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

+ CM(M) 996/2022, CM 41489/2022 & CM 41490/22

HARISH KUMAR Petitioner
Through: Mr. Anunaya Mehta, Adv.

versus

INDER MOHAN NAGPAL Respondent
Through:

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

JUDGMENT (ORAL)

% **22.09.2022**

1. This petition under Article 227 of the Constitution of India assails order dated 9th June 2022, passed by the learned Additional Rent Controller (“the learned ARC”) in Case No. E-36/2019 (*Inder Mohan Nagpal v. Harish Kumar*). The learned ARC has, by the impugned order, adjudicated an application filed by the petitioner, as the respondent in the aforesaid eviction petition, under Order VII Rule 11¹ read with Order I Rule 10(2)² of the Code of Civil Procedure, 1908

¹ 11. **Rejection of plaint.** – The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

² 10. **Suit in name of wrong plaintiff.** –

- (2) **Court may strike out or add parties.** – The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court



(CPC). The learned ARC, in one breath, has rejected the petitioner's application both under Order VII Rule 11 as well as Order I Rule 10(2) of the CPC.

2. As the recital hereinafter would make apparent, while this Court does not find any cause to interfere with the decision of the learned ARC, insofar as it rejects the petitioner's prayer under Order VII Rule 11 of the CPC, no conscious application of mind to the petitioner's prayer under Order I Rule 10(2) of the CPC appears to have been accorded by the learned ARC. As such, the impugned order, to the extent it rejects the petitioner's application under Order I Rule 10(2) of the CPC, would be required to be set aside, as it is unsupported by any reason whatsoever.

3. I proceed, therefore, to examine the impugned order, insofar as it deals with the petitioner's prayer for rejection of the eviction petition instituted by the respondent, under Order VII Rule 11 of the CPC.

4. The eviction petition E-36/2019, wherein the impugned order has come to be passed, was preferred under Clause (e) of the proviso to Section 14(1)³ [hereinafter "Section 14(1)(e)"] of the Delhi Rent

to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

³ 14. **Protection of tenant against eviction. –**

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-



Control Act 1958 (“the DRC Act”). The respondent, as the petitioner in the eviction petition, claimed to be owner/landlord of the property situated at Shop 1/151, forming part of Building No.147 to 155 Ward No. 1, Ganga Auto Market, Punja Sharif Chowk, Ganda Nala Bazar, Kashmere Gate, Delhi-110006 (“the tenanted premises”, hereinafter). The petition averred that the aforesaid shop had been let out to the petitioner Harish Kumar as a tenant and that the respondent was in possession only of one small Shop No. I-152/12, admeasuring 5’ x 10’ and a storage godown on the first floor of the building no. 147 to 155. The area of which the respondent was in possession was stated to be insufficient to cater to the needs of the respondent and his son. The respondent, therefore, averred, in the eviction petition, that he was in need of the shop on the ground floor of the aforesaid property, for which reason he sought eviction of the petitioner therefrom.

5. Consequent to issuance of notice in the aforesaid eviction petition, the petitioner applied under Section 25B(4)⁴ of the DRC Act for leave to defend the eviction petition.

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitably residential accommodation;

Explanation. – For the purposes of this clause “premises let for residential purposes” include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

⁴ **25-B. Special procedure for the disposal of applications for eviction on the ground of bona fide requirement.** –

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.



6. Prior to grant of leave to defend, the petitioner filed an application under Order VII Rule 11 read with Order I Rule 10(2) of the CPC, which has come to be dismissed by the learned ARC *vide* order dated 9th June 2022, under challenge in the present petition.

7. In his application, the petitioner alleged that the respondent was not the absolute owner of the tenanted premises, as the property, in which the shop was located, was under ownership of several co-owners, of which the respondent was but one. It was sought to be contended that a single co-owner could not have filed the eviction petition, seeking to evict the tenant therefrom, unless shares of the co-owners were determined by partition prior thereto. Else, such an eviction petition would require the consent of all other co-owners in the property.

8. The petitioner also relied, in his application, on cognate proceedings in CS (OS) 2274/2012, filed by the respondent in respect of the subject property, seeking partition thereof, in which the other co-owners are stated to have propounded a will to assert their rights in opposition to the said suit. If the contents of the will were to be perused, the application suggested that, quite possibly, the respondent would have no share in the suit property in question and could not, therefore, have maintained the eviction petition at all.

9. The application of the petitioner, therefore, sought dismissal of the eviction petition instituted by the respondent under Order VII Rule 11 of the CPC and, in the alternative, pleaded that all co-owners of the property in which the tenanted premises are situate, be impleaded as



parties in the eviction petition.

10. To support the submission that one co-owner could not, in the absence of consent of other co-owners, file an eviction petition in respect of the property, the petitioner relied upon the decision of the Supreme Court in *Mangal Builders and Enterprises Ltd. v. Williamson Magor & Company Ltd.*⁵

11. The learned ARC has, as already noted, rejected the petitioner's application by the order dated 9th June 2022, under challenge in the present petition.

12. The learned ARC has held, relying on the judgment of this Court in *Man Singh @ Mannu v. Mohd. Ibrahim & Anr.*⁶, which, in turn, relied on the judgment of the Supreme Court in *India Umbrella Manufacturing Co. v. Bhagbandei Agarwalla*⁷, that it was permissible for one co-owner to file a suit for eviction of a tenant, as, applying the doctrine of agency, consent of the other co-owners would be presumed. As such, the learned ARC has held that no objection having been tendered by the other co-owners, the eviction petition was maintainable. The judgment in *Mangal Builders*⁵, on which the petitioner sought to rely, was distinguished on the ground that, in that case, the defendant was a non-consenting co-owner. Inasmuch as there was no opposition of any co-owner, to the eviction petition, the learned ARC held that the eviction petition was maintainable.

13. Mr. Anunaya Mehta, learned Counsel for the petitioner, submits

⁵ MANU/SC/1857/2007

⁶ 2012 SCC OnLine Del 2375



that as the very title of the respondent in respect of the tenanted premises was in question in CS(OS) 2274/2012, it was not open to the learned ARC to treat the eviction petition filed by the respondent as maintainable. At the very least, submits Mr. Mehta, the learned ARC ought to have exercised the jurisdiction vested in him by Order XII Rule 6 of the CPC, as the record of CS (OS) 2274/2012 contained admissions, on the part of the respondent, which would result in the respondent's eviction petition being liable to be thrown out at the threshold.

14. When this matter was listed last on 21st September 2022, this Court had queried, of Mr Mehta, whether the learned ARC could have relied on any material other than the assertions in the plaint filed by the respondent while adjudicating on the petitioner's application under Order VII Rule 11. Mr Mehta had submitted that the Court was required, in a case such as this, to travel outside the plaint, even while adjudicating on the respondent's application under Order VII Rule 11 by invoking, *suo motu*, Order XII Rule 6 of the CPC. Mr Mehta was given an opportunity to cite decisions in support of his submission. He relies, today, on the judgments of Division Benches of this court in ***Keshav Chander Thakur v. Krishan Chander***⁸ and ***Suraj Munjal v. Chandan Munjal***⁹, as well as the judgment of a learned coordinate Single Bench of this Court in ***Asha Khanna v. Pankaj Khanna***¹⁰.

Analysis

⁷ 2004 (3) SCC 178

⁸ 2014 (211) DLT 149

⁹ 2019 (257) DLT 597

¹⁰ 2015 (217) DLT 614



15. Insofar as Order VII Rule 11 is concerned, it is settled law, over a period of decades, that, while examining an application under Order VII Rule 11, the Court is entitled to examine only the averments in the plaint and nothing beyond that. One may refer, in this context, to the following passages from the decision of the Supreme Court in ***Raghwendra Sharan Singh v. Ram Prasanna***¹¹:

“**6.7.** In ***Sopan Sukhdeo Sable v. Charity Commr.***¹², in paras 11 and 12, this Court has observed as under:

“11. In ***ITC Ltd. v. Debts Recovery Appellate Tribunal***¹³, it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out *in the plaint* or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that *if on a meaningful and not formal reading of the plaint* it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See ***T. Arivandandam v. T.V. Satyapal***¹⁴)”

6.8. In ***Madanuri Sri Rama Chandra Murthy v. Syed Jalal***¹⁵, this Court has observed and held as under:

¹¹ (2020) 16 SCC 601

¹² (2004) 3 SCC 137

¹³ (1998) 2 SCC 70

¹⁴ (1977) 4 SCC 467

¹⁵ (2017) 13 SCC 174



“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. *The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.*”

16. In ***Urvashiben v. Krishnakant Manuprasad Trivedi***¹⁶, it was held that “for the purpose of deciding application filed under Order VII Rule 11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the

¹⁶ (2019) 13 SCC 372



parties cannot be gone into”. There is a litany of similar authorities, including *Kamala v K. T. Eashwara Sa*¹⁷ and *Vaish Aggarwal Panchayat v. Inder Kumar*¹⁸.

17. This position is especially underscored, in respect of clauses (a) and (d) of Order VII Rule 11, even from the words employed by the statute. Clause (a) requires the plaint to be rejected “where *it does not disclose* a cause of action”. The disclosure or non-disclosure, therefore, has to be in the plaint, and the plaint alone. Clause (d), similarly, requires the plaint to be rejected “where the suit appears *from the statement in the plaint* to be barred by any law”. Again, what is relevant is “the statement *in the plaint*”. Whether, therefore, the defendant relies on clause (a) or (d) of Order VII Rule 11, he has to restrict his examination to the averments *in the plaint, and in the plaint alone*.

18. That said, while thus scanning the plaint, the Court should be mindful to subject the plaint to careful scrutiny. The *entirety of the plaint* is to be seen, and a holistic approach adopted. Equally, the Court should not allow its discretion to be swayed by “artful drafting” of the plaint, aimed at creating a smokescreen of a cause of action, where none exists, or embellishing a plaint which is actually barred by law by clever averments or interpolations which may seem to indicate to the contrary.

19. Applying these principles, it is clear, from a reading of the

¹⁷ (2008) 12 SCC 661

¹⁸ AIR 2015 SC 3357



averments in the eviction petition instituted by the respondent against the petitioner that a clear cause of action to institute the eviction petition exists therein. The respondent claims to be the landlord in respect of the tenanted property, in which the petitioner is a tenant. The respondent also claims that he is in need of the shop occupied by the petitioner being located on the ground floor, as his son is unemployed and the respondent has a shop only on the first floor of he property. Irrespective of whether these averments make out, or do not make out, a case for eviction under clause (e) of the proviso to Section 14(1) of the DRC Act, they clearly indicate the existence of a cause of action for instituting an eviction petition.

20. There is no reference, in the eviction petition, to the respondent being one of several co-owners in respect of the property in which the tenanted premises were situated. The Court, exercising jurisdiction under Order VII Rule 7 of the CPC cannot, therefore, take that fact into consideration, while exercising such jurisdiction. Even if, the learned ARC had not returned any finding on the said submission, no fault could have been found with the decision of the learned ARC and these are averments beyond the pale of the eviction petition. Arguments advanced by the petitioner, as the respondent in the eviction petition or in the application for leave to defend, are alien to Order VII Rule 11 of the CPC or to the exercise of jurisdiction envisaged by the said provision.

21. I advert, now, to the decisions cited by Mr. Mehta.

22. *Keshav Chander Thakur*⁸



22.1 Keshav Chander Thakur and the other appellants, in this case, filed a suit seeking partition of two properties, situated at B-11, Krishna Niwas, West End Colony, New Delhi and 245A, Puran Nagar, Jammu (Tawi), Jammu and Kashmir. The respondents in the appeal, who were also the respondents in the partition suit were, along with appellants, alleged each to have 1/7th share in the two properties.

22.2 Respondent 1 before the learned ADJ who rendered the aforesaid decision, alleged gross suppression of material facts by Keshav Chander Thakur and the other appellant/plaintiff. On the basis of the said averments, it was alleged, in the written statement filed by the respondents-defendants, that the suit was barred by *res judicata*, limitation and want of appropriate court fee. It was also alleged that the Court had no jurisdiction to entertain the suit.

22.3 Respondent 1 before the learned ADJ also filed an application under Order VII Rule 11 for rejection of the plaint, which was allowed by the learned Single Judge vide order dated 24th May 2013, which formed subject matter of challenge in the appeal before the Division Bench instituted by Keshav Chander Thakur and another, as the plaintiffs in the suit.

23. It is not necessary to enter into the details and facts of the said case. Suffice it to reproduce para 38 of the report in the said decision, read thus:

“38. We concur with the view of the learned Single Judge. However, we may like to note that the learned Single Judge



has exercised powers under Order VII Rule 11 CPC while rejecting the plaint. The scope of exercise of powers under Order VII Rule 11 CPC is limited by the contours of the provision. While exercising those powers what has to be seen is only the averments in the plaint and the documents filed alongwith the plaint. The defence as taken in the written statement is not to be gone into for the said purpose. To that extent, the judgment of the learned Single Judge may suffer from an infirmity. However, in our view given the nature of pleadings and admitted documents on record and the extensive arguments advanced by the parties on the issues discussed herein, this was a fit case for the Court to exercise powers under Order XII Rule 6 CPC where the Court has powers to suo moto pass a judgment. There is no requirement in Order XII Rule 6 CPC for filing of a formal application. The Court can on its own motion without any application by a party proceed to pass a decree on admissions as stated in Order XII Rule 6 CPC. Order XII Rule 6(i) CPC reads as follows:-

"6. Judgment on admissions.- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions."

In our view based on the pleadings and documents placed on record by the parties there are clear admissions of fact which warrant passing of the order of dismissal of the plaint."

24. The italicized portion in para 38 of the report in ***Keshav Chander Thakur***⁸, if anything, would militate against the submissions advanced by Mr. Mehta. The Division Bench has clearly held that the decision of the learned Single Judge, to the extent that it travelled outside the peripheries of the plaint instituted by Keshav Chander



Thakur and other plaintiff while adjudicating the application filed by the respondents under Order VII Rule 11, “suffered from an infirmity”. Nonetheless, the Division Bench deemed it appropriate not to interfere with the decision of the learned Single Judge “given the nature of pleadings and admitted documents on record and the extensive arguments advanced by the parties on the issues discussed”. In view thereof, the Division Bench opined that it was fit case for the Court to exercise the powers under Order XII Rule 6 of the CPC and to pass a judgment in exercise of such powers.

Suraj Munjal⁹

25. This decision again arises out of a suit for partition, declaration and injunction. The appellant Suraj Munjal, as the plaintiff in the suit, claimed a right in HUF property to the extent of 1/3rd share. The recital of facts in the judgment does not indicate that any application had been filed before the learned Single Judge in that case, either Order VII Rule 11 or Order XII Rule 6 of the CPC. Para 5 of the report states that the learned Single Judge, “by invoking the principles underlying Order VII Rule 11 *read with Order XII Rule 6 of the CPC*” rejected the plaint insofar as the claim of HUF property was concerned.

26. Reliance was placed, by Suraj Munjal, the appellant before the Division Bench, on the judgments in *Sejal Glass Ltd. v. Navilan Merchants Pvt Ltd*¹⁹ and *Satya Pal Gupta v. Sudhir Kumar Gupta*²⁰,

¹⁹ I (2018) SLT 80



The Division Bench advertent to the reliance on the said decisions observed thus in para 10 of the report:

“10. Insofar the judgments in the case of *Sejal Glass Ltd.*¹⁹ and *Satya Pal Gupta*²⁰ are concerned, the said judgments were with regard to application filed under Order 7 Rule 11 unlike the case in hand where the learned Single Judge has invoked the principles underlying Order 7 Rule 11 read with Order 12 Rule 6 CPC.”

As such, it is clear that the Division Bench distinguished a judgement rendered under Order VII Rule 11 alone, with one rendered under Order VII Rule 11 read with Order XII Rule 6 of the CPC.

27. The third decision on which Mr. Mehta relies is of the learned Single Judge of this Court in *Asha Khanna*¹⁰. Para 16 of the said decision holds as under:

“16. *It is trite law that in an application under Order VII Rule 11 CPC only averments in the plaint can be looked into and the defence cannot be looked into.* However, it is also well-settled that even if the scope of exercise of jurisdiction under Order VII Rule 11 CPC is limited in view of the nature of the pleadings and admitted documents, the Court *can exercise suo-moto power* under Order XII Rule 6 CPC without a formal application on this count and pass a judgment on admissions.”

After proceeding, in para 16 of the report, to rely on the judgment of the Division Bench in *Keshav Chander Thakur*⁸, the learned Single Judge proceeds to observe, in para 17 of the report, that even if the Court did not exercise jurisdiction under Order VII Rule 11 of the CPC, “it can still exercise its jurisdiction under Order XII Rule 6 of

²⁰ 230 (2016) DLT 73



the CPC”.

28. All that emerges, at the highest, from the afore-cited decisions, is that, in an appropriate case, the Court may be empowered to *suo moto* exercise jurisdiction under Order XII Rule 6 of the CPC, if there were admitted facts outside the plaint which warranted its dismissal. They do not mandate, by any stretch of imagination, as a principle of law, that, in every case where an application under Order VII Rule 11 is filed by a defendant, seeking rejection of a plaint, the Court must travel outside the peripheries of the plaint and examine other documents to ferret out a case for dismissing the plaint by exercise of *suo motu* jurisdiction under Order XII Rule 6 of the CPC. *Suo motu* exercise of jurisdiction is always a matter of discretion, and can never be a matter of compulsion. Indeed, if such the position that Mr Mehta seeks to advocate were to be treated as representing the inexorable legal position, it may well result in diluting the law, enunciated over a long line of decisions, to the effect that, while exercising jurisdiction under Order VII Rule 11 of the CPC, a Court cannot travel outside the averments in the plaint.

29. **Keshav Chander Thakur**⁸ was a case in which while deciding an application under Order VII Rule 11 of the CPC, the learned Single Judge travelled outside the plaint and allowed the application. The Division Bench of this Court categorically held that this approach was infirm. Nonetheless, given the fact that there were admissions on record and that excessive arguments had been advanced on the aspect, the Division Bench expressed the view that, *as it was open for the*



Court to suo moto exercise jurisdiction under Order XII Rule 6 of the CPC, no case for interference with the decisions of the learned Single Judge existed. **Suraj Munjal**⁹ specifically distinguished a situation in which the powers were being exercised on an application under Order VII Rule 11 of the CPC, with a situation in which the Court *suo moto* exercised powers under Order VII Rule 11 read with Order XII Rule 6 of the CPC. That judgment, in fact, clearly supports the proposition that, while exercising powers under Order VII Rule 11 of the CPC, the Court does not travel outside the averments contained in the plaint. To the same effect is the statement of law contained in para 16 of the report in **Asha Khanna**¹⁰, which proceeds to rely on **Keshav Chander Thakur**⁸, which has already been dealt with hereinabove.

Scope of jurisdiction under Article 227

30. This Court, in the present case, is exercising jurisdiction under Article 227 of the Constitution of India. While exercising jurisdiction under Article 227, the Court is not even expected to go into whether the decision of the Court below is correct or incorrect, factually or legally. The statement of law in the following passage from **Sadhana Lodh v. National Insurance Co. Ltd.**²¹ clearly enunciates the legal position:

“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

²¹ (2003) 3 SSC 524



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.”

(Emphasis supplied)

31. In its recent decision in *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.*²², the Supreme Court has again reiterated the limited parameters of Article 227 jurisdiction in para 28 of the report thus:

“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.*²³, 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*²⁴). 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.”

32. The following passage from the judgments in *Estralla Rubber v. Dass Estate (P) Ltd.*²³ and *Garment Craft v. Prakash Chand Goel*²⁴, on which the Supreme Court places reliance in the afore-extracted

²² 2022 SCC Online SC 620

²³ (2001) 8 SCC 97

²⁴ 2022 SCC OnLine SC 29



para 28 of the report in *Ibrat Faizan*²², again recapitulate the legal position regarding Article 227:

Estralla Rubber²³

“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*²⁵ 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*²⁶. This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte*²⁷ 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 Craft²⁴

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel v. Garment Craft*²⁸] 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.

²⁵ AIR 1972 SC 1598

²⁶ AIR 1954 SC 215

²⁷ AIR 1975 SC 1297

²⁸ 2019 SCC OnLine Del 11943



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*²⁹] 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*²³ 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

²⁹ (2010) 1 SCC 217



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.”

33. To the same effect are the following words in paras 14 to 16 of the report in *Puri Investments v. Young Friends and Co.*³⁰:

“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

³⁰ 2022 SCC Online SC 283



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.”

34. The submissions of Mr. Mehta entirely revolve around the power that, according to him, the learned ARC *could have exercised suo moto* by invoking Order XII Rule 6 of the CPC. There is no mandate in law requiring the learned ARC to exercise any such power. The fact that the learned ARC may not have chosen to exercise *suo moto* power under Order XII Rule 6 of the CPC cannot, by any stretch of imagination, constitute a legitimate ground for an Article 227 Court to interfere with the decision of the learned ARC.

35. The learned ARC has, in keeping that the settled law in respect



of Order VII Rule 11 of the CPC, restricted himself to the averments in the eviction petition filed by the respondent. Those averments clearly indicate that the eviction petition was maintainable. The petitioner would have every chance to contest the eviction petition on all the grounds that have been sought to be urged in the present petition, but those grounds could not have constituted a legitimate basis to reject the eviction petition outright under Order VII Rule 11 of the CPC. It is made clear that the grounds urged in the application under Order VII Rule 11 of the CPC, as well as in the present petition would remain open to be urged by the petitioner during the course of trial in the eviction petition.

36. No occasion, therefore, arises in this Court to interfere with the impugned order dated 9th June 2022 of the learned ARC, insofar as it dismisses the petitioner's application under Order VII Rule 11 of the CPC. To that extent, therefore, the impugned order is upheld.

37. However, the impugned order has rejected the petitioner's application Order I Rule 10 of the CPC without any reasons whatsoever.

38. To the extent of the alternative prayer in the petitioner's application under Order I Rule 10 of the CPC, therefore, the application is remanded to the learned ARC for consideration regarding the submissions of the petitioner predicated on Order I Rule 10 of the CPC.

39. This petition stands disposed of in the aforesaid terms with no orders as to costs. Pending applications, if any, do not survive for



consideration and are also, therefore, stand disposed of.

C.HARI SHANKAR, J

SEPTEMBER 22, 2022

r.bararia

