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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decided on: 03.09.2019

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CM(M) 514/2017

SIR SOBHA SINGH & SONS (P) LTD

..... Petitioner

Through: Mr. Neeraj Malhotra, Senior Advocate with Mr. Anand Singh, Ms. Nishtha Khurana and Ms. Cassandra Zosangliani, Advocates.

versus

KAMAL NURSERY & ANR

..... Respondents

Through: Mr. Ajay Kohli and Ms. Pooja Vohra, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This petition impugns the order dated 03.01.2017 passed by the learned Civil Judge in CS No. 56936/16 rejecting the petitioner's application under section 151 of the Code of Civil Procedure, 1908 read with section 137 of the Indian Evidence Act, 1872, which sought to bring on record certified copies of this Court's records in support of their suit.

2. It is the petitioner's case that the said Court records were sought to be adduced the very next day after closure of evidence of the respondents, when the case was otherwise listed for arguments. The petitioner contends that they were not a party to Writ Petition (Civil) No. 3954/2011 which had been preferred by the respondent/defendant and they serendipitously got to

know about the writ proceedings only when the counsel for the petitioner was surfing the High Court website apropos information about another disposed-off litigation, by the name of Kamal Saini vs. Prasad. In the present case, the respondent's name is Kamal Saini. The diligent curiosity of the learned counsel led him to the said Writ Petition of which, after obtaining certified copies, he filed the same before the learned Trial Court.

3. What emanates from the preceding discussion is that the impugned order of the learned Trial Court is founded on an assumption that the petitioner had due knowledge of the said writ proceedings. The assumption cannot necessarily be held against the petitioner in the absence of proof-documentary or otherwise that the petitioner did, in fact, have prior information of the writ proceedings.

4. Mr. Neeraj Malhotra, the learned Senior Advocate for the petitioner submits that this Court has supervisory albeit discretionary jurisdiction under Article 227 of the Constitution of India to correct the course of erroneous proceedings when the error is apparent on record or the order is *per se* void. In support of his contention, he relies upon the dicta of the Gauhati High Court in ***State of Arunachal Pradesh & Ors. Vs. Food Corporation of India & Ors***; and upon the decision of this Court in ***B.K. Kapur Vs. P.D. Gupta & Anr.*** 1996 SCC OnLine Del 252, which held as under:

“19. When such is the scope of the power under Art. 227 of the Constitution of India mere availability of an alternative remedy can not oust the said power of the High Court. In such case the High Court will consider whether a case for exercise of the power under Art. 227 of the Constitution of India is made out or not. The High Court will always be conscious of the fact that the power has to be used

sparingly and with the main object of keeping the Courts and the Tribunals within bounds of their authority. If a case is made out where the Subordinate Court exceeds the bounds of its authority or passes an order which is without jurisdiction or refuses to exercise jurisdiction vested in it, the High Court may interfere with such an order, irrespective of the availability of the right of the appeal. In this context reference may be made to Shyam Kishore v. M.C.D., (1993) 1 SCC 22 : JT 1992 (5) SC 335 (5). In para 37 of the said judgment the Supreme Court took note of the fact that ordinarily the High Court will not entertain a petition under Art. 226 of the Constitution when alternate remedy of appeal is available to the party but it must be said that the High Court has the jurisdiction to grant such a relief if it thinks proper to do so in the circumstances of any case. It is settled law that if there is case of a manifest error, error in exercise of jurisdiction on the facts on record or an order being per se void, the High Court may interfere with such an order without insisting on alternative remedy being availed of. The discussion to follow will show that the impugned order in the present case is manifestly illegal and is contrary to the deal and settled position of law. It amounts to refusal to exercise jurisdiction vested in the Addl. Rent Controller, inasmuch as he failed to ensure that the landlords are put in possession of their premises forthwith on their approaching the Addl. Rent Controller for that purpose. It also results in grave miscarriage of justice and grave and irreparable injury inasmuch as it embroils the petitioners in prolonged and indefinite litigation and in the process deprive them of the possession of the suit premises contrary to the statutory assurance and protection. For all these reasons I am of the view that the present petition under Art. 227 of the Constitution is maintainable.”

5. The learned counsel for the respondent states that this Court’s jurisdiction is to be sparingly exercised as has been held by the Supreme

Court in *Shalini Shyam Shetty & Anr vs. Rajndra Shankar Patil* (2010) 8

SCC 329, as under:-

“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

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

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

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

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

*(e) According to the ratio in **Waryam Singh** (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order*

only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

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

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

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

*(i) 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 the case of **L.Chandra Kumar v. Union of India and Ors.** (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.*

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

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

be exercised suo motu.

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

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

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

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

6. He further submits that the records and documents now sought to be adduced were always available to the petitioner and in any case ought to have been diligent in promptly procuring certified copies of the same for filing earlier during the trial.

7. The Court would note that the petitioner had applied for production of the said documents immediately i.e. the very next day after closure of the

evidence of the defendants. It was their case that neither they were served a copy of the Writ Petition through which the petitioners would have got prior knowledge of the writ proceedings, nor were they parties in any of the prior proceedings. Therefore, in the absence of any such proof, documentation or deductive reasoning, for the impugned order to assume that the writ proceedings and the relevant documents were in the knowledge of the petitioner, is not made out from the records and is erroneous. Furthermore, a mere suggestion that they were in the knowledge of an appeal pending before the Appellate Tribunal MCD, would by itself not suffice the requirement of due knowledge of the pleadings and/or averments made in the writ petition. The Supreme Court in ***State of Rajasthan and Ors. vs. Lord Northbrook and Ors.*** 2019 SCC OnLine SC 1117, has held as under:

“138. The power of the High Court to issue prerogative writs is wide. The Constitution does not place any limitation on such power. However, the Courts have, through judicial pronouncements, evolved self imposed restrictions on the exercise of power by the writ Court. When an efficacious alternative remedy is available, the High Court does not normally exercise jurisdiction. However, when a writ petition has been entertained and kept pending for years, it would not be appropriate to reject the writ petition only on the ground of existence of an alternative remedy.

..... 141. In deciding the question of maintainability of a writ petition in view of existence of alternative remedy, this Court cannot forget that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature. The High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. The existence or even invocation of alternative remedy has nothing to do with the jurisdiction of the writ court. Even if a party has already availed of the alternative remedy by invoking the appellate jurisdiction, as also the jurisdiction

under Article 226, the party could elect to prosecute proceedings under Article 226 for the same relief.

142. There are certain well-recognised exceptions where the bar of alternative remedy does not apply. Where the authority has acted without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of an alternative remedy, as held by this Court, inter alia, in Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur, U.P. reported in (1987) 4 SCC 525. Complete lack of jurisdiction of an authority to take the impugned action, as in this case, is always a good ground to entertain a writ petition.”

8. The Court is of the view that when the petitioner was unable to produce the documents, which are merely court records, because those proceedings were unbeknownst to them, therefore it would be unjust to not let them produce the same before the learned Trial Court. In the circumstances, the impugned order is liable to be and is set aside.

9. At this stage, the learned counsel for the respondent submits that the case has unnecessarily been prolonged and they have expended quite some amounts before the learned Trial Court as well as before this Court, therefore, they would not like to oppose the petition but some costs may be imposed upon the Petitioner. Furthermore, they may be allowed to lead their own evidence against any documents which may be produced or led in evidence by the petitioner. The Court would note that the case has been listed 11 times over and effectively for about 6 times. In the circumstances, for each of the hearing of the case, Rs. 20,000/- cost is imposed upon the petitioner. Accordingly, costs of Rs. 1,20,000/- shall be paid to the respondent through counsel, within a week from the date of receipt of copy of this order.

10. In view of the above, the impugned order is set aside. The parties shall appear before the learned Trial Court on 03.10.2019. The petitioner is permitted to lead evidence apropos Writ Petition No. (Civil) 3954/2011, and the respondent/defendant is permitted to respond to the same.

11. Seeing that the suit has been pending since 2013, the learned counsels for the parties submit that they shall request the learned Trial Court to expedite the disposal of the suit, preferably in six months. They assure the Court that they would assist the learned Trial Court on every date, when the case is so listed and shall not seek any adjournment.

12. The petition is disposed-off in the above terms.

13. A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

SEPTEMBER 03, 2019

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NAJMI WAZIRI, J

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