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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 925/2022 & CM APPL. 39441/2022, CM APPL. 39442/2022

MOHAN SAKPAL AND ANR Petitioners
Through: Mr. Arvind Nayar, Sr. Adv.
with Mr. Neeraj Kumar Verma, Mr. Nikhil
Jain, Ms. Simran Jeet ad Mr. Akshay Joshi,
Advts.

versus

ABHAY GOYAL AND ANR Respondents
Through:

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

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

% **07.09.2022**

1. This petition, under Article 227 of the Constitution of India, is directed against an order dated 21st July 2022, passed by the learned National Consumer Disputes Redressal Commission “the learned NCDRC”) in Execution Application 39/2018 in Complaint Case 294/2015 (*Abhay Goyal v. M/s A A Estate Pvt. Ltd.*).

2. The impugned order reads as under:

“

IA 6586 of 2022 (directions)

Issue notice for 08.09.2022. All the Directors of the Judgment Debtor Company shall be present in person on the next date of hearing in view of the fact that despite the final order and despite taking adjournments for



making the payment, no payment has so far been made.

Meanwhile, report of the Collector shall also be called for.

Copy of the application supplied to the learned Counsel for the Judgment Debtor.”

3. Mr. Arvind Nayar, learned Senior Counsel for the petitioners, submits that there was no warrant or justification for the learned NCDRC to direct the petitioners, who are the directors of M/s A A Estate Pvt. Ltd, (the respondents before the learned NCDRC) to appear in person.

4. He submits that attachment proceedings, toward execution of order dated 5th January 2018 passed by the learned NCDRC, are in process. At this point, he submits, therefore, the learned NCDRC has exceeded its jurisdiction in summoning the petitioners without due justification therefor. Mr. Nayar has placed reliance, to support his submissions, on two recent orders passed by a Coordinate Bench of this Court in *Sylvanus Properties Ltd. v. Paresh Pratap Rai Mehta*¹ and *Sandeep Jain v. Akash Gupta*² as well as an earlier judgment, by A.K. Sikri, J.(as he then was) sitting as a single Judge of this Court in *(Dr.) V.P. Mainra v. Dawsons Leasing Ltd.*³.

Analysis

5. In *Omaxe Buildhome Pvt. Ltd. v. Ibrat Faizan*⁴, the question that fell for consideration before this Court was whether a writ petition

¹ MANU/DE/2585/2021

² Order dated 4th October 2021 in CM(M) 676/2021

³ 2004 (77) DRJ 727



under Article 227 would lie against an order passed by the learned NCDRC in appellate or revisional jurisdiction.

6. Section 23 of the 1986 Act provides for appeal only against orders passed by the learned NCDRC in exercise of original jurisdiction. This Court, therefore, held that no appeal to the Supreme Court, or to any other forum being available against an order passed by the learned NCDRC in appellate or revisional jurisdiction, a writ petition under Article 227 would be maintainable against such order.

7. The issue was carried to the Supreme Court, which, *vide* its judgment in *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.*⁵, upheld the decision of this Court, even while entering the following note of caution in paras 27 and 28 of the report:

“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

⁴ (2022) 4 HCC (Del) 492

⁵ 2022 SCC Online SC 620

⁶ (2001) 8 SCC 97



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.”

8. Subsequently, this Court was seized with the issue whether a petition under Article 227 would be maintainable against an order passed by the learned NCDRC in original jurisdiction. That issue was also answered in the affirmative by this Court *vide* its judgment in ***Lucina Land Development Ltd. v. UOI***⁸.

9. In either case, however, the Court exercising jurisdiction under Article 227 of the Constitution of India, has to remain within the limits of its jurisdiction as delineated in ***Estralla Rubber v. Dass Estate (P) Ltd.***⁶, ***Garment Craft v. Prakash Chand Goel***⁷, ***Puri Investments v. Young Friends and Co.***⁹ and ***Sadhana Lodh v. National Insurance Co. Ltd.***¹⁰.

10. The relevant paragraphs from the aforesaid decisions may be

⁷ 2022 SCC OnLine SC 29

⁸ 2022 SCC OnLine Del 1274

⁹ 2022 SCC Online SC 283

¹⁰ (2003) 3 SSC 524



reproduced thus:

Estralla Rubber⁶

“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*¹¹ 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*¹². This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte*¹³ 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*¹⁴] 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*

¹¹ AIR 1972 SC 1598

¹² AIR 1954 SC 215

¹³ AIR 1975 SC 1297

¹⁴ 2019 SCC OnLine Del 11943



*Kholkar*¹⁵] 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 court or tribunal has come to.”

¹⁵ (2010) 1 SCC 217

*Puri Investments*⁹

“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 Lodh¹⁰

“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.”

11. Clearly, therefore, this Court, while exercising Article 227 jurisdiction, is proscribed from entering into the correctness of the orders passed by the Court or forum below, except where the order suffers from perversity or is manifestly unsustainable in law, or where interference is justified *ex debito justitiae*.



12. The present petition has to be examined on the anvil of that touchstone.

13. Viewed thus, the impugned order, quite clearly, merely call upon the petitioners to be present in person. The justification for the said direction is also to be found in the impugned order, which is that, despite a final order having been passed in favour of the respondents and adjournments having been taken to make payment, no payment had been made.

14. Mr. Nayar has sought to contend that, in fact, the attachment process, envisaged in execution, is under way and that, therefore, this observation may not be correct.

15. He also submits that the petitioners were not named personally as parties either in the complaint which stood decided by the order dated 5th January 2019 of the learned NCDRC, or in the Execution Petition itself.

16. Adverting, now, to the three decisions on which Mr. Nayar has placed reliance.

17. Mr. Nayar has emphasised para 13 of the report in *V.P.Mainra*², specifically the following observations contained therein:

“13. .. It is clear from the language of Section 27 that, for failure to comply with the orders of the District Forums, the person who was to comply with such an order, is punishable



with imprisonment or with fine or with both. *Obviously a company incorporated under the Act, which is juristic or artificial entity, cannot be imprisoned. It is for this reason that when an order is made against a company, its Directors would be liable for such a punishment/penalties prescribed under Section 27 of the CP Act.* As held by this court in *Rakoor Industries Pvt.Ltd.(supra)*, expression "legal proceedings" in Section 446(1) is wide enough to include criminal prosecution also but such proceedings must be in relation to assets of the company. The court in that case, which was under the Income Tax Act, 1961, found that the complaint by the Income Tax Officer against the Directors of the company was made for the offences punishable under Section 276-C and Section 277 of the Income Tax Act and the allegation was that the accused willfully attempted to evade tax, penalty or interest chargeable or imposable under the provisions of the Income Tax Act. Section 276C provides for penalty when a person willfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under the Income Tax Act. Section 277 makes a person liable for imprisonment when he makes a statement in any verification under the Income Tax Act or under any rule made there under or delivers an account or statement which is false. These Sections do not attribute to the assets of the company but the actions are attributable to the person who has committed such willful acts. Such proceedings were held to be not in respect of assets of the company in liquidation and rightly so. However, as far as proceedings/complaints under the CP Act are concerned, these were filed against the company. Order was passed against the company. It is the company which was to comply with the said order. Because of non-compliance, applications under Section 27 of the CP Act have been filed by the complainants.

There is no personal liability of the Directors. If the company pays the amount, there would not be any proceedings. However, when the company fails to make the payment and since it is an artificial person and cannot be imprisoned, the Directors are held responsible and it is in this context that the orders can be passed against the Directors under Section 27 of the CP Act. Therefore, it cannot be said that the ex-Directors of the company committed any such act in relation to the proceedings under the CP Act which is personally attributable to them. To put it differently, proceedings under



Section 27 of the CP Act would be in relation to the assets of the company.”

(Emphasis supplied)

18. The aforesaid passage from *V.P.Mainra*², quite clearly, does not advance the petitioners’ case. Section 27 of the 1986 Act provides for penalties to be imposed against any trader, persons or complainant who fails to comply with the order passed by the concerned consumer forum. It envisages imprisonment of such trader, persons or complainant for the periods specified in the provision, or imposition of fine, or both. The decision in *V.P.Mainra*² to the extent Mr. Nayar relies thereon, holds that when a company, against whom an order is passed by the Consumer Forum, fails to make payments in accordance therewith, the directors of the company maybe held responsible and orders can be passed against the directors under Section 27 of the 1986 Act. In the first place, no orders have been passed against the petitioners under Section 27 of the 1986 Act. Indeed, no proceedings, under Section 27 of the 1986 Act have even been initiated against the petitioners. That apart, the aforesaid words from the judgment of this Court in *V.P.Mainra*², in fact, indicate that the directors cannot be completely absolved from the responsibility to dishonour the liability of the company, consequent on orders passed by the consumer forum. The said decision, in fact, may justify, to some degree, the direction for the directors to remain present.

19. *Sandeep Jain*² was a case in which recovery proceedings were initiated by way of issuance of an individual recovery certificate against the petitioner Sandeep Jain who was one of directions in the judgment debtor company before the learned NCDRC. No such



individual recovery certificate has been issued against any of the petitioners in the present case. This judgment is also, therefore, of no assistance to the petitioner.

20. *Sylvanus Properties Ltd.*¹ was a case which pertains to adjudication proceedings before the learned NCDRC and not execution proceedings. The very nature of the said proceedings are distinct and different.

21. There is a paradigm shift, when one travels from the realm of adjudicatory proceedings, resulting in an enforceable forum, into the realm of execution. In ***Rahul S. Shah*¹⁶**, the Supreme Court has bemoaned the fact that, oftentimes, the travails of the litigant commence after a decree is passed in his favour. The following passages from the said decision merit reproduction:

“22. These appeals portray the troubles of the decree-holder in not being able to enjoy the fruits of litigation on account of inordinate delay caused during the process of execution of decree.

23. This Court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees. This was discussed even in the year 1872 by the Privy Council in ***General Manager of the Raj Durbhunga v. Coomar Ramaput Sing*¹⁷**, which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar

¹⁶ (2021) 6 SCC 418

¹⁷ 1872 SCC OnLine PC 16 : (1871-72) 14 Moo IA 605



observation in *Shub Karan Bubna v. Sita Saran Bubna*¹⁸, wherein it recommended that the Law Commission and Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or Parliament must give effect to appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.”

22. The protocol which would apply during the course of adjudication, therefore, is completely distinct from that which applies to execution.

23. *Sylvanus Properties Ltd.*¹ was a case in which an affidavit was directed to be filed by the Chief Executive Officer of the petitioner, during the adjudication of a complaint filed before the learned NCDRC, though the Chief Executive Officer was not personally impleaded. This Court held that, as the Chief Executive Officer was not personally impleaded and there was no justification forthcoming, for direction for him to file an affidavit, the direction could not be sustained. That decision, therefore, is in completely different facts and circumstances and has no application to the present case.

24. Viewing the present case in the backdrop of the law enunciated in *Estralla Rubber*⁶, *Garment Craft*⁷, *Puri Investments*⁹ and *Sadhana*

¹⁸ (2009) 9 SCC 689 : (2009) 3 SCC (Civ) 820



*Lodh*¹⁰, the impugned order is purely discretionary. There is no jurisdictional infraction committed by the learned NCDRC in directing the petitioners to be present. The impugned order does not indicate, even opaquely, that the learned NCDRC has intended to take any proceedings against the petitioners personally. The direction to the petitioners to remain present, clearly, is only to facilitate expeditious conclusion of the execution proceedings.

25. As such, I am of the opinion that the impugned order is innocuous in nature, and cannot afford any ground for reasonable apprehension on the part of the petitioners.

26. No occasion, therefore, arises for this Court to interfere with the impugned order within the limited peripheries of the jurisdiction vested in this Court by Article 227 of the Constitution of India.

27. Having said that, this Court is sanguine that the learned NCDRC, even while calling upon the petitioners to appear personally before it tomorrow i.e. on 8th September 2022, would not take any action against them as is not sanctified by the law and that further proceedings in the matter, even qua the petitioners would be in accordance with the provisions of the 1986 Act and the law applicable in that regard.

28. Mr. Arvind Nayar, learned Senior Counsel, has, in conclusion, prayed that this order may not stand in the way of the directors seeking exemption from personal appearance before the learned



NCDRC tomorrow i.e. 8th September 2022.

29. Needless to say, however, if any such exemption is sought, it would be for the learned NCDRC whether a ground for exemption from appearance is made out or not. This Court expresses no opinion in that regard, but clarifies that this order would not disentitle the petitioners from claiming exemption from personal appearance, if the law permits them to do so.

30. Subject to the aforesaid limited *caveat*, this petition is disposed of.

31. *Dasti.*

SEPTEMBER 7, 2022

dsn

C. HARI SHANKAR, J

न्यायमेव जयते