsel for
Mr.M. Rajamani

For respondent : Mr.T.Palanivel

ORDER

Challenging the fair and decretal order passed in I.A.No.958 of 2012 in O.S.No.529 of 2012 on the file of IV Additional District Court, Coimbatore, the plaintiff filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.529 of 2012 for Specific Performance, declaration and permanent injunction. In the said suit, the first defendant filed an application in I.A.No.58 of 2012 under Order 7 Rule 11 of Civil Procedure Code, seeking for rejection of the plaint. The application, filed by the first defendant, was contested by the plaintiff.

3. The trial Court, taking into consideration the case of both the parties and also Ex.P.1 document, produced by the first defendant, allowed the application in I.A.No.958 of 2012 and rejected the suit as not maintainable. As against this order, the plaintiff has filed the above Civil Revision Petition.

4. The learned counsel, appearing for the respondent, raised a preliminary issue, with regard to the maintainability of the

Civil Revision Petition, as against the order passed in the application in I.A.No.958 of 2012, rejecting the suit as not maintainable.

5. Mr.R. Singaravelan, learned Senior Counsel, appearing for the petitioner/first defendant submitted that the Civil Revision Petition is maintainable as against the order passed in I.A.No.958 of 2012. In support of his contention, the learned counsel relied on the following judgments:

(i) **2015 (1) SCC 379(Sameer Singh and another vs Abdul Rab and others)**, wherein the Hon'ble Supreme Court has held as follows:

25. At this juncture, we may refer with profit to the pronouncement in [Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal and another](#) (1997) 3 SCC 694 wherein a two-Judge Bench scanning the anatomy of the rules came to hold that:-

9. ... "... a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually

dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order XXI, Rule 99. Order XXI, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order XXI, Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order XXI and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him."

26. The aforesaid authorities clearly spell out that the court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties. It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property. The self-contained Code, as has been emphasised by this Court, enjoins the executing court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings. It is also so because prior to 1976 amendment the grievance was required to be agitated by filing a suit but after the amendment the entire enquiry has to be conducted by the executing court. Order XXI, Rule 101 provides for the determination of necessary issues. Rule 103 clearly stipulates that when an application is adjudicated upon under Rule 98 or Rule 100 the said order shall have the same force as if it were a decree. Thus, it is a deemed decree. If a Court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing court only expresses its inability to

adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different. In the instant case the executing court has expressed an opinion that it has become functus officio and hence, it cannot initiate or launch any enquiry. The appellants had invoked the jurisdiction of the High Court under [Article 227](#) of the Constitution assailing the order passed by the executing court on the foundation that it had failed to exercise the jurisdiction vested in it. The appellants had approached the High Court as per the dictum laid down by this Court in [Surya Dev Rai v. Ram Chander Rai and others](#) (2003) 6 SCC 675.

27. Whether the executing court, in the obtaining circumstances, has correctly expressed the view that it has become functus officio or not and thereby it has jurisdiction or not, fundamentally pertains to rectification of a jurisdictional error. It is so as there has been no adjudication. If a subordinate court exercises its jurisdiction not vested in it by law or fails to exercise the jurisdiction so vested, the said order under Section 115 of the Code is revisable as has been held in *Joy Chand Lal Babu v. Kamalaksha Chaudhury and others* AIR 1949 PC 239. The same principle

has been reiterated in [Keshardeo Chamria v. Radha Kissan Chamria and others AIR 1953 SC 23](#) and [Chaube Jagdish Prasad and another v. Ganga Prasad Chaturvedi AIR 1959 SC 492](#). Needless to emphasise, the said principle is well-settled. After the amendment of [Section 115](#), C.P.C. w.e.f. 1.7.2002, the said power is exercised under [Article 227](#) of the Constitution as per the principle laid down in *Surya Dev Rai* (supra). Had the executing court apart from expressing the view that it had become functus officio had adjudicated the issues on merits, the question would have been different, for in that event there would have been an adjudication.

28. In view of the forgoing analysis, we conclude and hold that the High Court has fallen into error by opining that the decision rendered by the executing court is a decree and, therefore, an appeal should have been filed, and resultantly allow the appeal and set aside the impugned order. The High Court shall decide the matter as necessary under [Article 227](#) of the Constitution of India. As a long span of time has expired we would request the High Court to dispose of the matter within a period of three months. There shall be no order as to costs.

(ii) **2013 9 SCC 374 (Sameer Suresh Gupta through PA Holder vs Rahul Kumar Agarwal)**, wherein, the Hon'ble Supreme Court has held as follows:

7. The same question was considered by another Bench in *Shalini Shyam Shetty and Anr. v. Rajendra Shankar Patil* [MANU/SC/0508/2010](#) : (2010) 8 SCC 329, and it was held:

(a) A petition under Article [226](#) of the Constitution is different from a petition under Article [227](#). The mode of exercise of power by the 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, at 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 the 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 their 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* and the principles in *Waryam Singh* have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh*, 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 (c) and (f). High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the 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) The 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 L. Chandra Kumar v. Union of India and therefore abridgment 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 the 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 counterproductive and will divest this extraordinary power of its strength and vitality.

(iii) **2011 (12) SCC 650 (Bandaru Satyanarayana vs Imandi Anasuya and others)**, wherein the Hon'ble Supreme Court has held as follows:

9. In *Shalini Shyam Shetty and Anr. v. Rajendra Shankar Patil* (supra), the Court again examined the scope of supervisory jurisdiction of the High Court under Article [227](#) of the Constitution and laid down several principles, Clauses (c),(d), (g)and (h) whereof are reproduced below:

" 49. (c) High Courts cannot, at 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 the 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 their 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* and the principles in *Waryam Singh* have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(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

the 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.

(iv) **2010 (8) SCC 329 (Shalini Shyam Shetty and another vs Rajendra Shankar Patil)**, wherein, the Hon'ble Supreme Court has held as follows:

67. As a result of frequent interference by 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, 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.

(v) **AIR 2011 Madras 136 (N. Ravindran vs V. Ramachandran)**, wherein the Division Bench of this Court held as follows:

10. The well settled position is that while considering the application under Order VII Rule 11 C.P.C., Court is not required to take into consideration the defence set up by the defendant in his written statement or other documents. The question whether plaint discloses any cause of action and whether it is barred by any law is to be decided by looking at the averments contained in the plaint itself and not the defence set up in the written statement. While considering the application, the strength or weakness of the case of the plaintiff is not to be examined. It is fairly well settled that the Court has to find out from the allegations made in the plaint itself and not beyond it as to whether any vexatious or frivolous litigation has been initiated by the plaintiff. The Court cannot take into account materials beyond the plaint

to declare that the case of the plaintiff is frivolous or is barred by any law.

(vi) An unreported Judgment of the Division Bench of this Court made in **CRP(PD) No.1211 of 2013 etc., batch dated 28.08.2014**, wherein, the Division Bench of this Court held as follows:

" 31. At this stage, this Court worth recalls and recollects the decision of this Court Alexander V M. Balu and others reported in (2008) 2 MLJ 139 and at special page 140, whereby and whereunder, it is observed and held as follows:

" while dealing with the effect of Section 115 of Code of Civil Procedure after the Amendment Act 46 of 1999, which came into effect from 01.07.2002, the Supreme Court has held that such amendment has not affected the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. It was further held that even if the remedy of revision was excluded by the amendment, it is open to challenge and continue to be subject to, certiorari and supervisory jurisdiction of the High Court. That was a decision held in Yeshwant Sakhalkar and another vs Hirabat Kamat Mhamai and another (2004 (6) SCC 71), based on the previous judgment of the Supreme Court in Surya Dev Rai

v Ram Chandrer Rai and Others (2003) 6 Scc 675: 2003(4) CTC 176:

32. If a Court of Law passes an order for rejection of plaint under Order 7 Rule 11 of CPC, it has the force of " Decree" and therefore, regular " Appeal" lies under Civil Procedure Code and in fact, no " Revision" would lie.

33. This Court has already held for the first question under reference that against an order declining to reject a plaint filed under Order 7 Rule 11 of CPC passed by a Court and Subordinate to High Court only " Revision" lies and no " Appeal" is maintainable.

" 34. In regard to the order dated 05.02.2009 in I.A.No.501 of 2008 in CRP PD No.1022 of 2009 relating to the relief of rejection of plaint and strike out the same, the learned Single Judge in the decision reported in 2009 (5) CTC at page 627 held that only an appeal lies and there was no ground for the Hon'ble High Court to invoke Article 227 of the Constitution of India, in the considered opinion of this Court, is not a correct view because of the simple reason that as against an interlocutory order ordinarily no " Revision" would lie, inasmuch as no finality to suit or other

proceedings would have been reached. Also that, when the said interlocutory order is an interim nature, the same may not be subject matter of "Revision" under Section 115 of the Civil Procedure Code."

6. On a careful consideration of the materials available on record, the submissions made by the learned counsel on either side and the judgments relied upon by the learned Senior Counsel for the petitioner, the only issue that arises for consideration in this Civil Revision Petition at this stage, is with regard to the maintainability of the Civil Revision Petition.

7. The learned Senior Counsel submitted that under Article 227 of the Constitution of India, this Court has got ample powers to interfere with the order passed by the trial Court in an application, filed under Order 7 Rule 11 of the Civil Procedure Code. It is not in dispute that 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 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.

8. When there has been a patent perversity in the orders of the 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, High Court can interfere in exercise of its power of superintendence under Article 227 of the Constitution of India.

9. It is a settled position that the High Court cannot, at 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 the courts or tribunals subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court. 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.

10. No doubt, High Court's power of superintendence under Article 227 of the Constitution cannot be curtailed by any statute. The power has been declared as a part of the basic structure of the Constitution and frequent exercise of this power will be counter productive and will divest this extraordinary power of its strength and vitality.

11. At the first and foremost, the present Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code and not under Article 227 of the Constitution of India. When an alternative statutory mode of redressal has been provided, the petitioner should have exhausted the alternative remedy instead of filing the Civil Revision Petition, as against the order passed in the application in I.A.No.958 of 2012, allowing the application, filed under Order 7 Rule 11 of Civil Procedure Code.

12. The Division Bench of this Court, in the unreported Judgment dated 28.08.2014 referred supra, has clearly held that if a Court of Law passes an order for rejection of plaint, under Order 7 Rule 11 of Civil Procedure Code, it has the force of " Decree" and

therefore, regular "Appeal" lies under Civil Procedure Code and in fact, no "Revision" would lie.

13. As against an order, declining to reject the plaint under Order 7 Rule 11 of the Civil Procedure Code, passed by a Court and Subordinate to High Court, only a " Revision" lies and no " Appeal " is maintainable.

14. In the case on hand, the application, filed by the respondent/first defendant, under Order 7 Rule 11 of the Civil Procedure Code, was allowed by the trial Court. In such circumstances, only an appeal is maintainable as against the said order. The Revision, filed by the plaintiff, challenging the said order, is not maintainable. Since I am of the view that the Civil Revision Petition, filed under Section 115 of the Civil Procedure Code is not maintainable, as against the order, allowing Order 7 Rule 11 application, the Civil Revision Petition is dismissed as not maintainable. However, it is open to the revision petitioner/plaintiff to challenge the order dated 21.03.2016 passed in I.A.No.958 of 2012 in O.S.No.529 of 2012 in accordance with law. No costs. Consequently, connected CMP is closed.

20 -10-

2016

sr

Index:no
website:yes

To

The IV Additional District Court, Coimbatore.

M. DURAISWAMY,J.,

sr

Pre-Delivery Order in
C.R.P(NPD)No2874/2016

20-10-2016