

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.2490 OF 2018

Indumati Chatrabhuj Sampat and others      ...      Petitioners  
Vs.  
M/s. Panorama Estate                                      ...      Respondent

Mr. Nikhil Sakhardande a/w. Mr. Ravi Gandhi and Ms Rashmin Jain i/b.  
Kanga & Co. for Petitioners.  
Mr. Rajendra Thakkar i/b. Mr. B. R. Dalal for Respondent.

**CORAM : R. G. KETKAR, J.**  
**DATE : MARCH 27, 2018**

**P.C. :**

Heard Mr. Sakhardande, learned Counsel for the petitioners and  
Mr. Thakkar, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 08.12.2017 passed by the Appellate Bench of the Small Causes Court in Miscellaneous Appeal No.314 of 2017 in so far as restoring application at exhibit-10 and further directing the trial Court to consider application exhibit-10 in view of the observations made in the judgment after holding that Miscellaneous Appeal preferred by the respondent is not maintainable.

3. Respondent, hereinafter referred to as 'plaintiff', had instituted R.A.E.&R. Suit No.1321/2087 of 2003 against C. K. Sampat (for short 'defendant') for recovery of possession of a room above toilet block situate at backside out-house on South side of Building known as 'Panorama', 203, Walkeshwar Road, Bombay 400 006 (for short 'suit premises') inter alia on the grounds under Section 16(1)(n) (non-user),

Section 16(1)(d) (additions and alterations of permanent nature), Section 15 (arrears of rent) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). By order dated 13.12.2007, Suit was decreed.

4. Petitioners, who are heirs and legal representatives of the defendant, took out application being Marji Application No.531 of 2015 on 15.07.2015 inter alia praying for setting aside judgment and decree dated 13.12.2007 and for restoration of possession of the suit premises, which respondent-plaintiff recovered in execution of warrant of possession and for perpetual injunction. On 07.10.2015, on behalf of the petitioners, letter was addressed to the Advocate for the plaintiff placing on record that petitioners are only relying upon the death certificate of late Shri C. K. Sampat. In other words, petitioners made it clear that they do not intend to rely upon any other document, save and except the death certificate of C. K. Sampat. Petitioners filed application mainly on the ground that defendant C. K. Sampat died on 23.03.2003. Respondent-plaintiff had instituted Suit on 02.12.2003. Thus, as on the date of the institution of the Suit, defendant was dead and consequently, the decree passed on 13.12.2007 is a nullity.

5. Plaintiff filed application on 18.10.2016, exhibit-9, seeking adjournment of four weeks for filing reply to the Marji application. Petitioners filed say dated 18.10.2016 opposing the adjournment. By order dated 18.10.2016, the learned trial Judge allowed the application and directed the plaintiff to pay costs of Rs.2,000/- to the petitioners as per order below exhibit-7. The learned trial Judge granted four weeks time as prayed by the plaintiff for filing say strictly as a last chance. In the meantime, the learned trial Judge directed the petitioners to allow the plaintiff to inspect the other documents, if any, relied by them, other than the death certificate relied by them. On 15.11.2016, plaintiff filed application for dismissing Marji application for non-compliance of order

dated 18.10.2016 directing the petitioners to permit plaintiff to inspect documents other than the death certificate. By order dated 13.07.2017, the learned trial Judge rejected application exhibit-10 for dismissal of Marji Application No.531 of 2015. Aggrieved by that decision, plaintiff preferred Miscellaneous Appeal before the appellate Court. By the impugned order, the appellate Court dismissed the Miscellaneous Appeal on the ground that it is not maintainable. However, appellate Court invoked Section 34(4) of the Act and set aside the order of the trial Court below exhibit-10 and directed the trial Court to consider exhibit-10 in the light of the observations made in the impugned order. It is against this order, petitioners have instituted the present Petitioner.

6. The matter was heard on the earlier occasion and parties were put to notice that in view of the admitted fact as set out in the Marji Application itself that defendant during his life time has sold his interest in the suit premises to S/Sh. Dharamshi Shamjibhai Vala and Bharat Dharamshi Vala under agreement (MOU) dated 17.12.1991, the Court will consider maintainability of Marji application itself by exercising *suo motu* powers under Article 227 of the Constitution of India. Accordingly, learned Counsel for the parties have advanced elaborate submissions.

7. In support of this Petition, Mr. Sakhardande submitted that by order dated 13.07.2017, the learned trial Judge rejected application exhibit-10. By the impugned order, the appellate Court came to the conclusion that appeal preferred by the plaintiff, itself, is not maintainable. If that be so, the appellate Court was not thereafter justified in invoking powers under Section 34(4) of the Act and setting aside order below exhibit-10. The appellate Court was further not justified in restoring exhibit-10 and directing the trial Court to decide

that application in the light of the observations made in the judgment. He submitted that the appellate Court exceeded jurisdiction in invoking Section 34(4) of the Act and reviving application exhibit-10 as also directing the trial Court to decide it afresh. The said direction is without jurisdiction and without any authority of law. Once the appellate Court comes to the conclusion that Miscellaneous Appeal is not maintainable, all that, appellate Court should have done was that to dismiss a Miscellaneous Appeal on the ground of maintainability.

8. He further submitted that this is not a fit case for invocation of *suo motu* powers in exercise of power of superintendence under Article 227 of the Constitution of India. In support of this proposition, he relied upon the following decisions:

- a. ***Estralla Rubber Vs. Dass Estate (P) Ltd.*, (2001) 8 SCC 97**, and in particular paragraph 6; and
- b. ***Jai Singh Vs. MCD*, (2010) 9 SCC 385**, and in particular paragraphs 2, 10, 42 and 43.

9. Mr. Sakhardande further submitted that in case the Court is inclined to exercise *suo motu* power under Article 227 of the Constitution of India then in that event the ex-parte decree itself may be set aside, as admittedly, on the date of filing of the Suit, defendant was dead. The decree is, therefore, a nullity.

10. On the other hand, Mr. Thakkar submitted that in the Marji Application, petitioners have contended that defendant sold his interest to S/Sh. Dharamshi Shamjibhai Vala and Bharat Dharamshi Vala, and therefore, he had no subsisting interest in the suit premises and consequently, petitioners have no locus to maintain and prosecute Marji Application. He relied upon the decision of the Apex Court in ***Surya***

***Dev Rai Vs. Ram Chander Rai, (2003) 6 SCC 675.***

11. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that respondent-plaintiff had instituted Suit on 02.12.2003 against the defendant, which was decreed on 13.12.2007. It is the case of the petitioners that the defendant died on 23.03.2003 and the Suit was instituted on 02.12.2003. In other words, plaintiff instituted Suit against the dead person, and therefore, decree passed on 13.12.2007 is a nullity.

12. Petitioners took out Marji Application on 15.07.2015 for setting aside decree on the ground that defendant was dead on the ground of filing of the Suit, and therefore, decree is a nullity. In paragraphs 3 and 4 of the Marji Application, petitioners have contended that,

“3. I say that during his life time late Shri C. K. Sampat sold his interest in the said premises to Shri Dharamshi Shamjibhai Vala and Bharat Dharamshi Vala under an agreement (MOU) dated 17.12.1991 for a consideration of Rs.27,00,000/- and the said transaction was duly intimated to Appropriate Authority (Income Tax Department) who in turn have issued Certificate dated 26.02.1992. I crave leave to refer to and rely upon the copy of the above Certificate as and when produced.

4. I say that after late Shri C. K. Sampat sold his interest in the said premises to Shri Dharamshi Shamjibhai Vala and Bharat Dharamshi Vala, they were admitted as member of the said Society and the said shares and the said Share Certificate was transferred in the names of said Shri Dharamshi Shamjibhai Vala and Bharat Dharamshi Vala. I say that said late Shri C. K. Sampat, at the time of transfer had put said Shri Dharamshi Shamjibhai Vala and Bharat Dharamshi Vala in exclusive possession of the said premises and thereafter they continued to be in exclusive possession thereof. I say that the said Society started raising maintenance bills in respect of the said premises in the names of said Shri Dharamshi Shamjibhai Vala and Bharat Dharamshi Vala.”

13. A perusal of the above extracted paragraphs clearly shows that defendant, during his life time, had already sold his interest in the suit premise in favour of S/Sh. Dharamshi Shamjibhai Vala and Bharat Dharamshi Vala. The moot question is, therefore, whether the petitioners, who were heirs and legal representatives of defendant have locus to file Marji Application. In my opinion, once their predecessor in title namely C. K. Sampat had sold his interest in the suit premises, their predecessor in title C. K. Sampat also did not have any subsisting interest when the Suit was instituted in the year 2003. Even otherwise, the present petitioners, who are heirs and legal representatives of defendant, they have also no subsisting right, title and interest to maintain and prosecute Marji Application. The question is whether the said Marji Application could be prosecuted by the petitioners.

14. In the case of **Surya Dev Rai** (*supra*), the Apex Court has considered the scope of Articles 226 and 227 of the Constitution of India. In paragraph 22, the Apex Court has observed that 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.

15. In paragraph 24, the Apex Court observed that the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals

within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when - (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

16. In paragraph 25, the Apex Court observed that in exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

17. In paragraph 26, the Apex Court observed that there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded. In paragraph 28, the Apex Court referred to the decision in *Baby Vs. Travancore Devaswom Board & Ors.*, (1998) 8 SCC 310 which clarified that in spite of the revisional jurisdiction being not available to the High Court, it still had powers under Article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at

by non-consideration of the relevant and material documents, the consideration of which could have led to an opposite conclusion. The Apex Court also held that power to issue 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. In paragraph 38, the Apex Court summed up the conclusions. Clauses 4, 5 and 7 thereof read as under:

“(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is 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 (iii) a grave injustice or gross failure of justice has occasioned thereby.

(7) 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. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.”

18. Mr. Sakhardande relied upon the decision in **Estralla Rubber** (*supra*), and in particular paragraph 6 thereof. In that case, respondent-plaintiff had instituted Suit against the appellant-defendant for eviction on the ground of reasonable requirement for building or rebuilding and on the ground of default in payment of rent. Defendant filed an application under Section 17(2) and 17(2A) of the West Bengal Premises Tenancy Act, 1956 raising certain contentions including that the relationship of landlord and tenant did not exist between the parties. Defendant filed an application for amendment under Order VI Rule 17 of C.P.C., which was rejected by the trial Court by holding that the proposed amendment would be inconsistent and it will have the effect of displacing the plaintiff from admission made by the defendant. Defendant filed a revision petition before the District Court which was allowed and the trial Court's order was reversed. Plaintiff instituted Petition under Article 227 of the Constitution of India before the High Court. High Court set aside the order of the District Court against which the defendant approached the Apex Court. It is in that context, the Apex Court observed in paragraph 6 thus,

“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 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 duty expected or required by 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 courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if 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 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.”

19. Mr. Sakhardande relied upon the decision in **Jai Singh** (*supra*), and in particular paragraphs 2, 10, 42 and 43. In that case, petitioners had instituted eviction proceedings against Delhi Transport Corporation (DTC) / respondent No.2 which had initially sublet / assigned the premises in favour of Municipal Corporation of Delhi (MCD) / respondent No.1. The Additional Rent Controller allowed the application by holding that respondent No.2 - DTC had initially sublet the premises to respondent No.1 - MCD. The order was upheld by the Additional Rent Control Tribunal. Against that decision, Petition was instituted before the High Court, Delhi. The High Court held that it was not the case of subletting as Delhi Transport Services (DTS), Delhi Transport Undertaking (DTU), MCD and DTC were the creation of statute. The premises had come to them after it was acquired by Union of India (UOI) from Gwalior Northern India Transport Company (GNIT) on nationalization of the business. There was no parting with possession by DTC to MCD, and therefore, it was not a case of subletting. It is in that context, the Apex Court, in paragraphs 15 and 17 observed thus,

“15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies

to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It can not be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

17. In our opinion, the High Court in this case, has traveled beyond the limits of its jurisdiction under Article 227 of the Constitution. Both ARC and ARCT had acted within the limits of the jurisdiction vested in them. The conclusions reached cannot be said to be based on no evidence. All relevant material has been taken into consideration. Therefore, there was hardly any justification for the High Court to undertake an investigation into issues which did not even arise in the lis.”

20. In paragraph 42, the Apex Court reproduced paragraph 6 of **Estralla Rubber** (*supra*) and observed in paragraph 43 that the High Court committed a serious error of jurisdiction in entertaining the writ petition filed by MCD under Article 227 of the Constitution of India in the peculiar circumstances of this case. It was observed that there was no lis relating to the ownership of the land on which the superstructure or the demised premises had been constructed. The whole issue of ownership of plot of land No:2, Block-B, transport area of Jhandewalan Estate, Desh Bandhu Gupta Road, Karol Bagh, New Delhi is the subject matter of the suit. The High Court was, therefore, not justified in giving any opinion on the question of ownership. The Apex Court, therefore, held that the High Court traveled beyond the well defined contours of its jurisdiction under Article 227 of the Constitution of India.

21. In the present case, on the petitioners' own showing, defendant had sold his interest in the suit premises in favour of S/Sh. Dharamshi

Shamjibhai Vala and Bharat Dharamshi Vala. If that be so, it cannot be said that defendant and after his death, the present petitioners have any subsisting interest to prosecute Marji Application.

22. Mr. Sakhardande submitted that if the Court is inclined to exercise suo motu power under Article 227 of the Constitution of India, in view of the fact that the defendant died on 23.03.2003 and the Suit was instituted on 02.12.2003, the Suit is obviously filed against the dead person and consequently decree is a nullity. He, therefore, submitted that in that case, by exercising suo motu power, decree is liable to be set aside.

23. Mr. Thakkar invited my attention to proviso to Section 21 of the Limitation Act, 1963 and relied upon the decision of the Apex Court in the case of **Karuppaswamy Vs. C. Ramamurthy, (1993) 4 SCC 41** and submitted that plaintiff was not aware of the death of the defendant at the time of the institution of the Suit and that question can be gone into proceedings that may be instituted by the purchasers of the defendant. In my opinion, the said question is a disputed question of fact, which cannot be gone into for the first time in exercise of powers under Article 227 of the Constitution of India. In so far as Marji Application filed by the petitioners is concerned, the same is liable to be dismissed on the ground that petitioners cannot maintain and prosecute the application. At the same time, liberty is reserved to S/Sh. Dharamshi Shamjibhai Vala and Bharat Dharamshi Vala to take out appropriate proceedings for setting aside decree on the ground of nullity. If such application is made, the same shall be decided on its own merits and in accordance with law, uninfluenced by the observations made in this order. Hence, the Petition is disposed of in the following terms:

- a. Marji Application No.531 of 2015 instituted by the petitioners is dismissed on the ground of maintainability;

- b. Liberty is reserved to S/Sh. Dharamshi Shamjibhai Vala and Bharat Dharamshi Vala to take out appropriate proceedings for setting aside decree on the ground of nullity;
- c. If such application is made, the same shall be decided on its own merits and in accordance with law, uninfluenced by the observations made in this order.
- d. Order accordingly.

**(R. G. KETKAR, J.)**

*Minal Parab*