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

+ CM(M) 761/2022 & CM APPL.33802/2022, CM APPL. 33803/2022

RAJESH KUMAR YADAV & ANR. Petitioners
Through: Mr. Swastik Kumar, Mr. Atul Singh, Mr. Himanshu Dagar and Mr. Rewant Chandra, Advs.

versus

GANESH SINGH YADAV Respondent
Through: None

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

J U D G M E N T (O R A L)
04.08.2022

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1. This petition under Article 227 assails order dated 8th September, 2021, passed by the learned Additional Senior Civil Judge (the learned ASCJ) in CS SCJ 337/17 (*Ganesh Singh Yadav v. Rajesh Kumar Yadav & Ors.*). The impugned order rejects an application by the petitioner, as the defendant before the learned ASCJ, under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC), seeking to amend the written statement filed by him in response to the suit instituted by the respondents.

2. CS SCJ 337/17, instituted by the respondent against the petitioners alleged that the petitioners were in unauthorised and illegal occupation of the property of the respondent at D-84, Ground Floor, D-Block, Madhu Vihar, New Delhi-110059. The petitioners are the



son and daughter-in-law of the respondent. The plaint alleged that, owing to acrimonious relations which developed between the respondent and the petitioners, the respondent had disowned the petitioners and requested the petitioners to vacate the suit property. The respondent also claimed to have filed a complaint on 30th November, 2016 at PS Dabari, New Delhi against the petitioners. Legal notices to the petitioners, by the respondent, calling on the petitioners to vacate the suit property, having met with no response, the respondent instituted the aforesaid CS SCJ 337/17 against the petitioners, seeking a decree of mandatory injunction, directing the petitioners to vacate the suit property and hand over vacant and peaceful possession of the suit property to the respondent.

3. The petitioners filed their written statement in response to the plaint of the respondent. It was sought to be contended, in the written statement, that the suit property was purchased by the respondent out of proceeds of sale of ancestral properties which fact, according to the petitioners, the plaint concealed. Preliminary objections to the maintainability of a suit merely seeking mandatory injunction without any relief of declaration, as well as absence of any cause of action in favour of the respondent and against the petitioners, were also raised. The written statement denied the assertion of the respondent that he was the absolute owner of the suit property. The petitioners claimed that they had commenced residing in part of the suit property with the consent of the respondent and as per his wish, with effect from March, 2016. The petitioners also claimed to have invested money in renovation of the suit property and to be paying the electricity and



water charges with respect to the suit property to the respondent. Objecting to the attempt of the respondent to evict the petitioners from the suit property, the written statement prayed that the suit be dismissed.

4. The petitioners also filed a counter claim, under Order VIII Rule 6A of the CPC in response to the suit instituted by the respondent. In the counter claim, the petitioners claimed independent right to hold, use and enjoy the portion of the suit property which was in their possession, as Class I legal heirs of the respondent. As such, by the counter claim, the petitioners asserted their right to the portion of the suit property of which they were in possession.

5. The counter claim, therefore, sought a declaration that Respondent 1 was the sole, absolute and exclusive owner of that portion of the suit property which was in the possession of the petitioners as well as a permanent injunction, restraining the respondent from interfering with the peaceful possession and enjoyment, by the petitioners, of the said portion of the suit property.

6. Consequent to completion of pleadings in the counter claim, the petitioners withdrew the counter claim on 4th May, 2019.

7. Thereafter, the petitioners filed an application under Order VI Rule 17 of the CPC, seeking to amend the written statement tendered by them. The amendments that the application sought to make, to the written statement, were set out in para 3 thereof, which reads thus:



“3. That the Defendant are seeking the following amendments to the written statement:

A. That, the para 6 of the preliminary objection that states 'that the Plaintiff has concealed the true and material facts from this Hon'ble Court and has not come with clean hands and is guilty of suppressio-veri and therefore the suit is liable to be dismissed with special costs' be read as follows:

i. That the grandfather of the Defendant no 1, being the father of the Plaintiff, owned various ancestral properties and agricultural land at Village Kotisa, District Ghazipur (U.P.), during his lifetime.

ii. That after the death of the said grandfather, Sh. Mahadev Yadav, the Plaintiff sold the aforesaid ancestral properties belonging to him, and out of the proceeds thereof, purchased the following properties:-

a. House No. D-84, Madhu Vihar, Uttam Nagar, New Delhi-110059, admeasuring 250 Sq. yards.

b. House No. D-78, Madhu Vihar, Uttam agar, New Delhi-110059, admeasuring 100 Sq. yards.

c. Shop No. 1, (Gola Dairy), Near Plot No. 13, 'E' Block, Qutub Vihar, Phase-1, New Delhi, admeasuring 100 Sq. yards.

d. House No. C-1/81B, Madhu Vihar, Uttam Nagar, New Delhi, admeasuring 50 Sq. yards.

e. House No. D-15, Gali No. 10, Bharat Vihar, Uttam Nagar, New Delhi, admeasuring 50 Sq. yards.

f. Plot at Secundrabad, Telangana, admeasuring 200 Sq. yards.



iii. That after the death of the wife of the Plaintiff,. The mother of the Defendants, the Plaintiff married again, somewhere in the year 1971.

iv. That the Defendants got married in the year 1994, while the family was residing at House No. D-84, Madhu Vihar, Uttam New Delhi. That, the defendant & his wife had shifted in to the eastern side of the property shown specifically in colour red in the site plan (hereinafter referred to as the 'suit property').

v. That the Defendant no 1 was working in a private company, and was required to leave station frequently. That while the Defendant no 1 was away regularly, his stepmother, wife of the Plaintiff would regularly pick fights with the Defendant no 2.

That in these circumstances, and out of respect for his father, the Plaintiff, the Defendant no 1 and 2, moved out of the suit property into a rented accommodation.

vi. That in the meanwhile in the year 2005 the parties to the suit reconciled their differences and started living together at House No. C-1/81-B, Madhu Vihar, Uttam Nagar, New Delhi.

That, it is pertinent to mention here that the Plaintiff was keeping unwell, and the Defendants started taking care of him. That in return, the Plaintiff promised to give the Suit property to the Defendants, in any future family settlement, as and when the need arose.

vii. That due to the fact that there were all round disputes in the family, as well as in the extended family of the Plaintiff, including issues with his wife, it was decided to partition off the properties in order to enjoy them peacefully.

That, as per the oral family settlement conceived in the year 2005, and arrived at in between the parties



in the year 2015, the Defendant no 1 was to become the owner, and exclusively enjoy the suit property to the exclusion of everyone else, including the Plaintiff, where as the Plaintiff would exclusively own property bearing No. D-78, Madhu Vihar, Uttam Nagar, New Delhi

That, the Plaintiff reached an arrangement of some sort with the rest of the family members, in respect of the other properties.

viii. That, in view thereof the Defendants has been enjoying the suit property, to the exclusion of the rest of the world, as the owner thereof since the year 2015.

ix. That, on various occasion the Defendants requested the Plaintiff to execute the necessary paper of transfer, while offering to execute the relinquishment deed in respect of the other properties in view of the oral family settlement arrived in between the parties.

That, however, the Plaintiff kept delaying the matter on one pretext or the other, all the while acknowledging the oral family settlement, and the rights of the Defendants arising therefrom. The Defendants too, considering the documents a mere formality, kept waiting for the Plaintiff to execute the said documents.

x. That it is pertinent to mention that while both parties continued to live in their respective properties as per the oral family settlement, the Defendants, as the case ordinary would be, spent a lot of money on repair and maintenance of the suit property, to make it into a livable home.

xi. That the Defendants had been living in the suit property since the oral family settlement, as the owner thereof, without any opposition on protest from any other party, including the Plaintiff.



xii. That it is also pertinent to mention that the Defendant no 1 has completely renovated the property out of their own funds. That out of respect & affection for his father the Defendant no 1 got an electricity meter installed in his name. However, the Defendant no 1 has been paying all the necessary dues out of his own income.

That, therefore the parties were living peacefully in their respective portion.

xiii. That the Defendants was completely shocked and dismayed to receive a legal notice dated 02.11.2016, issued by the Plaintiff. That in the said legal notice, the Plaintiff asked the Defendants to vacate the said premises. That the said legal notice was duly replied to by the Defendants. However the Defendants sent only a formal reply to the said legal notice because they believed that it would be better to meet their father i.e. the Plaintiff, in person and sort things out.

In view thereof the Defendants approached their father, however his father did not listen to any reason. Instead the Plaintiff filed a false police complaint against the Defendants.

xiv. That, it is to submit that the Defendant no 1 is the rightful owner of the suit property and is thus entitled to enjoy the same.

xv. That in these facts & circumstances it is to submit that the Defendant no 1 is the true and actual owner of the suit property and hence the present suit be dismissed with heavy cost.

B. That para 9 to be added to the preliminary objections will read as follows:

'9. That the present suit as filed is not maintainable in the present form and is as such liable to be dismissed. The Plaintiff cannot be allowed to seek the relief of possession couched



in the form of mandatory injunction, and thus avoid paying court fees on the same'.

C. That para 1 of the parawise reply be read as under:

'That the contents of para 1 of the plaint are wrong and are therefore denied. It is denied that the Plaintiff is residing at D-84, D-81lock, Madhu Vihar, New Delhi-110059. It is to submit that the Plaintiff is actually residing at D-78, D-81lock, Madhu Vihar, New Delhi-110059. It is also denied that the Plaintiff is the absolute owner of the said property. It is to submit that the facts mentioned in preliminary objections will show that it is the case of the Defendant that as per the family arrangement of the year 2005, the Defendant herein became the owner in respect of the portion in his possession, i.e. Ground Floor of D-84, Madhu Vihar, Uttam Nagar, New Delhi . The fact that the Defendant No. 1 is the son and the Defendant No. 2 is the daughter in law of the Plaintiff is admitted and as such needs no reply'.

D. That para 2 of the parawise reply be read as under:

'2. That the content of paragraph No. 2 of the suit filed by the Plaintiff is wrong, false and vehemently denied. The Plaintiff may please be put to strict proof as to his ascertain.

In the month of December, 2005, the Plaintiff called the Defendant No. 1 and requested him to join him at Delhi house as both the Defendants were residing on rented accommodation. Both the Defendants again rejoined the Plaintiff at House No. C-1/81-B, Madhu Vihar, Uttam Nagar, Delhi. The Plaintiff also assured the Defendant No. 1 that he is to give to them a portion of his immoveable



property at Delhi. Out of the above mentioned properties the Plaintiff, in the month of December, 2015, handed over the physical possession of the H.No. D-84, Madhu Vihar, Uttam Nagar, Delhi, to the Defendant No. 1 after vacating from the then tenants of the said house. The Plaintiff also directed the Defendant No. 1 that after his death the Defendant No. 1 became the sole owner of the entire house and shall take the rent from the tenants of the remaining portion of the said house, but during his lifetime he use the said rental income and the Plaintiff shall not claim the same.

Finally in the month of March, 2016, the Plaintiff personally shifted the Defendant Nos. 1, 2, and their daughter, to the part portion of property in question where the Defendants are presently residing alongwith their children. The Voter ID Card, Adhaar Card Driving License, PAN Card, all have been issued in the name of the defendant at the premises in which he is presently residing alongwith his family. ANNEXURE D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8, D-9 IDENTIFICATIONS OF DEFENDANT NOS.1, 2 AND THEIR CHILDREN. The said portion/property is bounded as under:-

East : Other's Property

West: Remaining Portion of suit property

North : Gali 20 Ft. Approximately

South : Gali 15Ft. Approximately

Also note that the said entire property in question was very old. Also there are four shops on the Northern side of the said property which let out by the Plaintiff and he is getting the rental income from the said shops. The Plaintiff directed the Defendant No. 1 to manage his eastern side portion as per the said oral settlement at his own cost. The Defendant No. 1 spend a total sum of Rs. 4,00,000/- (Rs. Four



Lac) from his hard earned money for the renovation of the said portion given to him by the Plaintiff.

E. That para 4 of the parawise reply be read as under:

'4. That the contents of para 4 of the plaint are wrong and are therefore denied. It is denied that the Defendant have been either disbarred or disowned, as alleged. It is to submit that even otherwise in view of the family settlement, the Defendant No. 1 has become the owner of his respective portion and such alleged acts have no consequence'."

8. The aforesaid application of the petitioners under Order VI Rule 17 of the CPC has been dismissed by the learned ASCJ *vide* the impugned order dated 8th September, 2021. The learned ASCJ has held, *inter alia*, that the application for amendment had been filed after commencement of trial, as the matter was listed before him for cross examination of PW-1 and that, given the embargo statutorily contained in the proviso to Order VI Rule 17 of the CPC, the sole ground urged for inability to advance, earlier, the arguments which were being sought to be advanced by way of the amendments proposed in the application, which was of error and negligence on the part of the Counsel who drafted the written statement, could not be treated as sufficient to justify allowing the amendments.

9. Aggrieved by the said decision, the petitioner has invoked the jurisdiction vested in this Court by Article 227 of the Constitution of India by means of the present petition.



10. I have heard Mr. Swastik Singh, learned Counsel for the petitioner and have perused the material on record.

11. The learned ASCJ is correct in his observation that the only ground urged in the amendment application filed by the petitioners, for not urging, earlier, the pleas which they now sought to urge by way of amendment, was that there was an error on the part of the Counsel who drafted the written statement.

12. Order VI Rule 17 of the CPC reads as under:

“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.”

13. The proviso to Order VI Rule 17 is clear and categorical. It engrafts a statutory proscription to allowing amendments after trial has commenced in the suit 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. In order to escape the rigour of the proviso, therefore, the party seeking to amend the plaint or the written statement would have to establish that (i) due diligence was exercised by it and (ii) *despite exercise of due diligence*, the party could not have raised the matter before commencement of trial. *These are twin*



considerations, which are cumulatively required to be satisfied where amendment of pleadings is sought after trial commences.

14. In the present case, the application seeking amendment does not even satisfy the first condition. A plea of due diligence is antithetical to a plea of error or negligence on the part of the Counsel. They cannot cohabit. One destroys the other. The submission, of the petitioners, in their amendment application, that the pleas being sought to be introduced by amendment were omitted in the written statement owing to negligence of the Counsel amounts to an explicit admission that there was want of due diligence. Once such an admission was made, no occasion arose to examine whether the second ingredient, requires satisfaction to escape the rigor of the proviso to Order VI Rule 17 of the CPC, was or was not pleaded. If there was want of due diligence at the time when the pleadings were originally drafted and filed, *ipso facto*, the proviso to Order VI Rule 17 would kick in, and the amendments would be barred.

15. Mr. Swastik Singh has invited my attention to three judicial authorities. They are the judgment of the Supreme Court in ***Varun Pahwa v. Renu Chaudhary***¹, and the judgment of the High Court of Uttarakhand in ***Raghubar Datt Maulekhi v. State of Uttarakhand***² and of the High Court of Telangana and Andhra Pradesh in ***J. Yadagiri Reddy v. J. Hemalatha***³.

¹ (2019) 15 SCC 628

² MANU/UC/0512/2018

³ MANU/AP/0060/2016



16. The decision of the Supreme Court in *Varun Pahwa*¹ is clearly distinguishable. The amendment that was sought to be incorporated in that case was in the title of the suit. What was sought to be contended was that, instead of mentioning the name of the company as the plaintiff, the name of one of its directors had been mentioned. This, it was sought to be submitted, was owing to negligence of Counsel.

17. The Supreme Court held that such an inadvertent error could not be refused to be corrected, when it was attributable to negligence of Counsel. For this purpose, the Supreme Court relied on the well established principle that rules of procedure are merely hand maiden to dispensation of substantial justice.

18. The present case cannot be analgised to *Varun Pahwa*¹. The amendments that the petitioners sought to incorporate, in the written statement, by way of amendments were considerable and amounted to raising substantial pleas of fact and law much beyond the pleas which was contained in the written statement. The amendment could not be compared, in any manner of speaking, with an amendment in the cause title, as was the situation which obtained before the Supreme Court in *Varun Pahwa*¹. Substantive amendments, such as those which the petitioners sought to incorporate in the written statement, when sought to be made after trial commences, had necessarily to pass the test of the proviso to Order VI Rule 17. They cannot be allowed at the drop of a hat, merely by accepting a plea of negligence of Counsel.

19. In *Raghubar Dutt Maulekhi*², though the bar of the proviso to



Order VI Rule 17 of the CPC was pressed into service by the respondents, the judgment of the High Court does not indicate any clear finding on the said plea. The High Court has proceeded on the general principle that amendment of pleadings ought, in normal course, to be allowed and a lenient view adopted in that regard. As such, this judgment in my view cannot be pressed into service as an expression of judicial opinion on the applicability of the proviso to Order VI Rule 17 of the CPC.

20. In *J. Yadagiri Reddy*³, the amendment that was sought was only in the relief claimed in the suit. No amendment to the substantive paragraphs in the suit, whether of facts or of law was sought. Para 3 of the decision in *J. Yadagiri Reddy*³ reads thus:

“3. The case of the plaintiff is that Jambula Kasi Reddy and Jambula Venkat Reddy are joint owners of land of an extent of Ac.51.16 gts situated in several survey numbers at Dasarlapally Village, Kandukur Mandal, Ranga Reddy District. They have partitioned the said property in equal measure. Thus, each got Ac.25.28 gts. Sri. Jambula Kasi Reddy was having 4 sons. Sri. J. Anjan Reddy, the father of the plaintiff, J. Yadagiri Reddy, the defendant No. 1, J. Surender Reddy, the defendant No. 2 and J. Ganesh Reddy, the defendant No. 3 in the suit. After the death of Jambula Kasi Reddy, all his 4 sons have succeeded to the above lands. The father of the plaintiff and the defendant Nos. 1 to 3 have executed a registered gift deed vide document No. 787 of 1992 dated 04.05.1992 in favour of the 5th defendant, their sister, in respect of land of an extent of Ac.1.34 gts in Sy. No. 30 part, to an extent of Ac.1.20 gts in Sy. No. 31 part, to an extent of Ac.1.26 gts in Sy. No. 59 part. Thus, making a total extent of Ac.5.00 gts out of the total extent of Ac.25.28 gts, which they have succeeded to upon the death of their father, Jambula Kasi Reddy. It is the case of the plaintiff that the 2 sale deeds in question have been executed on 12.12.2003 with a view to defeat the rights and interests of the plaintiff



petitioner. In those set of circumstances, the plaintiff instituted suit O.S. No. 1383 of 2005 seeking partition of the joint family properties and for allotment of one share to the plaintiff and for delivery of such a share by metes and bounds to her. She also sought for cancellation of the 2 sale deeds executed on 12.12.2003. Defendant Nos. 4 and 6, in whose favour they stand, have been impleaded for that very reason to the suit. But however, she has realized that the cancellation of sale deeds is not the appropriate relief that can be sought for by the plaintiff as she is not one of the parties to the aforementioned 2 sale deeds and on the other hand, she ought to have claimed the relief of declaration that such sale deeds are null and void and not binding on the plaintiff. Hence, the I.A. No. 1295 of 2014 has been filed, seeking declaration, by way of amendment.”

(Emphasis supplied)

21. It is clear from a reading of the afore-extracted passage of **J. Yadagiri Reddy**³ that the amendment that was sought was to introduce a prayer of declaration, which was not contained in the original suit. The judgment does not indicate that, to substantiate this prayer, any substantive amendments, in the body of the suit, were proposed.

22. The justification for the decision of the High Court in holding that the prayer for amendment ought to have been allowed is to be found in para 12 of the report which reads thus:

“12. The same principles, we hold, should apply in the present case. The amendments do not really introduce a new case, and the application filed by the appellant himself showed that he was not taken by surprise; nor did he have to meet a new claim set up for the first time after the expiry of the period of limitation.”

23. Again, to compare the decision in **J. Yadagiri Reddy**³ with the present case would be to compare chalk with cheese. I have already



set out, *in extenso*, the amendments that the application of the petitioner under Order VI Rule 17 sought to incorporate in the written statement filed by the petitioner. They are substantial amendments both of facts and law. They cannot in any manner be compared with technical amendments in the cause title or the introduction of a prayer for declaration which was inadvertently omitted in the suit.

24. There is no absolute embargo on introducing, by way of amendment, pleas of fact and law such as those which the petitioner desired to introduce into the written statement. No such absolute bar exists even after trial has commenced. The only requirement, where the amendment is sought after commencement of trial is that the applicant seeking amendment should satisfy the Court that, despite due diligence, he could not have raised the matter before commencement of trial. If the applicant seeking amendment establishes that these twin conditions stand satisfied, he is certainly entitled to amend the pleadings as sought.

25. The learned ASCJ however, holds, in the present case, that the only plea advanced to justify not raising the pleas that were being sought to be introduced by amendment in the present case was error on the part of the Counsel who drafted the written statement. As I have already observed hereinabove, the very admission of error constitutes admission of want of due diligence. That by itself is sufficient to justify rejection of the prayer for amendment, as trial had already commenced.



26. Suffice it, therefore, to state that the learned ADJ cannot be said to have erred, on facts or in law, in holding that no sufficient justification, as envisaged by the proviso to Order VI Rule 17 of the CPC, had been advanced by the petitioner for his plea to amend the suit.

27. The present petition has been preferred under Article 227 of the Constitution of India. Article 227 confers, on the High Court, a very limited jurisdiction. This Court cannot, exercising its jurisdiction under Article 227 of the Constitution of India, substitute its subjective satisfaction for the subjective satisfaction of the court below. Where the Court below has erred in discharging its function in a manner as would call for supervisory correction, the High Court can interfere under Article 227. Else, it has to hold its hands.

28. Regarding the restricted scope of the jurisdiction that Article 227 of the Constitution of India vests in the High Court, one may refer to the decisions in *Estralla Rubber v. Dass Estate (P) Ltd.*⁴, *Garment Craft v. Prakash Chand Goel*⁵, *Puri Investments v. Young Friends and Co.*⁶, *Sadhana Lodh v. National Insurance Co.*⁷ and *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.*⁸ The relevant passages from these judgments may also, therefore, be reproduced thus:

⁴ (2001) 8 SCC 97

⁵ 2022 SCC OnLine SC 29

⁶ 2022 SCC Online SC 283

⁷ (2003) 3 SCC 524

⁸ 2022 SCC OnLine SC 620

***Estralla Rubber⁶:***

“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*⁹ 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*¹⁰. This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte*¹¹ 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.”

Garment Craft⁷

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel v. Garment Craft*¹²] 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

⁹ AIR 1972 SC 1598

¹⁰ AIR 1954 SC 215

¹¹ AIR 1975 SC 1297

¹² 2019 SCC OnLine Del 11943



or tribunal. [*Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar*¹³] 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*⁶ 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

¹³ (2010) 1 SCC 217



court or tribunal has come to.”

Puri Investments⁸

“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.

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.”

Sadhana Lodh⁹

“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.”

Ibrat Faizan¹⁰

“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***⁶, 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***⁷). 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.”

29. Within the narrow confines of the jurisdiction vested in this Court by Article 227 of the Constitution of India, it is clear that no such error can be said to have been committed by the learned ASCJ, while passing the impugned order, as calls for supervisory correction.

30. Resultantly, this petition is dismissed in *limine*.

C.HARI SHANKAR, J

AUGUST 4, 2022/kr