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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CM(M) 602/2022 & CM APPL. 28540/2022****DISHA GARG**

..... Petitioner

Through: Mr. Kunal Tandon and Mr.
Saurabh Dev Karan Singh,
Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Mr. Sidhanth Nath, Adv.for R-1.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****JUDGMENT (ORAL)****19.07.2022**

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1. The impugned order dated 6th June 2022 passed by the learned Appellate Tribunal, MCD in A. No. 421/2021 reads thus:

“A. No. 421/21

06.06.2022

Present: Sh. SD Karan Singh, Ld. counsel for the
appellant.

Sh. Ashutosh Gupta, Ld counsel for the respondent.

Appellant has not deposited the misuse charges of Rs.6,43,234/- till now. One last opportunity is granted to the appellant to deposit at least 50% of the misuse charges within a period of two weeks from today failing which respondent is at liberty to execute the order dated 26.08.2021 after expiry of



two weeks.

Renotify for further proceedings on
29.07.2022.

Copy of the order be given dasti.

(PITAMBER DUTT)

P.O: Appellate Tribunal : MCD

06.06.2022”

2. Admittedly, the appeal, in which the impugned order has come to be passed, was filed under Section 343 read with Section 347B of the Delhi Municipal Corporation Act, 1957 (“the Act”). Section 347B of the Act does not incorporate any requirement of pre-deposit, to maintain an appeal.

3. As such, in the absence of any statutory requirement for a pre-deposit, the impugned order, which effectively directs as pre-deposit of 50% of the amount under challenge as a precursor to hearing of the appeal, without any reason whatsoever cannot sustain.

4. The impugned order states “*One last opportunity is granted*” to the petitioner to deposit the aforesaid amount of 50%.

5. Learned counsel for the parties are *ad idem* that there was no earlier order passed by the learned Tribunal directing the payment of any pre-deposit. As such, the use of the expression “One last opportunity” appears to be mistaken.



6. Reasons, it is trite, are the life blood of any judicial order¹.

7. Sans reasons, the Court as also the petitioner would remain completely unaware as to why the learned Tribunal deemed it appropriate to direct a pre-deposit of 50% of the amount under challenge, especially where the provision under which the appeal was filed does not require any pre-deposit be made.

8. Learned Counsel for the respondent has pressed into service of the well established restrictions which are required to guide the exercise of jurisdiction by the Court under Article 227 of the Constitution of India and has, in this context, relied on the judgment of Coordinate Single Bench in ***Black Diamond Track Parts Pvt. Ltd. and Ors. v. Black Diamond Motors Pvt. Ltd.***².

9. There can be no cavil with the proposition of law that Mr. Nath seeks to espouse. That the jurisdiction of this Court under Article 227, is extremely restricted and is to be exercised only in rare and sparing cases where the order of the Court below calls for correction in exercise of supervisory jurisdiction, is practically axiomatic. One may refer, in this context, to the following passages from the decisions in ***Sadhana Lodh v. National Insurance Co. Ltd.***³, ***Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.***⁴, ***Estralla Rubber v. Das Estate (P) Ltd.***⁵, ***Garment Craft v. Prakash Chand Goel***⁶, ***Puri Investments v.***

¹ *Central Board of Trustees v. Indore Composite Private Limited*, (2018) 8 SCC 443; *State of Uttarakhand v. Mayan Pal Singh Verma*, 2022 SCC OnLine SC 469

² 2022 SCC OnLine Del 545

³ (2003) 3 SCC 524

⁴ 2022 SCC OnLine SC 620

⁵ (2001) 8 SCC 97



Young Friends and Co.⁷.

Sadhana Lodh²:

“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)

Ibrat Faizan³:

“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***³, which has been consistently followed by this Court (see the recent decision of this Court in the case of ***Garment Craft***⁴). 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

⁶ 2022 SCC OnLine SC 29

⁷ 2022 SCC OnLine SC 283



rigour of the powers to be exercised under Article 227 of the Constitution of India.”

Estralla Rubber⁴:

“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*⁸ 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*⁹. This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte*¹⁰ 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.”

(Emphasis Supplied)

Garment Craft⁵:

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel v. Garment Craft*¹¹] 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*

⁸ AIR 1972 SC 1598

⁹ AIR 1954 SC 215

¹⁰ AIR 1975 SC 1297

¹¹ 2019 SCC OnLine Del 11943



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 Kholkar¹²] 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***³ has observed : (SCC pp. 101-102, para 6)

“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

¹² (2010) 1 SCC 217



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.*"

(Emphasis Supplied)

Puri Investments⁶:

"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 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.”

(Emphasis Supplied)

10. The present case, however, as noted supra is one in which interference under Article 227 is called for as pre-deposit has been directed in the absence of any statutory provision permitting such direction and without any reasons as to why the learned Tribunal deemed it appropriate to direct pre-deposit of 50% to entertain the petitioner's appeal.

11. In the aforesaid facts, therefore, the impugned order is set aside. The appeal of the petitioner is remanded back to the learned Appellate Tribunal for it to re-consider its decision to direct pre-deposit by the appellant.

12. The Tribunal would keep in mind the fact Section 345 B under which the appeal was preferred does not require any pre-deposit to be



made. If nonetheless, the learned Appellate Tribunal deems it appropriate to direct pre-deposit, it is expected that reasons for such direction, *inter-alia*, justifying the quantum of deposit that the learned Tribunal deems necessary, are direct and forthcoming.

13. The petition stands allowed to the aforesaid terms with no order as to cost.

C. HARI SHANKAR, J

JULY 19, 2022/ssc

