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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + CM(M) 643/2022, CM APPL. 30078/2022 (stay) and CM
 APPL. 30079/2022 (Exemption)

SMT. SURINDER KAUR SINCE
 DECEASED THRU ITS LRS & ORS. Petitioners
 Through: Mr. Satinder Singh and Mr.
 Robin Bansal, Advs.

versus

PRABHAT KUMAR SAHU Respondent
 Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(ORAL)

% **11.07.2022**

1. This petition under Article 227 of the Constitution of India assails order dated 5th April 2022, whereby the learned Additional Senior Civil Judge (“the learned ASCJ”) has allowed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) preferred by the respondent, as the plaintiff in the said suit.

2. A brief factual recital would be apposite.

3. CS 11012/2016, filed by the respondent against the petitioners, sought a restraint against the petitioners from dispossessing the respondent from the suit property located at WZ-75/3, Plot No. 87, Killa No.22, Sant Garh, Major Bhupinder Singh Nagar, New Delhi (“the suit property”) and from demolishing the existing structure or making any other construction in its place.



4. On the ground that, despite an order of stay having been passed in CS 11012/2016, on 24th December 2010, restraining any construction being unauthorised construction from coming up on the suit property, the defendant in the suit was carrying out unauthorized construction thereon, the respondent filed an application under Section 343 of the Delhi Municipal Corporation Act, 1957. The learned ASCJ, on the said application, directed the MCD to take action for demolishing the allegedly unauthorised construction erected by the defendant in the suit property.

5. The respondent alleged, in his application under Order VI Rule 17 of the CPC (which has come to be allowed by the impugned order) that there was no compliance with the aforesaid direction, for demolition of the unauthorised construction.

6. At this stage, the present petitioner moved an application under Order I Rule 10 of the CPC before the learned ASCJ in CS 11012/2016, for being impleaded in the said proceedings. She asserted, in the said application, that she was the registered owner and in absolute possession of the suit property since 22nd October 2011, having purchased the suit property from one Harpreet Kaur *vide* a registered Sale Deed of the said date.

7. Mr. Robin Bansal, learned Counsel for the petitioner points out that a copy of the aforesaid application was supplied to learned Counsel for the respondent on 22nd October 2013 itself, when the application



came up for hearing before the learned ASCJ, as is reflected in the order passed by the learned ASCJ on the said date, which has been placed on record.

8. Subsequently, *vide* order dated 18th November 2013, the petitioner's application under Order I Rule 10 of the CPC was allowed and the petitioners were impleaded as a party in CS 11012/2016. Mr. Bansal has invited my attention to the order dated 18th November 2013 whereby the application was allowed, which records the contentions of the petitioner that she had placed on record the registered Sale Deed whereby Harpreet Kaur had sold the suit property to her.

9. Thus, submits Mr. Bansal, at least on 18th November 2013, the respondent was well aware of the fact that, *vide* registered Sale Deed dated 22nd October 2011, the suit property had been purchased by the petitioners from Harpreet Kaur and was in possession of a copy of the registered Sale Deed, whereunder this transaction took place.

10. The petitioners filed CS DJ 608006/2016 seeking a declaration that the Sale Deed dated 21st October 2011, whereunder the petitioners purchased the suit property from Harpreet Kaur, was valid, and also seeking injunctive reliefs on that basis. Summons in the aforesaid suit came to be served on the respondent on 22nd March 2014.

11. According to the respondent, in the application under Order VI Rule 17 of the CPC, which has come to be allowed by the impugned order, the respondent acquired knowledge of the aforesaid purchase,



by the petitioners, of the suit property from Harpreet Kaur only on receiving the summons in the aforesaid suit, i.e. CS DJ 608006/2016. Mr. Bansal submits that this was a misstatement, as the respondent had, in fact, acquired knowledge of the said transaction on 21st October 2013, when he was served a copy of the petitioner's application under Order I Rule 10 of the CPC, filed in CS 11012/2016, with which the petitioners had also annexed a copy of the registered Sale Deed relating to the said transaction

12. Be that as it may.

13. On 14th April 2017, CS DJ 608006/2016, filed by the petitioners for a declaration of validity of the registered Sale Deed dated 21st October 2011, came to be dismissed as withdrawn as not maintainable.

14. According to the respondent, a cause of action enured, in favour of the respondent, to assail the aforesaid Sale Deed dated 21st October 2011 and to question the title of the petitioners, *qua* the suit property on 14th April 2017, when CS DJ 608006/2016 filed by the petitioners was dismissed as withdrawn. Further asserting that the respondent came to know, thereafter, that the petitioners had carried out construction in the suit property in violation of the injunctive orders dated 24th December 2010, and that the Sale deeds whereunder Harpreet Kaur purchased the suit property from the earlier owners were also (according to the respondent) null and void, the respondent moved an application under Order VI Rule 17 of the CPC, seeking to amend the plaint and to introduce, by such amendment, reliefs of



possession and declaration that the Sale Deeds dated 14th January 2010, 12th October 2011 and 22nd October 2011, whereunder the petitioner purchased the suit property, were null and void, along with consequent relief of mandatory injunction.

15. The application was contested by the petitioners with all due vigour. The petitioners submitted that the application was seeking to introduce a claim which, by then, had become time barred, as the respondent had acquired knowledge of the purchase, by the petitioners, of the suit property from Harpreet Kaur on 21st October 2013. A time barred claim, submitted the petitioners, could not be introduced by way of an amendment under Order VI Rule 17 of the CPC. Additionally, the petitioners sought to contend that, by the amendment, the respondent was changing the very nature of the suit instituted by him, which, too, was not permissible under Order VI Rule 17 of the CPC.

16. In this context, Mr. Bansal also cites, before me, Article 58 of the Limitation Act, 1963, read with Section 5 thereof, whereunder the limitation provided for a right to sue for declaration is three years from the date when the right to sue first accrues.

17. The said plea, however, does not find place either in the reply filed by the petitioners to the application under Order VI Rule 17 of the CPC of the respondent, nor does the impugned order indicate that any such plea was raised before the Ld. ASCJ during arguments. Article 227 of the Constitution of India being in the nature of



superintending jurisdiction, in which the duty of the Court is essentially supervisory in nature, an argument which does not find place either in the pleadings or in the order passed by the Court below cannot constitute a basis for interference under Article 227 of the Constitution of India.

18. Having said so, the argument essentially seeks to contend that the application for amendment could not have been allowed as the relief being sought to be introduced by the application for amendment was barred by time. In my considered opinion, that cannot be a ground to interfere with the impugned order.

19. The learned ASCJ has accepted the submission of the respondent that knowledge of the purchase, by the petitioners, of the suit property *vide* Sale Deed dated 22nd October 2011, was acquired by the respondent only on service, on the respondent, of summons in DJ 608006/2016, whereby the petitioner sought validation of the said Sale Deed. Further, the learned ASCJ has held, relying on ***South Konkan Distilleries v. Prabhakar Gaganan Naik***¹, that, in an appropriate case, a cause of action which may have become time barred could also be allowed to be introduced by way of amendment, if the amendment were found to be necessary to determine the real nature of controversy between the parties. In this context, the following passage from ***South Konkan Distilleries***¹ has been extracted by the learned ASCJ in para 15 of the impugned order:

¹ AIR 2009 SC 1177



“It is well settled that the court must be extremely liberal in granting the prayer for the amendment, if the court is of the view that if such amendment is not allowed, a party who has prayed for such an amendment shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really sub serve ultimate cause of justice and avoid further litigation.”

20. Thereafter, the learned ASCJ has held that the amendments, to the plaint, which the respondent sought to carry out, were necessary to determine the real issue in controversy between the parties and that disallowing the said amendments would result in irreparable prejudice to the respondent. The contention that the nature of the suit would be changed by the proposed amendments has also been rejected by the learned ASCJ.

21. Aggrieved by the said order, the petitioner is before this Court under Article 227 of the Constitution of India.

22. I have heard Mr. Robin Bansal, learned Counsel for the petitioners at some length.

23. Mr. Bansal has essentially raised three contentions. The first is that in asserting, in his application under Order 6 Rule 17 of the CPC, that the respondent had acquired knowledge of the purchase, by the petitioners, of the suit property from Harpreet Kaur only on 22nd March 2014, when summons in CS DJ 608006/2016 was served on him, the respondent had resorted to misstatement, as knowledge of the



said transaction had, in fact, been acquired by the respondent on 21st October 2013, when the respondent was served with a copy of the petitioner's application under Order I Rule 10 of the CPC filed in CS 11012/2016. The second is that, by the time the amendment was filed, three years had expired from 22nd October 2013 and, therefore, the petitioners had lost their right to seek a declaration that the Sale Deed dated 22nd October 2011 was illegal, by virtue of Article 58 of the Limitation Act, 1963 read with Section 5 thereof. The third, which is interlinked with the second, was that it is impermissible to introduce, by way of amendments, under Order VI Rule 17 of the CPC, a prayer which is barred by time, for which purpose Mr. Bansal has invited my attention to the well-known judgment of the Supreme Court in *Revajetu Builders and Developers v. Narayana Swami*², in which the Supreme Court, while delineating the factors which are to be taken into account while dealing with an amendment application, has held that "as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application".

24. Having considered these three pleas, I am unable to convince myself, within the confines of the jurisdiction vested in this Court by Article 227 of the Constitution of India, that a case for interference with the impugned order is made out.

25. The issue of whether there was any misstatement in the Order VI Rule 17 application filed by the respondent, is a pure question of

² (2009) 10 SCC 84



fact. Even assuming there was any inaccuracy in mentioning the date on which the respondent acquired knowledge of the Sale Deed dated 22nd October 2011, if the amendments sought were necessary to determine the real issue in controversy between the parties, the prayer for amendment could hardly be rejected on that ground.

26. Insofar as the main contention of Mr. Bansal, to the effect that the prayer for amendment ought not to have been allowed as three years had passed since 21st October 2013 when the respondent acquired knowledge of the Sale Deed dated 22nd October 2011, is concerned, suffice it to state that, in its judgment in *South Konkan Distilleries*¹, the Supreme Court has clearly held that the general rule against allowing amendments which introduce a cause of action which by the date of amendment, has been become time barred, has to cede place to the more salutary principle that all amendments, which are necessary for determining the real issue in controversy between the parties, have to be allowed. In this context, apart from *South Konkan Distilleries*¹, on which the learned ASCJ has relied, one may refer to, *B.K. Narayana Pillai v. Parmeswaran Pillai*³, *P.A. Jayalakshmi v. H. Saradha*⁴, *Nitaben Dinesh Patel v. Dinesh Dahyabhai Patel*⁵, *Sajjan Kumar v. Ram Kishan*⁶, *Niyat Ali v. Sonargon Housing Cooperative Society*⁷, which elucidate the same principle.

27. As such, there is no edict carved in stone, proclaiming that

³ (2000) 1 SCC 712

⁴ (2009) 14 SCC 525

⁵ 2021 SCC OnLine SC 902

⁶ (2005) 13 SCC 89

⁷ AIR 2008 SC 225



every amendment which may introduce a cause of action which, by then is barred has necessarily to be rejected. The Court has, in every case, to act *ex debito justitiae*. The most important consideration, to weigh with the Court while dealing with the application under Order VI Rule 17 of the CPC is whether the proposed amendment is necessary for adjudicating on the real nature of the controversy between the parties. In fact, this is the sole consideration which Order VI Rule 17 of the CPC envisages. The provision reads thus:

“17. Amendment of pleadings - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

28. Save and except in a case in which trial had commenced before filing of the application under Order VI Rule 17 of the CPC, the provision mandates that the Court would allow all such amendments “as may be necessary for the purpose of determining the real questions in controversy between the parties”. If, therefore, the amendment sought is found to be necessary for determining the real question in controversy between the parties, statutorily, it has to be allowed. The fact that the amendment may be belated cannot be a ground to disallow the amendment, where the primary ingredient envisaged in Order VI Rule 17 of the CPC is clearly satisfied⁸.

⁸ **Andhra Bank v. ABN Amro Bank N.V. AIR 2007 SC 2511**



29. In the present case, the suit filed by the respondent was for a restraint against the defendants in the suit from dispossessing the respondent or interfering with his possession in the suit property. The claim set up by the petitioner, in her application under Order I Rule 10 of the CPC, was that she was in possession of the suit property since 22nd October 2011. She set up her claim on the ground that she had purchased the suit property from Harpreet Kaur under a Sale Deed of the said date. The petitioners, in fact, filed CS DJ 608006/2016 for a declaration that the said Sale Deed was valid. The application of the respondent, seeking impleadment in the said proceedings, was allowed. This single factor, even by itself, indicates that the alleged transaction of purchase of the suit property by the petitioners, from Harpreet Kaur, on 22nd October 2011, was integral to the disputes that the petitioners had sought to raise in the suit filed by them.

30. The petitioners filed the application under Order VI Rule 17 of the CPC, seeking to amend the suit introducing, *inter alia*, a challenge to the Sale Deed and other documents to amend the suit, whereunder the petitioners claimed to have purchased and come into possession of the suit property and as well as seeking ancillary reliefs. It is obvious, in the very nature of the claim that the respondent had to set up in CS 11012/2016, that the Court was required, in order to adjudicate on the claim, to also adjudicate on the issue of title of the suit property as well as the issue of the person who was entitled to remain in lawful possession thereof.

31. The resolution of the controversy raised by the petitioners was,



therefore, integral to a complete adjudication of the issues in controversy in CS 11012/2016. Keeping the said issues out of discussion in CS 11012/2016 would clearly impede a clear and proper resolution of the disputes raised by the respondent in the said plaint and would also result in irreparable prejudice to the respondent and substantial damage to the cause of justice in general.

32. For these reasons, it is clear that the decision, of the learned ASCJ, that the amendments proposed by the respondent were necessary to decide the issue in controversy between the parties, does not suffer from any infirmity whatsoever. In that view of the matter, the learned ASCJ cannot be faulted in treating the present case as one of those cases in which, even if the cause of action that the respondent sought to introduce by amendment may have become barred by time, the amendment was, nonetheless, required to be allowed.

33. This Court, exercising jurisdiction under Article 227 of the Constitution of India, works within a narrow compass. The confines of the jurisdiction of this Court under Article 227 of the Constitution of India stands clearly delineated by the following passages, contained in authoritative pronouncements of the Supreme Court in *Estralla Rubber v. Dass Estate (P) Ltd*⁹, *Garment Craft v. Prakash Chand Goel*¹⁰ and *Puri Investments v. Young Friends & Co.*¹¹

Estralla Rubber⁹

⁹ (2001) 8 SCC 97

¹⁰ 2022 SCC OnLine SC 29

¹¹ 2022 SCC OnLine SC 283



“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*¹² 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*¹³. This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte*¹⁴ 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 Craft¹⁰

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel v. Garment Craft*¹⁵] 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*¹⁶]

¹² AIR 1972 SC 1598

¹³ AIR 1954 SC 215

¹⁴ AIR 1975 SC 1297

¹⁵ 2019 SCC OnLine Del 11943

¹⁶ (2010) 1 SCC 217



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***⁹ 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 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 Investments¹¹:***

“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)

34. Within the narrow confines of the jurisdiction vested in this Court by Article 227 of the Constitution of India, I am unable to convince myself that any case for interference with the impugned order can be said to exist.

35. For the aforesaid reasons, this petition is dismissed *in limine*. Miscellaneous applications also stand disposed of.

JULY 11, 2022
r.bararia

C.HARI SHANKAR, J