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

+ CM(M) 1069/2022, CM APPL. 44060/2022 (stay), CM APPL. 44061/2022 (Exemption) and CM APPL. 44062/2022 (Exemption)

VIJAY MAHAJAN

..... Petitioner

Through: Mr. Arpit Bhargava and Mr. Pankaj, Advs.

versus

PARVESH KUMAR GUPTA

..... Respondent

Through: Mr. Rajender Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T
12.10.2022

1. The order dated 12th September 2022, passed by the learned District Judge (Commercial Courts) (“the learned Commercial Court”) in CS (Comm) 36/2022 (*Parvesh Kumar Gupta v. Vijay Mahajan*), under challenge in the present petition instituted under Article 227 of the Constitution of India, rejects an application filed by the petitioner, as the defendant in the suit, seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC).

CS (Comm) 36/2022, in précis

2. The respondent claimed in CS (Comm) 36/2022 (“the suit”, hereinafter) to be the owner of G-16A, Ground Floor, Kalkaji, New



Delhi-110019 (“the suit property”). He claimed ownership on the basis of a Relinquishment Deed dated 12th May 2015 executed by several persons including the petitioner, as the defendant in the suit. Post relinquishment of his rights in the suit property, the petitioner, according to the respondent, continued to stay in the suit property on rent for a period of nine years with effect from 12th September 2017, under a Lease Deed dated 18th September 2017. The plaint alleged that the petitioner was in default of rent with effect from 1st October 2021 and that notices, calling upon the petitioner to disgorge rent in respect of the suit property yielded no useful result. In these circumstances, the respondent instituted the aforesaid suit against the petitioner, seeking a decree of eviction, directing the petitioner to vacate the suit property and to handover peaceful and vacant possession thereof to the respondent. Additionally, the suit also claimed arrears of lease rent and damages/mesne profits. Further, the suit sought a decree of permanent injunction, restraining the petitioner from entering the suit property or creating any interference with the peaceful possession of the suit property by the respondent.

3. As the property was being used for commercial purposes, the suit was filed as a commercial suit, under the Commercial Courts Act, 2015. Along with the suit, the respondent filed an application under Order XXXIX Rules 1 and 2 of the CPC, seeking an interlocutory order, restraining the petitioner from creating any third party right or interest in respect of the suit property.



Application of the petitioner under Order VII Rule 11 of the CPC

4. During the pendency of the aforesaid suit, the petitioner, as the defendant in the suit, moved an application seeking dismissal of the suit under Order VII Rule 11 of the CPC. The main contention of the petitioner, in the said application, was that the respondent had filed the suit without complying with the mandatory requirement of pre-institution mediation, contained in Section 12-A(1)¹ of the Commercial Courts Act.

5. While acknowledging that the respondent had filed, with the suit, an application seeking interlocutory relief under Order XXXIX Rules 1 and 2 of the CPC, the petitioner, in his application, sought to contend that the said relief already stood granted by the learned Additional Civil Judge (“the learned ACJ”), *vide* order dated 18th September 2021 passed in CS SCJ 1046/2021, which had been instituted by the petitioner against the respondent. The said order reads thus:

“18.09.2021

Present hearing has been done through VC.

Present: Sh. Arpit Bhargav, Ld. Counsel for the plaintiff.

Sh. Joby P. Varghese Ld. Counsel for the defendant
no.3 and 4.

Sh. Rajender Singh, Ld. Counsel for defendant no.5.

¹ 12-A. **Pre-Institution Mediation and Settlement.** –

(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.



Today the matter is listed for filing of WS on behalf of defendants. Same is not filed.

Status quo be maintained by the parties till NDOH.

Put for filing of WS on behalf of defendants and further proceedings on **29.11.2021.**”

6. Maintenance of the *status quo*, in respect of the suit property, having thus already been directed by the afore-extracted order dated 18th September 2021, passed by the learned ACJ in CS SCJ 1046/21, the petitioner contended, in his application, that CS (Comm) 36/2022 could not be treated as contemplating any urgent interim relief, within the meaning of Section 12-A of the Commercial Courts Act, as to dispense with the requirement of pre-institution mediation.

7. Though certain other grounds had also been urged in the application under Order VII Rule 11 of the CPC, a reading of the impugned order dated 12th September 2022 reveals that the only ground urged during arguments was the contention already noted hereinabove, i.e. that, in view of the order dated 18th September 2021, passed by the learned ACJ in CS SCJ 1046/21, CS (Comm) 36/2022 could not be regarded as contemplating any urgent interim relief, in spite of the application preferred by the respondent under Order XXXIX Rules 1 and 2 of the CPC.

8. The learned Commercial Court has, by the impugned order dated 12th September 2022, rejected the said contention and, consequently, has dismissed the petitioner's application under Order VII Rule 11 of the CPC.



9. The relevant paragraphs from the impugned order read thus:

“5. It is the admitted case of both the parties that the defendant has filed a suit for cancellation of relinquishment deed dated 07.05.2015. It is also the admitted case that on an application under Order 39 Rules 1 and 2 CPC by defendant in that case, the parties were directed to maintain status quo on 18.09.2021.

But the moot question is whether the urgent relief claimed by plaintiff under Order 39 Rules 1 and 2 CPC, was granted by that Court in order dated 18.09.2021.

6. Following is the operative order dated 18.09.2021:

"Status quo be maintained by the parties till next date of hearing."

Bare perusal of above order shows that it did not specify whether the parties were required to maintain status quo qua possession or nature of use or qua title. It is not speaking one. Perusal of the application under Order 39 Rules 1 and 2 CPC of the present case shows that the plaintiff is seeking restraint order against defendant restraining it from creating 3rd party right, interest or claim. As the urgent relief claimed in the interim application of this case, was not granted by the court dealing with the previously instituted suit, it cannot be said that there was no ground for the plaintiff to forego the provisions of Section 12-A of the Commercial Courts Act. It is no doubt the law of the land, in view of "Mis Patil Automation Pvt. Ltd. & Ors. vs. Rakheja Engineers Pvt. Ltd., decided on 17.08.2022, by Hon'ble Supreme Court", that provisions of Section 12-A of the Act are mandatory. That section is subject to the exception of urgent interim relief. So, the case of the plaintiff is covered by that exception and hence, application under Order 7 Rule 11 CPC is dismissed.”

10. Aggrieved by the aforesaid order, the petitioner has moved the



present petition under Article 227 of the Constitution of India.

Contentions of the petitioner

11. I have heard Mr. Arpit Bhargava, learned Counsel for the petitioner, who has sought to contend that the impugned order is not sustainable in law. He submits that, once the *status quo* in respect of the suit property had been directed to be maintained, by the learned ACJ *vide* order dated 18th September 2021 in CS SCJ 1046/2021, the respondent's interests, qua the suit property, stood adequately protected. Mr. Bhargava relied, in this context, on the jurisprudential connotation of "*status quo*" for which purpose he has referred to the judgment of the learned Single Judge of this Court in ***Montreaus Resorts Pvt Ltd v. Ascot Hotels & Resorts Ltd***² and the judgment of a learned Single Judge of the High Court of Jammu and Kashmir in ***Ghulam Ahmad Dar v. Mushtaq Ahmad Shah***³.

12. Additionally, to emphasize the mandatory nature of Section 12-A of the Commercial Courts Act, and the requirement of urgent interim relief has been sought as the indispensable *sine qua non* for seeking exemption from the applicability thereof, Mr. Bhargava has cited a judgment of a coordinate Single Bench of this Court in ***Gurjinder Singh v. S. Gurbir Singh***⁴ and of a learned Single Judge of the High Court of Calcutta in ***Laxmi Polyfab Pvt Ltd v. Eden Realty***

² 174 (2010) DLT 439

³ AIR 2006 J&K 91

⁴ 2021 SCC OnLine Del 4864



*Ventures Pvt Ltd*⁵.

13. Mr. Bhargava, additionally, seeks to submit that, in order to be entitled to the benefit of exemption from pre-institution mediation under Section 12-A of the Commercial Courts Act, the urgent interim relief, that is sought, has to be sought under the Commercial Courts Act. He has relied, for this purpose, on para 10 of the decision in *Gurjinder Singh*⁴.

Analysis

14. The Supreme Court has, in its recent decision in *Patil Automation Pvt Ltd v Rakheja Engineers Pvt Ltd*.⁶, held that Section 12-A of the Commercial Courts Act is mandatory and that a party seeking to institute a commercial suit has to abide by the said provision.

15. However, suits seeking urgent interim relief have been held, even by the Supreme Court in para 80 of the report in *Patil Automation*⁶, to be permitted to be instituted without following the protocol of pre-institution mediation, in view of the exception to that effect to be found in Section 12-A(1) itself.

16. Section 12-A(1) ordains that, before instituting a suit “which does not contemplate any urgent interim relief under this act”, the

⁵ AIR 2021 Cal 190

⁶ 2022 SCC OnLine SC 1028



plaintiff is required to exhaust the exercise of pre-institution mediation. What has to be seen, therefore, whether the suit instituted by the plaintiff, contemplates urgent interim relief.

17. Needless to say, a plaintiff cannot seek to make out an artificial case of urgent interim relief, where, on facts, no such case can be said to exist, merely so as to escape the rigour of Section 12-A(1). I am in agreement with the judgment of this Court in *Gurjinder Singh*⁴ and of the High Court of Calcutta in *Laxmi Polyfab*⁵ to the extent they hold that the Court, while exempting a plaintiff from the rigour of Section 12-A, has necessarily to apply its mind as to whether the suit did contemplate urgent interim relief or whether the plea of urgent relief was merely an artificial device in order to avoid the rigour of Section 12-A(1).

18. While undertaking on this exercise, the Court is required, in my considered opinion, to be mindful of the fact that of the circumstances in which the plaint is instituted by the plaintiff. Unless it is clear that no case for seeking urgent interim relief existed, and that the interim relief, if sought, was not urgent or that, if it was pleaded to be urgent, such plea was artificial, the Court would ordinarily have to defer to the right of the plaintiff to assess whether the interim relief sought was, or was not, urgent.

19. In the present case, the learned ADJ has taken stock of the order dated 18th September 2021, passed by the learned ACJ in CS SCJ 1046/2021. He has observed that the order merely directs “*status quo*”



to be maintained by all parties till the next date of hearing. The order, as the learned ADJ correctly notes, is devoid of particulars. The interim relief sought by the respondent in the application under Order XXXIX Rules 1 and 2 of the CPC filed with CS (Comm) 36/2022, in the present case, was, on the other hand, for specific interlocutory restraint, against the petitioner, from creating third party interests in respect of the suit property. It cannot be gainsaid that the order dated 18th September 2021 does not specifically state that no third party interests were to be created in respect of the suit property.

20. No doubt, if one were to enter into the etymological and jurisprudential intricacies of the concept of “*status quo*”, it might be possible to argue that “*status quo*” encompasses all aspects of the suit property, which would also include creation of third party interest. That said, however, it cannot be said that, in seeking a specific order against creation of third party interest in respect of the suit property, despite the order of *status quo* dated 18th September 2021 passed by the learned ACJ in CS SCJ 1046/2021, the petitioner was merely replicating the relief already granted to him *vide* order dated 18th September 2021. What the petitioner was seeking, by means of the application under Order XXXIX Rules 1 and 2 of the CPC, in CS(Comm) 36/2022, was a specific order against creation of third party interests in respect of the suit property. No such specific direction being contained in the order dated 18th September 2021, it cannot be said that the prayer for interim relief filed with CS (Comm) 36/2022, was unjustified or that it was not urgent, as the relief already stood covered by the order dated 18th September 2021 passed by the



learned ACJ in CS SCJ 1046/2021.

21. Even otherwise, I am somewhat hesitant to accept the proposition that the issue of whether urgent interim relief has, or has not, been contemplated in one suit, as instituted, can be assessed on the basis of orders passed in another case. The fate of the interlocutory order passed in such other case would be a matter of conjecture and hypothesis. An interlocutory order is always in peril of being modified or vacated, not being imbued, by its very nature, with any character of permanence. Even for this reason, the order, dated 18th September 2021 in CS SCJ 1046/2021 cannot, in my view, be legitimately urged as a ground to contend that the interim relief sought in CS (Comm) 36/2022 was not urgent.

22. In that view of the matter, it may not be possible to fault the learned ACJ in his finding that, in the present case, the respondent had indeed, sought urgent interim relief and that, therefore, the rigour of Section 12-A of the Commercial Courts Act would not apply to the respondent.

23. The submission, of Mr Bhargava, that, in order to be entitled to the benefit of exemption from pre-institution mediation under Section 12-A of the Commercial Courts Act, the urgent interim relief, that is sought, has to be sought under the Commercial Courts Act is, to my mind, completely misconceived. The Commercial Courts Act does not independently contain any provision under which urgent interim relief can be sought. Any interim relief, in a suit, has to be sought under the



relevant provisions of the CPC. Interim relief, of the nature, sought in the interlocutory application filed with the suit in the present case, could only have been sought under Order XXXIX Rules 1 and 2 of the CPC. There is no provision in the Commercial Courts Act, which empowers a litigant to seek such interim relief.

24. Para 10 of the report in *Gurjinder Singh*⁴, in my view, does not support the submission of Mr. Bhargava. This Court has not, in the said paragraph, held that the urgent interim relief that is sought, for the purpose of being claimed exemption from pre-institution mediation under Section 12-A has to be sought under the Commercial Courts Act. This Court has, merely in the said paragraph, pondered as to whether an application under Order XXXIX Rules 1 and 2 of the CPC, filed with the suit would constitute urgent interim relief for the purposes of Section 12-A of the Commercial Courts Act.

25. In the present case, on facts, I have already held that the interim relief sought in the application filed by the respondent under Order XXXIX Rules 1 and 2 of the CPC, with the suit did contemplate urgent interim relief. As such, this submission of Mr. Bhargava is rejected.

Article 227 of the Constitution of India and its scope and ambit

26. The present petition has been instituted under Article 227 of the Constitution of India. The powers of this Court under Article 227 of the Constitution of India are heavily circumscribed. The scope and



ambit of the jurisdiction vested in this Court by Article 227 of the Constitution of India is well delineated in the following passage from *Sadhana Lodh v. National Insurance Co. Ltd.*⁷, rendered by three Hon'ble Judges of the Supreme Court:

“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.”

(Emphasis Supplied)

27. In its recent decision in *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.*⁸, rendered on 13th May, 2022, 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.*⁹, 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*¹⁰). 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

⁷ (2003) 3 SSC 524

⁸ 2022 SCC Online SC 620

⁹ (2001) 8 SCC 97

¹⁰ 2022 SCC OnLine SC 29



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.”

28. The following passage from the judgments in *Estralla Rubber*⁹ and *Garment Craft*¹⁰, on which the Supreme Court places reliance in the afore-extracted para 28 of the report in *Ibrat Faizan*⁸, again recapitulate the legal position regarding Article 227.

Estralla Rubber

“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

¹¹ AIR 1972 SC 1598

¹² AIR 1954 SC 215

¹³ AIR 1975 SC 1297



its jurisdiction under Article 227 in passing the impugned order.

Garment Craft

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 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*⁹ 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

¹⁴ 2019 SCC OnLine Del 11943

¹⁵ (2010) 1 SCC 217



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.”

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

“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

¹⁶ 2022 SCC Online SC 283



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.”

30. This Court, while exercising jurisdiction under Article 227 of the Constitution of India, is not even expected to examine whether the decision of the court below is correct or incorrect. It is only where the manner in which the learned Trial Court has chosen to exercise discretion is such as calls for supervisory correction, that the Court would step in and exercise jurisdiction under Article 227 of the Constitution of India.

31. In the present case, the learned ADJ has taken note of the petitioner’s argument, predicated on the order dated 18th September 2021 passed by the learned ACJ in CS SCJ 1046/2021. He has interpreted the order, noting the fact that it was not specific in terms and did not advert, particularly, to creation of third party interests. He has, therefore, expressed the view that, in seeking a restraint against creation of third party interests against the petitioner in the present suit, i.e. CS (Comm) 36/2022, the respondent had, in fact, sought urgent interim relief.

32. The view adopted by the learned ADJ, cannot be said to be such as would merit interference by this Court in exercise of its limited supervisory jurisdiction, vested by Article 227 of the Constitution of India.



33. In that view of the matter, this petition is devoid of merit and is, accordingly, dismissed. Miscellaneous applications are also disposed of.

C.HARI SHANKAR, J

OCTOBER 12, 2022

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