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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 806/2022 & CM APPL. 35597/2022, CM APPL. 35598/2022, CM APPL. 35599/2022

AARCITY BUILDERS PVT LTD Petitioner
Through: Mr. Shubhanshu Gupta, Ms. Chaitanya and Mr. Kartik Pant, Advs.

versus

SUBHASH SHARMA & ANR. Respondents
Through:

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

JUDGMENT (ORAL)
17.08.2022

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1. The petitioner, which is engaged in the business of development and construction of multistoreyed residential and commercial buildings, launched a project under the name “Aarcity Regency Park” in Sectors 9 and 11, Hisar, Haryana in 2012. Anandita Sharma and Anuradha Sharma, the daughters-in-law of Respondent 1 booked a 3 BHK flat admeasuring 1625 sq. ft. in the aforesaid Aarcity Regency Park project of the petitioner in 2012. They were allotted Flat No. D-0804, Tower D at the 8th Floor of the project construction. The basic costs of the flat was ₹ 48,10,625/-. A Flat Buyer Agreement was executed between the petitioner and the daughters-in-law of Respondent 1 on 5th November 2012.

2. Subsequently, with the permission of the petitioner, the



aforesaid flat was transferred by the daughters-in-law of Respondent 1 to Respondent 1 on 22nd March 2013. Respondent 1 opted for payment under the “Construction Linked Plan”. The daughters-in-law of Respondent 1 had, prior to doing so, deposited a total amount of ₹ 21 lakhs towards the price chargeable in respect of the aforesaid flat.

3. Alleging that the construction on the project had come to a halt in February 2014, resulting in the petitioner not being able to deliver possession of the flat to Respondent 1 till November 2015 by which date possession was required to be delivered as per the Flat Buyer Agreement, the petitioner approached the learned State Consumer Disputes Redressal Commission, Haryana (“the learned SCDRC”), by way of Consumer Complaint 378/2017.

4. By order dated 18th February 2020, the learned SCDRC held deficiency in service on the part of the petitioner to have been proved and, therefore, directed the petitioner to make payment to Respondent 1 in terms of para 9 of the order, which read thus:

“9. Hence with the above observation and discussion there are sufficient grounds to accept the complaint and while accepting the complaint, the O.Ps. are directed to refund of the amount of Rs.21,00,000/- (Twenty One Lacs Only) alongwith interest @ 9% per annum from the date of respective deposits till realization. In case, there is a breach in making payment within the stipulated period of 45 days, in that eventuality, the complainant would further be entitled to get the interest @ 12% per annum, for the defaulting period. The complainant is also entitled of Rs.1,00,000/- (One Lac Only) for compensation of mental and physical agony. In addition, the complainant is also entitled of Rs.21,000/- (Twenty One Thousand Only) as litigation charges. It is also made clear that for noncompliance, the provisions enshrined under section 25 and 27 of the C.P.Act would also be



attractable.”

5. Aggrieved by the aforesaid order dated 18th February 2020 of the learned SCDRC, the petitioner preferred First Appeal No. 536/2021 (*Aarcity Builders Private Limited v. Subhash Sharma*) before the learned National Consumer Dispute Redressal Commission (“the learned NCDRC”).

6. The said appeal stands dismissed by the learned NCDRC *vide* the impugned order dated 23rd September 2021. Paras 8 to 11 of the impugned order dated 23rd September 2021 of the learned NCDRC read thus:

“8. I have considered the arguments of the appellant and examined the record. A perusal of the order sheet shows that the case was adjourned on the request of the appellant on 10.01.2018, 07.03.2018, 24.04.2018, 26.07.2018, 24.09.2018, 12.11.2018, but written reply was not filed. The cost was imposed on 18.12.2018, when again adjournment was sought. Rs. 30000/- was not such a big amount for a builder of multi-storied building, so as to make it impossible for him to pay. Absolutely no reason has been given for not filing written statement on earlier dates, which shows that the delaying tactic and harassing attitude of the builder. I do not find any illegality of the order of State Commission in this respect

9. According to the complainant, the construction on the site was stopped since 2013. Last instalment was paid him on 07.02.2014, receipt of which has been filed. If the builder had stopped the construction work on the site, then there was no justification for him to issue demand notice as the payment was based on construction.

10. It has been stated that the construction was being done with full sprint. But till today, the builder could not produce the Occupation Certificate, relating to Tower, in which the flat of the complainant was allotted in July, 2012, although under FBA, the possession had to be delivered till November,



2015. The builder's defence for delaying construction is not liable to be accepted. The argument that the complainant was a subsequent transferee as such he cannot insist for delivery of possession on the schedule fixed in FBA, is not liable to be accepted. Supreme Court in *Laureate Buildwell Pvt. Ltd. vs. Charanje*,¹ has held that a subsequent transferee stepped in the shoes of the transferor with same right and liability. In the present case, the transferors were daughter-in-laws of the complainant and the transfer was made with prior permission of the builder.

11. Supreme Court in *Bangalore Development Authority Vs. Syndicate Bank*², *Fortune Infrastructure Vs. Trevo D'Lima*³, and *Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra*,⁴ has held that an allottee cannot be made to wait for indefinite period for the possession. The builder could not obtain Occupation Certificate till today although Rs.21 lakhs was paid till February, 2014, and promised period of possession was 3 years 3 months. In the circumstance, the order of State Commission does not suffer from any illegality.”

7. The petitioner has chosen to challenge the impugned order dated 23rd September 2021 of the learned NCDRC only to the limited extent that it confirms the order of the learned SCDRC to the extent it directs 12% penal interest to be paid by the petitioner

8. Once the petitioner has not chosen to challenge any of the other findings returned by the learned NCDRC or the learned SCDRC, it is clear that the direction for payment of interest @12% per annum, which is purely discretionary in nature, cannot warrant interference by this Court in exercise of jurisdiction vested in it by Article 227 of the Constitution of India. In this context, one may refer to the following

¹ 2021 SCC OnLine SC 479

² (2007) 6 SCC 711

³ (2018) 5 SCC 442

⁴ 2019 SCC OnLine SC 438



passages from the judgment of the Supreme Court in *Ibrat Faizan v. Omaxe Buildhome Private Limited*⁵, which dealt with the scope of the proceedings under Article 227 of the Constitution of India, by way of challenge to orders passed by the learned NCDRC in the First Appeals:

“27. In view of the above, in the present case, the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the order passed by the National Commission which has been passed in an appeal under Section 58(1)(a) (iii) of the 2019 Act. We are in complete agreement with the view taken by the High Court. However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

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

⁵ 2022 SCC OnLine SC 620

⁶ (2001) 8 SCC 97

⁷ 2022 SCC Online SC 29



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.

28. In view of the above discussion and for the reasons stated above and subject to the observations made hereinabove, it cannot be said that a writ petition under Article 227 of the Constitution of India before the concerned High Court against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) of the 2019 Act was not maintainable. We are in complete agreement with the view taken by the High Court. As the matter on merits is yet to be considered by the High Court, we do not express anything on merits in favour of either of the parties. However, it is observed that while considering the question of interim relief/stay, the High Court will bear in mind the observations made hereinabove.”

9. The Supreme Court has, in the afore-extracted passages, referred to its earlier decisions in ***Estralla Rubber***⁶ and ***Garment Craft***⁷. The relevant passages from the said decisions may be reproduced, thus:

“Estralla Rubber⁶

“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

⁸ AIR 1972 SC 1598



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.

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**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 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**¹²] 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

⁹ AIR 1954 SC 215

¹⁰ AIR 1975 SC 1297

¹¹ 2019 SCC OnLine Del 11943

¹² (2010) 1 SCC 217



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 court or tribunal has come to.”

10. Additionally, one may also refer to the following passages from the judgment of the Supreme Court in *Puri Investments v. Young Friends and Co*¹³:



“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.”

11. Furthermore, one may also refer to the following passage from the judgment of the Supreme Court in *Sadhana Lodh v. National Insurance Co. Ltd*¹⁴:

“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.”

12. As such, it is clear that the Court exercising jurisdiction under Article 227 of the Constitution of India is not even expected to enter into the correctness of the order under challenge before it. All that the

¹⁴ (2003) 3 SSC 524



Court is required to examine whether the hierarchically lower judicial authority, which has passed the order, has erred in such a manner as would call for superintending correction by the Court. Short thereof, no orders would be justified under Article 227 of the Constitution of India, even if the order passed by the Court below is otherwise erroneous.

13. Still less would the scope of interference be, where the order is discretionary in nature. In this context, the Supreme Court has held thus, on the aspect of interference in appeal with discretionary orders passed by hierarchically lower judicial authorities, in *Wander Ltd. v. Antox India (P) Ltd*¹⁵:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in

¹⁵ 1990 Supp SCC 727



Printers (Mysore) Private Ltd. v. Pothan Joseph¹⁶ said:

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.”

The appellate judgment does not seem to defer to this principle.”

14. The scope of jurisdiction under Article 227 of the Constitution of India is classically less than the scope of jurisdiction in appeal. Where the scope of jurisdiction in appeal, over discretionary orders passed by lower judicial authorities is itself thus circumscribed, the Article 227 Court is required to be doubly cautious in dealing with discretionary orders passed by the learned Court below. It is only where the exercise of discretion by the learned Court below is found to be palpably vexatious or perverse that the Court should step in and interfere.

15. It is not the petitioner’s case that the learned SCDRC did not possess the jurisdiction to award penal interest @ 12% per annum. In fact, a reading of para 9 of the order passed by the learned SCDRC reveals that the learned SCDRC has directed the petitioner to refund ` 21 lacs to Respondent 1 along with interest @ 9% per annum from the respective deposits till realization. It is only in the event of breach in making payment within the stipulated period of 45 days that the

¹⁶ (1960) 3 SCR 713



learned SCDRC has directed payment of further payment @ 12% per annum for the defaulting period. There is, thus, no upfront direction, to the petitioner to pay interest @ 12% per annum.

16. Interest @ 12% per annum, as directed by the learned SCDRC and upheld by the learned NCDRC, is in the nature of default interest, for the imposition of which the learned SCDRC and the learned NCDRC have ample discretion. Default interest, by its very nature, is intended to be punitive. Any reduction in the rate of default interest would, therefore, be counterproductive and would send an entirely wrong signal.

17. In view thereof, no occasion arises for this Court to interfere with the decision of the learned SCDRC to impose penal interest @ 12% per annum, in para 9 of its order dated 18th February 2020, as affirmed by the learned NCDRC by the impugned order dated 23rd September 2021.

18. The petition is, therefore, bereft of merit and is accordingly dismissed *in limine*.

C. HARI SHANKAR, J

AUGUST 17, 2022
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