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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 896/2022 & CM APPL. 38332/2022, CM APPL. 38333/2022

RAHUL BABBAR@ RANVEER SINGH BABBAR

..... Petitioner

Through: Mr. Rakesh Mohan and Mr. Sundaram Ojha, Advs.

versus

SIDDHARTH SAPRA

..... Respondent

Through: None

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

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

01.09.2022

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1. This petition, under Article 227 of the Constitution of India, impugns order dated 21st March 2022, passed by learned ADJ in CS DJ 1058/2021 (*Siddharth Sapra v. Rahul Babbar*). By the impugned order, the learned ADJ has partly allowed the application filed by the respondent (the plaintiff in the suit) under Section 151 of the Code of Civil Procedure, 1908 (CPC) and has directed the petitioner to furnish a security of ₹ 4.5 lakhs by way of an FDR within 30 days, in the name of the learned Trial Court.

2. CS DJ 1508/2021 was filed by the respondent against the petitioner as a summary suit under Order XXXVII of the CPC for recovery of an amount of ₹ 9 lakhs.



3. Consequent to filing of leave to defend by the petitioner (the defendant in the suit), leave to defend was granted and the suit was converted into an ordinary suit.

4. The suit came to be decreed *vide ex-parte* judgment/decreed dated 10th March 2015. The petitioner moved an application under Order IX Rule 13 of the CPC for setting aside the *ex-parte* judgment/decreed. The said application was allowed by the learned ADJ, subject to costs of ₹ 50,000/-.

5. Assailing this order, the respondent moved this Court by way of CRP 161/2022, which came to be disposed of, *vide* judgment dated 11th February 2022, by a coordinate Single Bench of this Court. This Court held that it was not inclined to interfere with the order dated 24th December 2021, passed by the learned ADJ, but reserved liberty with the respondent to move an application before the learned ADJ seeking some form of security or deposit from the petitioner.

6. Pursuant to the liberty thus granted by this Court on 11th February 2022, the respondent filed an application before the learned ADJ under Section 151 of the CPC, seeking a direction, to the petitioner, to furnish security of ₹ 9 lakhs pending disposal of the suit.

7. The said application stands partly allowed by the impugned order dated 21st March 2022 of the learned ADJ, which, as already noted at the commencement of this judgment, directs furnishing of an FDR, by the petitioner, of an amount of ₹ 4.5 lakhs, to be deposited



with the learned Trial Court.

8. Mr. Rakesh Mohan, learned Counsel for the petitioner, submits that the learned ADJ ought not to have placed such an onerous condition on the petitioner, especially as the petitioner is in impecunious circumstances.

9. The present petition has been preferred under Article 227 of the Constitution of India. The parameters and peripheries of Article 227 of the Constitution of India stand well defined by the judgments of the Supreme Court in *Estralla Rubber v. Dass Estate (P) Ltd.*¹, *Garment Craft v. Prakash Chand Goel*²; *Puri Investments v. Young Friends & Co.*³ and *Sadhana Lodh v. National Insurance Co. Ltd.*⁴, the relevant passages whereof read thus:

***Estralla Rubber*¹:**

“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*⁵ 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*⁶. This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte*⁷ 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

¹ (2001) 8 SCC 97

² 2022 SCC OnLine SC 29

³ 2022 SCC OnLine SC 283

⁴ (2003) 3 SSC 524

⁵ AIR 1972 SC 1598

⁶ AIR 1954 SC 215

⁷ AIR 1975 SC 1297



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 Craft*²

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel v. Garment Craft*⁸] 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 reappraise, 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*⁹] 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*¹ has observed : (SCC pp. 101-102, para 6)

“6. The scope and ambit of exercise of power and

⁸ 2019 SCC OnLine Del 11943

⁹ (2010) 1 SCC 217



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.”

Puri Investments³

“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.



Sadhna Lodh⁴

“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.”

10. Where the order under challenge is discretionary, the scope of interference under Article 227 of the Constitution of India is even lesser.

11. A higher degree of circumspection is required to be observed when examining discretionary orders passed by an hierarchically lower judicial authorities is, even where the Court is exercising appellate jurisdiction, is, as has been held by the following passages from ***Wander Ltd. v. Antox India P. Ltd.***¹⁰:

“13. On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox’s alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.

¹⁰ 1990 SCC 727



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 that 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”

12. Where the Court is exercising jurisdiction under Article 227 of the Constitution of India, the scope of interference would be proportionally lesser.

13. It is only, therefore, where the exercise of discretion is palpably perverse or results in serious miscarriage of justice that the Court would step in under Article 227 of the Constitution of India. Else, the Court is expected not to substitute its subjective satisfaction for the subjective satisfaction of the Court, the legitimacy of which it is examining.

14. In the present case, the reasoning of the learned ADJ, in directing furnishing of an FDR, by the petitioner, for 50% of the amount in dispute in the suit, is to be found in para 6 of the impugned order, which reads thus:

“6. From the nature of the defence taken by the defendant, it is clear that the defendant had admitted the factum of giving



bank guarantor by the plaintiff for securing the overdraft facility. Story brought on record by the defendant does not prima facie appear to be convincing though the matter requires evidence and trial to arrive at just decision of the case. However, keeping in mind the prima facie case in favour of the plaintiff and the previous conduct of the defendant which is apparent from his *ex-parte* status, this court is of the opinion that there are chances that the defendant may not pay or obstruct payment of decretal amount to the plaintiff, if the suit of the plaintiff is decreed. Accordingly, to secure the right of the plaintiff, the present application is allowed and the defendant is directed to deposit an FDR of 50o/o of the suit amount which is Rs.4,50,000 within 30 days in the name of this court i.e. 'Additional District Judge-03, South East District' with automatic renewal clause. The proceeds of the said FDR shall be subject to final decision of this court."

15. A reading of the aforesaid passage reveals that the learned ADJ has kept in mind the three considerations of existence of a *prima facie* case, balance of convenience and irreparable loss, which are required to guide any consideration of whether interlocutory relief is required to be granted.

16. The learned ADJ has noted the fact that the petitioner had admitted the fact that the respondent had acted as guarantor for the overdraft facility that the petitioner sought to obtain from the bank. Owing to the default on the part of the petitioner in liquidating the dues of the bank, the respondent, as guarantor, had to liquidate the said dues.

17. The suit of the respondent against the petitioner was essentially for this amount, along with interest.



18. The claim of the respondent being of ₹ 9 lakhs, the direction of the learned ADJ, to the petitioner, to deposit 50% of the said amount by way of an FDR, cannot be said to suffer from any such infirmity as would justify interference by this Court under Article 227 of the Constitution of India.

19. This petition is accordingly dismissed in *limine*, with no order as to costs.

20. At this juncture, learned Counsel for the petitioner seeks extension of time to make the aforesaid deposit.

21. The petitioner is granted four weeks further time to comply with the directions for deposit passed by the learned ADJ on 21st March 2022.

SEPTEMBER 1, 2022

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C. HARI SHANKAR, J.