



\$~67 (Appellate Side)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 503/2022**

BHAJAN SINGH

..... Petitioner

Through: Mr. Akhil Sachar, Ms. Sunanda
Tulsyan and Mr. Akshar Bhat, Advs.

versus

S. LACHHMAN SINGH & ANR.

.... Respondents

Through: Mrs. Inderjeet Saroop and Mr.
Raghav Saroop, Advs. for Respondent 1

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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27.05.2022

**CM(M) 503/2022, CM APPL. 25606/2022 (exemption) and CM
APPL. 25715/2022 (interim relief)**

1. The petitioner is aggrieved by orders dated 9th March, 2022 and 17th May, 2022, passed by the learned Senior Civil Judge (“the learned SCJ”) in CS/SCJ/83300/2016 (*S. Lachhman Singh v. Narula Garments and Anr.*).

2. The order dated 9th March, 2022 closes the right of the petitioner to lead defence evidence and the order dated 17th May, 2022 dismisses an application, under Section 151 of the Code of Civil Procedure, 1908 (CPC), seeking recall of the order dated 9th March, 2022.



3. The order-sheets, recording the course of proceedings in CS(SCJ)/83300/2016 before the learned SCJ have been placed on record. I deem it appropriate to reproduce the orders passed, day-to-day, *in extenso* thus:

“30.01.2021

Present: Ms. Inderjeet Saroop Ld Counsel for plaintiff.

Defendant no. 1 is exparte.

None for defendant no.2.

It is submitted by Ld Counsel for plaintiff that as per instructions from plaintiff, plaintiff wants to close his evidence as evidence has already been lead in respect to the issues, onus of which was upon plaintiff.

Separate statement of Ld Counsel for plaintiff is recorded to the said effect. In view of the statement, PE is close.

Defendant no.2 is given last opportunity to join the proceedings. It is clarified that only one opportunity shall be granted to defendant no.2 to lead his evidence as the matter is almost 7 years old and needs to be expedited.

List of witnesses be filed by defendant no.2 within 15 days from today. Copies of affidavits of the witnesses to be examined be supplied in advance to the counsel for plaintiff at least 2 weeks prior to the NDOH.

Put up for DE for 09.03.2021.

09.03.2021

Present: Ms. Inderjeet Saroop, Ld Counsel for plaintiff.



Defendant no.1 is exparte.

Sh. Gaurav Sharma, Ld Counsel for defendant no.2.

Copy of affidavits are stated to have not been supplied. Defendant no.2 is given final opportunity to file the same as per SOP and supply the copy of same to the opposite party.

Put up for DE for 22.04.2021.

Date is given as per convenience of both the parties.

26.08.2021

Present: Ms. Inderjeet Saroop, Ld Counsel for plaintiff.

Defendant no.1 is exparte.

Sh. Amit Gupta, Ld Counsel for defendant no.2.

It is submitted by Ld Counsel for defendant no.2 that an application under Order 12 Rule 6 CPC has been filed at the official email ID of this court. Copy is stated to have not been supplied.

Ld Counsel plaintiff has provided her e-mail/ Whatsapp number for supplying the copy of the application. Copy be supplied against due receiving. Reply, if any be filed to the said application with advance copy to the opposite side.

Now matter be listed for reply and arguments on the application under Order 12 Rule 6 CPC for 27.09.2021.

27.09.2021

Present: Ms. Inderjeet Saroop, Ld Counsel for plaintiff.

Sh. Amit Gupta, Ld Counsel for defendant no.2.



Defendant no.1 is exparte.

Reply filed by plaintiff to the application of defendant no.2 under Order 12 Rule 6 CPC. Copy is stated to have been received two days back.

It is stated by Ld Counsel for defendant that it was a lengthy reply running into 16 pages, he was not able to go through the same. Hence, it is prayed that one opportunity be granted to address the arguments. At request, last and final opportunity is granted.

It is submitted by Ld Counsel for plaintiff that at least affidavit of defendant's witnesses be supplied so that matter be expedited. The same be filed at least one week prior to the NDOH. The same will be taken on record subject to outcome of the above said application.

Put up for reply/ arguments on the above said application for 23.11.2021.

23.11.2021

Present: Ms. Inderjeet Saroop, Ld Counsel for plaintiff.

Sh. Amit Gupta, Ld Counsel for defendant no.2.

Defendant no.1 is exparte.

It is submitted by Ld Counsel for plaintiff that despite direction, affidavit has not been supplied till date.

It is stated by Ld Counsel for defendant no.2 that due to medical ailment of plaintiff, affidavit could not be filed. Medical document of defendant no.2 is filed on record.

Last and final opportunity is granted to defendant no.2 to file the affidavit with advance copy to the opposite side.

Argument on application under Order 12 Rule 6 CPC addressed.



Put up for seeking clarification, if any/ Orders on the said application for 22.12.2021.

22.12.2021

Present: Sh. Prabhakar Roy, Ld. Proxy Counsel for plaintiff.

Sh. Amit Gupta, Ld Counsel for defendant no.2.

Defendant no.1 is exparte.

Orders are not ready as record is bulky. Hence, orders could not be pronounced today.

Put up for seeking clarification, if any/ Orders on application under Order 12 Rule 6 CPC as filed by defendant no.2 for 17.01.2022.

09.03.2022

Present: Ms. Inderjeet Saroop, Ld. Counsel for the plaintiff.
Sh. Amit Rao, Ld. Counsel for the defendant no. 2. (fresh v/n filed)

Defendant no. 1 is exparte.

Affidavits of defence witnesses not filed. It is stated that due to recent engagement of counsel for defendant no. 2, the affidavits could not be filed.

Previous records shows that numerous opportunities have been granted to defendant no. 2 since 30.01.2021 to file the affidavits but no steps are being taken despite imposition of cost. Now, no further opportunity can be granted. DE stands closed.

Be put up for addressing final arguments for 19.04.2022.”



4. It is apparent, on the face of the aforesaid orders, that the learned SCJ is perfectly correct in her observation that, despite repeated opportunities, defence evidence was not filed by the petitioner.

5. In such circumstances, Order XV-A of the CPC entitles the Court to close defence evidence.

6. Mr. Akhil Sahhar, learned Counsel for the petitioner, has sought to place reliance on the judgment of the Supreme Court in ***Robin Thapa v. Rohit Dora***¹, especially paras 6 and 7 of this report in that case read thus:

“6. Per contra, the learned counsel for the decree-holder would submit that ample opportunity was given to the appellant, and in spite of the same, he has not contested the matter. The appellant has another residential building. The building in question was let out on rent. Most importantly, the learned counsel submits that after levying execution of the decree, the property has been conveyed to the respondent by the orders of the Court. In other words, sale deed has already been executed in her favour. It is respondent's case that appellant was served notice by the executing court. There is no scope for interfering with the matter by this Court.

7. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

7. A bare perusal of the judgment in ***Robin Thapa***¹ reveals that it

¹ (2019) 7 SCC 359



is of no application to the present case.

8. In that case, Rohit Dora was the plaintiff in the suit from which the proceedings emanated and Robin Thapa was the defendant. The suit was decreed by the learned Civil Judge, Dehradun on 9th October, 2014. Robin Thapa filed an application, on 2nd February, 2015, under Order IX Rule 13 of the CPC, for setting aside the decree, which had been passed *ex parte*. Rohit Dora filed objections thereto. The application of Robin Thapa was allowed by the learned Trial Court. The High Court of Uttarakhand, however, set aside the decision of the learned Trial Court, *vide* the judgment dated 25th August 2017, which was subsequently reported as ***Rohit Dora v. Robin Thapa***².

9. Aggrieved, Robin Thapa approached the Supreme Court.

10. It is in these circumstances that the Supreme Court returned the findings in which paras 6 and 7 on which Mr. Sachar places reliance.

11. Clearly, therefore, the situation which obtained before the Supreme Court in ***Robin Thapa***¹ is completely different from that which obtains in the present case. The Supreme Court was concerned, in that case, with an application for setting aside an *ex parte* decree, preferred under Order IX Rule 13 of the CPC. It is not a case, such as the present, in which, despite the petitioner having failed to file defence evidence even after grant of several opportunities, had to suffer an order closing defence evidence.

² 2017 SCC Online UTT 1930



12. The reliance, by Mr. Sachar, on *Robin Thapa*¹ is, therefore, in my considered opinion, misconceived.

13. This Court, exercising jurisdiction under Article 227 of the Constitution of India, does not sit either in appeal or in revision or even in judicial review. The jurisdiction vested by Article 227 of the Constitution of India is superintending/supervisory in nature. The Court is, under Article 227, concerned more with the manner in which the Courts below has exercised jurisdiction and whether the manner of such exercise calls for supervisory correction. The correctness of the order passed by the Courts below is, as per the following passage from *Sadhana Lodh v. National Insurance Co. Ltd.*³, rendered by three Hon'ble Judges of the Supreme Court, is not to be examined under Article 227:

“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)

14. The restrictive limitations on Article 227 stand reiterated, most



recently, by the Supreme Court in its decision in para 28 of *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.*⁴, 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.*⁵, which has been consistently followed by this Court (see the recent decision of this Court in the case of *Garment Craft v. Prakash Chand Goel*⁶). 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.”

15. Mr. Sachar passionately canvassed the cause of his client, pointing out the deleterious consequences, which could ensue, if the impugned orders were not set aside. He refers to the fact that his client is a man of advanced years, and submits that the failure, on the part of his client, to file the affidavit-in-evidence was, essentially, owing to the circumstances in which his client was placed, in which he could not interact with his Counsel owing to the restrictions which were in place during the COVID-19 pandemic. He also submits that, even if his client had filed his affidavit in evidence, as proceedings were being conducted virtually, further proceedings on the basis of the said affidavit-in-evidence, could not, in any case, have taken place.

³ (2003) 3 SSC 524

⁴ 2022 SCC Online SC 620

⁵ (2001) 8 SCC 97

⁶ 2022 SCC OnLine SC 29



16. In exercise of the jurisdiction vested in this Court under Article 227 of the Constitution of India, it is not possible for this Court to revisit the decision of the learned SCJ, on the above considerations. The consequences which follow, on closure of defence evidence, is something which the legislature consciously envisaged in the CPC. Even if those consequences are severe, that cannot justify this Court crossing the legitimate boundaries of its jurisdiction under Article 227 of the Constitution of India and interfering with the discretionary decision exercised by the Courts below.

17. For the aforesaid reasons, I regret that it is not possible for me to interfere with the impugned order in exercise of the jurisdiction under Article 227 of the Constitution of India. The present petition is, accordingly, dismissed *in limine*. Pending miscellaneous applications are also disposed of.

C. HARI SHANKAR, J.

MAY 27, 2022
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