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

+ CM(M) 201/2022 & CM APPL. 10865/2022

SMT SUSHMA CHOPRA Petitioner

Through: Mr.Ashok Chhaparia, Adv.

versus

MS NEELU BISARIA & ANR. Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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21.03.2022

1. This petition under Article 227 of the Constitution of India challenges an order dated 29th November, 2021 passed by the learned Additional District Judge (“the learned ADJ”, hereinafter). A brief recapitulation of the proceedings as they transpired before the trial court is necessary.

2. *Vide* order dated 14th March, 2014, this Court – which was in *seisin* of the proceedings prior to their being transferred to the trial court *vide* order dated 5th March, 2016, consequent to enhancement of pecuniary jurisdiction of the trial court – noted that the defendant in the suit had set up an oral family settlement dated 26th January, 2003 which was subsequently reduced to a written memorandum of family settlement dated 27th September, 2009 and, therefore, that the



defendant should adduce evidence in the first instance. The defendant was, therefore, directed to file affidavit in evidence.

3. The defendant led the evidence of ten witnesses who, over a period of time, were examined, cross examined and discharged. On 6th July, 2019, the evidence of DW-9 was closed. DW-10 was not present and bailable warrants were directed to be issued to secure his presence. The matter was re-notified for 7th September, 2019 for respondent's evidence and 28th September, 2019 for the petitioner's evidence, the petitioner being the plaintiff before the trial court. The order also required the petitioner to file his affidavit in evidence in the meanwhile.

4. As DW-10 did not appear and as it was brought to the attention of the court that bailable warrants could not be issued as steps had not been taken, the learned Trial Court, on 7th September, 2019, again, directed bailable warrants to issue in terms of the order dated 6th July, 2019. It was also directed, that on the next date of hearing, the matter would be taken up for the defendant's evidence instead of the plaintiff's evidence. The matter was, therefore, re-notified for 28th September, 2019.

5. On 28th September, 2019, DW-10 was examined, cross examined and discharged. The disputed settlement deed dated 27th September, 2009 was sent to the Central Forensic Science Laboratory (CFSL) for examination and the CFSL was directed to report by 16th



November, 2019. The respondent, on the said date, stated that it had no other witness to lead.

6. As such, defence evidence was closed on 28th September, 2019.

7. On 29th November, 2021, the impugned order came to be passed. It was noted in the said order that the CFSL report had not yet been received. The defendant stated that it reserved its right to examine the CFSL witness as and when the report was received.

8. The trial court thereafter proceeded to observe thus:

“The plaintiff was also directed to file the affidavit in PE with advance copy to the opposite side & the date was also fixed for PE. However since plaintiff was not able to file the affidavit by the said date, the matter continue to be fixed for DE as per record. Fact remains that plaintiff does not file affidavit in evidence. Although there was attempts by the plaintiff side to justify the non filing of the affidavit on the basis of report awaited, the court does not find any relation between non filing of the affidavit on the basis of non filing of the report as plaintiff being dominus litus is to stand on its own legs. The plaintiff is given last and final opportunity to file affidavits in evidence, subject to cost of Rs.10,000/- to be deposited in DLSA, South District, Saket Court, New Delhi. Affidavits in evidence be filed within six weeks from today, with advance copy to the opposite side.

Failing filing of the affidavits the opportunity would be closed and no further opportunity would be granted.”

9. The aforesaid observation forms subject matter of the present challenge. The prayer clause in this petition reads thus:



“It is, therefore, most respectfully prayed that in the interest of justice this Hon'ble Court may graciously be pleased to:

- a) Call for the records in CS No 8980/2016 titled as 'Sushma Chopra Vs Neelu Bisaria and Anr, pending in the court of Sh. Nikhil Chopra, ADJ-02(South district), Saket Courts, New Delhi.
- b) Set aside the order dated 29/11/2021 passed by the Court of Sh Nikhil Chopra, ADJ-02(South district), Saket Courts, New Delhi in CS No 8980/2016 titled as 'Sushma Chopra Vs Neelu Bisaria and Anr. and Direct the case to be listed for defence evidence till it is finally concluded; and the petitioner be permitted to lead plaintiffs evidence, thereafter, if the need be; and
- c). grant any other and/ or further relief(s) as may be deemed just and proper in the facts and circumstances of the present case.”

10. Mr. Ashok Chhaparia, learned Counsel for the petitioner submits that there was no justification for the trial court to call upon the petitioner to file its evidence till the CFSL report was received and its contents known. He submits that, if the report is in favour of his client, the very requirement of filing of affidavit in evidence by the petitioners may be obviated.

11. I have considered the rival submissions. The jurisdiction of this Court under Article 227 of the Constitution of India is not appellate in nature. One may refer, in this context to the judgments of the Supreme Court in *Puri Investments v. Young Friends & Co.*¹,

¹ 2022 SCC OnLine SC 283



Estralla Rubber v. Dass Estate (P) Ltd.² and Garment Craft v. Prakash Chand Goel³.

12. The Supreme Court in ***Estralla Rubber*²** expounded on the scope of jurisdiction of the Court under Article 227 of the Constitution of India. In that case, the plaintiff filed a suit against the defendant for eviction on the ground of reasonable requirement as well as on the ground of default in payment of rent. The defendant, in its objections, questioned the relationship of landlord and tenant between the plaintiff and the defendant. Consequent thereupon, the plaintiff applied under Order VI Rule 17 of the Code of Civil Procedure, 1908, for amendment of the plaint. The application was rejected by the learned Trial Court on the ground that the amendment was inconsistent with the plaint as it existed and also displaced the plaintiff from taking advantage of the admission made by the defendant. A revision petition, under Section 115A of the CPC, was allowed by the learned District Judge. The order of the learned District Judge was, however, set aside by the High Court in a petition under Article 227 of the Constitution, preferred by the plaintiff, on the finding that the amendment, if allowed, would result in depriving the plaintiff of the benefit of the admission made by the defendant. The defendant appealed to the Supreme Court.

13. The Supreme Court, at the outset, held that the amendment sought by the defendant was necessary to properly adjudicate the

² (2001) 8 SCC 97

³ 2022 SCC OnLine SC 29



controversy between the parties and did not amount to resiling, by the defendant, from any admission made by it. Thereafter, in paras 6 and 7 of the report, the Supreme Court went on to state thus, regarding the scope of Article 227 jurisdiction:

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

7. This Court in **Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand**⁴ in AIR para 12 has stated that the power under Article 227 of the Constitution 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

⁴ (1972) 1 SCC 898 : AIR 1972 SC 1598



mere errors. Reference also has been made in this regard to the case **Waryam Singh v. Amarnath**⁵. This Court in **Bathutmal Raichand Oswal v. Laxmibai R. Tarte**⁶ has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.”

14. *Estralla Rubber*² was followed by the Supreme Court recently in *Garment Craft*³. In that case, the High Court, exercising Article 227 jurisdiction, set aside an order passed by the learned Trial Court under Order IX Rule 13 of the CPC.

15. Prakash Chand Goel (“Goel”, hereinafter), the respondent before the Supreme Court had filed a recovery suit. Garment Craft (“GC”, hereinafter) contested the suit. Goel’s evidence concluded on 1st May, 2015, and GC’s evidence was to commence on 28th October, 2015. Prior thereto, on 29th September, 2015, the sole proprietor of GC, Shailendra Garg was arrested in an unrelated case and detained in judicial custody, from which he was released on bail only on 6th May, 2017. In the interregnum, on 28th October, 2015, the Joint Registrar closed GC’s evidence, on the ground that there was no appearance on its behalf. The suit was, thereafter, transferred to the learned District Judge consequent on enhancement of pecuniary jurisdiction of trial courts. GC applied for recalling the order dated 28th October, 2015 of

⁵ AIR 1954 SC 215 : 1954 SCR 565

⁶ (1975) 1 SCC 858 : AIR 1975 SC 1297



the learned Joint Registrar. The learned ADJ, *vide* order dated 14th March, 2016, recalled the order and the GC was granted opportunity to lead evidence subject to costs. Thereafter, the learned ADJ, *vide* order dated 22nd April, 2016, observed that the learned Counsel for GC should have applied for issue of a production warrant to enable the proprietor of GC to appear before the court. Consequent thereto, an application for issuance of production warrant was moved by learned Counsel for GC on which the learned ADJ ordered for issuance of production warrant for appearance of Shailendra Garg from jail. Another application for issuance of production warrant for summoning Shailendra Garg was filed on 9th September, 2016. The application was rejected by the learned ADJ for want of an appropriate affidavit, despite the fact that Shailendra Garg was incarcerated at that time. Thereafter, on 4th November, 2016, Counsel for GC did not appear and defence evidence was closed. Final arguments were heard on 7th November, 2016 and, on 8th November, 2016, an *ex parte* judgment was passed decreeing the suit in favour of Goel.

16. Shailendra Garg was released on bail on 6th May, 2017. On 16th May, 2017, he filed an application under Order IX Rule 13 of the CPC for setting aside the *ex parte* decree. In the application, it was pleaded that this Court ought to have issued a production warrant for the appearance of Shailendra Garg before closing defence evidence. Shailendra Garg pleaded that, as he was in detention, he could not properly instruct his Counsel. The said application was allowed by the



learned ADJ by a detailed order dated 24th July, 2018 and the *ex parte* decree was set aside.

17. Goel moved this Court under Article 227 of the Constitution of India, challenging the aforesaid order dated 24th July, 2018 of the learned ADJ on the application of Shailendra Garg under Order IX Rule 13 of the CPC. This Court, *vide* judgment dated 4th July, 2019, allowed Goel's petition, on the ground that the Counsel for GC had obtained a certified copy of the judgment dated 8th November, 2016 in December, 2016, thereby indicating that GC was represented by Counsel even at that stage. As such, Shailendra Garg's contention that he had acquired knowledge of the decree only after release from custody on 6th May, 2017 was observed to be incorrect. The learned ADJ was, therefore, found to be in error in accepting the submission of Shailendra Garg that he was not in communication with his Counsel during the period of his incarceration.

18. GC appealed to the Supreme Court. Paras 18 and 19 of the report from the judgment of the Supreme Court are self speaking:

“18. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but *primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or*



can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when 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 that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. Explaining the scope of jurisdiction under Article 227, this Court in ***Estralla Rubber v. Dass Estate (P) Ltd.***² has observed:—

“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 a 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 the duty expected or required of 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 subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the 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 an 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. The factum that the counsel for the appellant had applied for the certified copy *would show that the counsel for the appellant was aware that the ex-parte decree had been passed on the account of failure to lead defence evidence. This would not, however, be a good ground and reason to set aside and substitute the opinion formed by the trial court that the appellant being incarcerated was unable to lead evidence and another chance should be given to the appellant to lead defence evidence. The discretion exercised by the trial court in granting relief, did not suffer from an error apparent on the face of the record or was not a finding so perverse that it was unsupported by evidence to justify it.* There could be some justification for the respondent to argue that the appellant was possibly aware of the *ex-parte* decree and therefore the submission that the appellant came to know of the *ex-parte* decree only on release from jail on 6th May 2017 is incorrect, but this would not affect the factually correct explanation of the appellant that he was incarcerated and could not attend the civil suit proceedings from 6th October 2015 to 6th May 2017. If it was felt that the application for setting aside the *ex parte* decree was filed belatedly, the court could have given an opportunity to the appellant to file an application for condonation of delay and costs could have been imposed. The facts as known, equally apply as grounds for condonation of delay. It is always important to take a holistic and overall view and not get influenced by aspects which can be explained. Thus, *the reasoned decision of the trial court on elaborate consideration of the relevant facts did not warrant interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution.*”

19. Article 227 of the Constitution also came up for consideration before the Supreme Court recently in *Puri Investments*¹. The appeal



before the Supreme Court emanated from an eviction proceeding by Puri Investments (“PI”, hereinafter) against the respondents (“YF”, hereinafter), in respect of a shop located at Cannaught Place. PI was admittedly the landlord of the said premises, which were let out to the proprietor of YF in 1936. PI sought eviction of YF on the ground that YF had sublet the premises to three medical practitioners and two other firms without its consent. The petition was dismissed by the learned Additional Rent Controller *vide* order dated 5th June, 1997 on the ground that PI had failed to prove subletting, assignment of parting with possession of the tenanted premises in favour of the alleged sub-lessees. This order was reversed by the learned Rent Control Tribunal (“the Tribunal”, hereinafter) which proceeded to pass an order of eviction on the ground of subletting of the premises in favour of the aforesaid three medical practitioners, without the consent in writing by PI. YF challenged the said decision under Article 227 before this Court.

20. This Court, *vide* its judgment dated 14th November, 2018, allowed the petition of YF and held that:

- (i) on evidence, the learned RCT was in error in holding that the aforesaid three medical practitioners were in exclusive possession of their respective clinics and,
- (ii) possession of the premises was, at all times, with YF, the three medical practitioners being merely temporary visitors.



Holding that the findings of the learned RCT were contrary to evidence, this Court set aside the order of the learned RCT.

21. PI appealed to the Supreme Court.

22. The Supreme Court noted that the occupation of the premises by the three medical practitioners was admitted. Having so observed, the Supreme Court held that the High Court, in exercising its jurisdiction under Article 227, was in error in re-appreciating the evidence and coming to a conclusion that the three medical practitioners were in possession of the premises only on a part-time basis and that the premises were otherwise under the exclusive control of YF. Paras 14 to 17 of the report, to the extent they are relevant read thus:

“14.The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are:—

- (i) Erroneous on account of non-consideration of material evidence, or
- (ii) Being conclusions which are contrary to the evidence, or
- (iii) Based on inferences that are impermissible in law.



15. *We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.*

16. *In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum. There is no dispute that the three medical practitioners were in occupation of part of the premises in question. The onus, under such circumstances, was on the respondents to establish the degree of control they were maintaining over the said premises for repelling the plea of sub-letting or assignment or parting with possession. . . .*

17. There was no perversity in the order of the Appellate Tribunal on the basis of which the High Court could have interfered. In our view, the High Court tested the legality of the order of the Tribunal through the lens of an appellate body and not as a supervisory Court in adjudicating the application under Article 227 of the Constitution of India. This is impermissible. The finding of the High Court that the appellate forum's decision was perverse and the manner in which such finding was arrived at was itself perverse.”

23. The supervisory jurisdiction vested in this Court by Article 227 of the Constitution of India is, therefore, essentially intended to ensure that the courts lower in the judicial hierarchy discharge their duties appropriately. It is not intended to substitute the view of this Court for the view of the Court below or especially, even in respect of



matters of procedure, and even where this Court were to be of the opinion that it would have dealt with the matter otherwise.

24. The impugned order has considered the request of the petitioner to be permitted to file its affidavit in evidence only after the CFSL report is made available. Having considered it, the learned ADJ has rejected the submission on the ground that the court did not “find any relation between non-filing of the affidavit on the basis of non-filing of the report as plaintiff being *dominus litis* is to stay on its own legs”. The earlier orders passed by the trial court in the matter, too, granted amnesty to the petitioner from filing her affidavit in evidence only till conclusion of the respondent’s evidence. The respondent had specifically stated on 28th September, 2019 that it did not seek to lead the evidence of any other witness. That being so, the trial court cannot be said to have committed any jurisdictional error in requiring the petitioner to file its affidavit in evidence within a time bound frame despite the pendency of the matter before the CFSL.

25. Needless to say, the rights of both parties to advance submissions on the CFSL report or to lead evidence in that regard would remain open after the report is received. No substantial ground justifying the interference by this Court with the order of the learned Trial Court, insofar as it directs the petitioner to file affidavit in evidence within a time bound frame, can be said to exist.



26. In the interests of justice, however, I deem it appropriate to grant one final opportunity to the petitioner to comply with the direction contained in the impugned order.

27. As such, subject to the petitioner filing affidavit in evidence, as directed by the impugned order, within a period of two weeks from today, she would not be required to pay costs as stipulated therein.

28. Subject to the above limited relief, the present petition stands disposed of.

MARCH 21, 2022/kr

C. HARI SHANKAR, J