



\$~66

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

+ **CM(M) 487/2022**

JASVEER LAL GOUR Petitioner

Through: Mr. Imran Ali, Mr. Abhishek Rai and Mr. Maneesh Saxena, Advs.

versus

DELCAP FINANCIAL PVT LTD Respondent

Through: Mr. Yakesh Anand, Ms. Sonam Anand and Mr. Pritesh Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

% **25.05.2022**

CM(M) 487/2022, CM 24914/2022 (exemption), CM 24915/2022 (exemption) and CM 25058/2022 (stay)

1. This petition, under Article 227 of the Constitution of India, assails an order dated 28th March, 2022, passed by the learned Additional District Judge (“the learned ADJ”) in CS(DJ) 146/2021 (*M/s Delcap Financial Services Pvt. Ltd. v. Jasveer Lal Gour*).

2. The respondent, who was plaintiff in the aforesaid suit, alleged that in September, 2020, the petitioner had approached the respondent for taking the property forming subject matter of the suit (“the suit property”) on lease, to run a “bed and breakfast” (commonly referred to as “B & B”) establishment. This culminated in execution of a Lease Deed dated 25th September, 2020 between the respondent and the petitioner, whereby the respondent leased out the suit property to



the petitioner for the period 1st November, 2020 to March, 2021 @ ₹ 1,20,000/- and for the period March, 2021 to September, 2021, accompanied by a security deposit of ₹ 3,00,000/-. The respondent alleged, in the plaint, that the petitioner had defaulted in paying the monthly rent as per the Lease Deed and had also defaulted in paying the entire amount of security deposit. This, alleged the plaint, resulted in the respondent addressing, on 8th January, 2020, a notice of termination to the petitioner, followed by attempts to physically take possession of the suit property, which, according to the respondent, were obstructed by the petitioner. Premised, *inter alia*, on these asseverations and assertions, the respondent filed CS(DJ) 146/2021 before the learned ADJ, seeking (i) a decree of possession of the suit property in favour of the respondent and against the petitioner, and (ii) a decree of permanent injunction, restraining the petitioner from interfering with the rights of the respondent in respect of the suit property, apart from arrears of rent, compensation, damages, interest and costs.

3. The petitioner filed an application, in CS(DJ) 146/2021, under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), alleging that the suit could not be maintained before the Civil Court, as it had to be tried as a commercial suit, in terms of the provisions of the Commercial Courts Act, 2015.

4. The impugned order rejects the said application. Being aggrieved, the petitioner-defendant has invoked the jurisdiction of this Court under Article 227 of the Constitution of India.



5. The impugned order reveals that the learned ADJ has rejected the petitioner's application under Order VII Rule 7 of the CPC on the ground that the suit property had not been leased out exclusively for commercial purpose.

6. "Commercial dispute" is defined, in Section 2(c)(vii) of the Commercial Courts Act, 2015, as including, *inter alia*, "a dispute arising out of agreement relating to immovable property, *used exclusively in trade or commerce*".

7. The legislature does not engage in tautology and superfluity¹. The words used by the legislature must; be regarded as having being employed deliberately have to be attributed their ordinary meaning. The use of the word "exclusively" as used in Section 2(c)(vii) cannot, therefore, be overlooked.

8. The Lease Deed, dated 25th September, 2020, executed between the petitioner and the respondent commences with the following recitals:

"THIS LEASE DEED is executed on this 25th September, 2020 BETWEEN

Delcap Financial Services Pvt. having its regd office at N-43, Lane no W-17, Sainik Farms New Delh-110062 hereinafter called "the LESSOR" (which expression shall wherever the context permits be deemed to include its successors. legal representatives and assigns) of the FIRST PART.

¹ Aswini Kumar Ghose v. Arabinda Bose, 1953 SCR 1; Tirath Singh v. Bachittar Singh, (1955) 2 SCR 457; Umed v. Raj Singh, (1975) 1 SCC 76



AND

Jasveer Lal Gaur S/o Shri Sohan Lal Gaur permanent resident of J2/1/7, Sangam Vihar, South Delhi, Delhi-110062 hereinafter called the “the LESSEE” (which expressions shall wherever the context permits, be deemed to include his heirs successors, legal representatives and assigns) of the SECOND PART.

WHEREAS the LESSOR is the absolute owner and possession of the Entire N-43, Sanik Farm, New Delhi-110062 with servant quarters in with all its easements and appurtenances (“**Demised Premises**”).

A. **AND WHEREAS** the LESSEE seeks to take on lease the Demised Premises, *on rent for his residence and bed and breakfast purposes only* for a fixed period of 11 months only, commencing from 1st day of November, 2020 till 30th September, 2021 at an initial monthly rental of Rs.90,000/- (Rupees Ninety Thousand Only) from November, 2020 to March 2021, thereafter rent will be Rs.1,20,000/- (One Lac Twenty Thousand, besides electricity & water charges as per BSES and Delhi Jal Board meters directly to the Authority Concerned and GST (if applicable) on the terms and conditions mentioned hereinafter.”

9. Clearly, Lease Deed leases out the suit property for the residence of the petitioner as well as for bed and breakfast purposes. It is nobody’s case that the use, by the petitioner, of the leased premises as residence amounted to commercial use.

10. The view expressed by the learned ADJ, in the impugned order, that in view of the aforesaid disposition in the Lease Deed, the premises could not be treated as being used exclusively for commercial purpose, cannot, therefore, be faulted.

11. Even otherwise, if the learned Court below has adopted a view,



which is plausible, and does not call for supervisory correction by this Court, no occasion would arise for Article 227 to be pressed in the service. The Court, exercising jurisdiction under Article 227 of the Constitution of India, does not sit either as an appellate or as revisional Court. Nor, for that matter, does it exercise of power of judicial review. In ***Sadhana Lodh v. National Insurance Co. Ltd.***², rendered by three Hon'ble Judges of the Supreme Court, the Court has gone to the extent of stating thus:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

(Emphasis Supplied)

12. In its recent decision in ***Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.***³, rendered on 13th May, 2022, the Supreme Court has again reiterated the limited parameters of Article 227 jurisdiction in para 28 of the report thus:

“28. The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of ***Estralla Rubber v. Dass Estate (P) Ltd.***⁴, which

² (2003) 3 SSC 524

³ 2022 SCC Online SC 620

⁴ (2001) 8 SCC 97



has been consistently followed by this Court (see the recent decision of this Court in the case of **Garment Craft v. Prakash Chand Goel**⁵). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India.”

13. The following passage from the judgments in **Estralla Rubber v. Dass Estate (P) Ltd**⁴ and **Garment Craft v. Prakash Chand Goel**,⁵ on which the Supreme Court places reliance in the afore-extracted para 28 of the report in **Ibrat Faizan**³, again recapitulate the legal position regarding Article 227.

Estralla Rubber

“7. This Court in **Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand**⁶ in 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 mere errors. Reference also has been made in this regard to the case **Waryam Singh v. Amarnath**⁷. This Court in **Bathutmal Raichand Oswal v. Laxmibai R. Tarte**⁸ has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court

⁵ 2022 SCC OnLine SC 29

⁶ AIR 1972 SC 1598

⁷ AIR 1954 SC 215

⁸ AIR 1975 SC 1297



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.

Garment Craft

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel v. Garment Craft*⁹] 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. [*Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar*¹⁰] 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.

16. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd*⁴ has observed : (SCC pp. 101-102, para 6)

“6. The scope and ambit of exercise of power

⁹ 2019 SCC OnLine Del 11943

¹⁰ (2010) 1 SCC 217



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.”

14. To the same effect are the following words in paras 14 to 16 of the report in *Puri Investments v. Young Friends and Co.*¹¹:

“14. In the case before us, occupation of a portion of the subject-premises by the three doctors stands admitted. What has been argued by the learned counsel for the appellant is that once the Tribunal had arrived at a finding on fact based on the principles of law, which have been enunciated by this Court, and reflected in the aforesaid passages quoted from the three authorities, the interference by the High Court under Article 227 of the Constitution of India was unwarranted. To persuade us to sustain the High Court's order, learned counsel appearing for the

¹¹ 2022 SCC Online SC 283



respondents has emphasized that full control over the premises was never ceded to the medical practitioners and the entry and exit to the premises in question remained under exclusive control of the respondent(s)-tenant. This is the main defence of the tenant. We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. 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.”

15. No case is, in the aforesaid circumstances, made out, for this Court to interfere with the impugned order in exercise of the jurisdiction vested in it under Article 227 of the Constitution of India

16. The petition is, accordingly, dismissed *in limine*. The miscellaneous applications are also disposed of.

MAY 25, 2022
r.bararia

C.HARI SHANKAR, J



सत्यमेव जयते