

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

% **Date of decision: 24th August, 2021.**

+ **CM(M) 548/2021**

VIKRANT

..... Petitioner

Through: Mr. Lakshay Yadav, Advocate.

Versus

RADHIKA & ORS.

..... Respondents

Through: None.

CORAM:

**HON'BLE MR. JUSTICE AMIT BANSAL
[VIA VIDEO CONFERENCING]**

JUDGMENT

AMIT BANSAL, J. (Oral)

CM No.27511/2021 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. The present petition under Article 227 of the Constitution of India impugns the order dated 8th March, 2021 passed by the Additional District Judge-06, West District, Tis Hazari Courts, whereby the three separate applications filed on behalf of the defendants in the suit proceedings i.e. (i) under Section 10 of the Civil Procedure Code (CPC) by the petitioner/defendant no.1; (ii) under Order VII Rule 11 of the CPC by the petitioner/defendant no.1; and, (iii) under Order VII Rule 11 of the CPC by the defendant no.2, have been dismissed.

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Signing Date: 24.08.2021
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4. The petitioner and the respondent no.1 were married in 2012 and both were residing in the suit property till 16th February, 2014, when the respondent no.1 was compelled to move out of the said property. The application under Order VII Rule 11 of the CPC was filed on behalf of the petitioner/defendant no.1 stating that the plaint does not disclose any cause of action against the petitioner. Similar application under Order VII Rule 11 has also been filed on behalf of the defendant no.2 raising similar contentions. An application under Section 10 of the CPC was also filed on behalf of the petitioner seeking a stay of the subsequent suit, pleading that a similar matter, also filed by the respondent no.1, was pending before the learned Civil Judge, Delhi. All the aforesaid applications were contested on behalf of respondent no.1/plaintiff by filing replies.

5. As regards the application under Section 10 of the CPC, the Trial Court has noted that the earlier suit, CS No.610880/2016 filed by the respondent no.1 before the learned Civil Judge was subsequently withdrawn on 6th June, 2019 and therefore, there cannot be any stay of the suit.

6. Insofar as the application under Order VII Rule 11 of the CPC is concerned, the Trial Court has noted that the case of the respondent no.1, as per the plaint is that the suit property is a matrimonial house and therefore, she is entitled to right of residence in the suit property. Accordingly, going by the averments made in the plaint, the Trial Court observed that, it cannot be held at this stage that the suit filed by the respondent no.1/plaintiff does not disclose any cause of action and therefore, ought to be dismissed in terms of Order VII Rule 11 of the CPC.



7. I have heard the counsel for the petitioner. The scope of interference under Article 227 of the Constitution of India is limited only to cases of jurisdictional error or cases where there is a manifest error on the face of the record. The powers conferred under Article 227 are discretionary and can be exercised only when the findings of the subordinate court are perverse or contrary to the material on record. The Court while exercising its jurisdiction under Article 227 of the Constitution of India is not sitting as an Appellate Court. In this regard, reference may be made to the judgment of the Supreme Court in *Surya Dev Rai Vs. Ram Chander Rai* (2003) 6 SCC 675, where parameters for exercising jurisdiction under Article 227 of the Constitution of India are set out:

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

...

(4) 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.



(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 (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(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 thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the 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.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.”

8. Keeping in mind the above well-defined parameters of interference under Article 227 of the Constitution of India, no ground is made for interference in the present case. The Trial Court has correctly observed that since the earlier suit was withdrawn by the respondent no.1/plaintiff on 6th June, 2019, there could not be any stay on the subsequent suit, from which this petition arises. A reading of the plaint makes it clear that the respondent no.1/plaintiff has made a claim of residence in the matrimonial house and the Trial Court has correctly held that under Section 26 of the Protection of Women from Domestic Violence Act, 2005 (DV Act) the aggrieved party may seek any relief available under Sections 18, 19, 20, 21, and 22 of the DV Act in any legal proceeding, before a civil court, family court or a criminal court. Accordingly, the present suit filed by the respondent no.1/plaintiff would be maintainable.



9. It is also a settled principle of law that an application under Order VII Rule 11 has to be decided on the basis of the pleadings of the plaintiff only and not from the rebuttal of the defendant or any other material produced by the defendant. Therefore, there is no error in the impugned order dismissing the said application.

10. There is no infirmity or perversity in the impugned order dated 8th March, 2021 and no grounds for interference with the said order are made out in exercise of jurisdiction under Article 227 of the Constitution of India.

11. The above observations would be without prejudice to the rights and contentions of the parties in the main suit.

Dismissed.

AUGUST 24, 2021
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AMIT BANSAL, J