

\$~54(Appellate)

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

+ CM(M) 1092/2022 & CM APPL.44701/2022, CM APPL.44702/2022

M/S RADIANT HOTELS PRIVATE LTD Petitioner
Through: Mr. Rajesh Yadav, Sr.
Advocate with Mr. Tanmay Nayar, Adv.

versus

UDAY PILANI Respondent
Through: Mr. Zeb Hasan, Adv. with Mr.
Shwetank Sai Lakwal, AOR

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

% **J U D G M E N T (O R A L)**
14.10.2022

1. This petition, under Article 227¹ of the Constitution of India, assails order dated 8th August 2022 passed by the learned National Consumer Disputes Redressal Commission (NCDRC) in FA 80/2018 (*Radiant Hotels Private Ltd.v. Uday Pilani*), whereby the learned

¹ 227. **Power of superintendence over all courts by the High Court. –**

- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.
- (2) Without prejudice to the generality of the foregoing provision, the High Court may—
 - (a) call for returns from such courts;
 - (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
 - (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.
- (3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:
Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.
- (4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

NCDRC dismissed the appeal filed by the petitioner in CC 154/2015.

2. Mr. Rajesh Yadav, learned Senior Counsel for the petitioner, submits that the learned NCDRC lacked the jurisdiction to pass the impugned order, as the initial complaint filed before the learned State Consumer Disputes Redressal Commission (SCDRC) was itself not maintainable.

3. He submits that the point of jurisdiction was raised both before the learned NCDRC as well as before the learned SCDRC, but has not been considered by the learned NCDRC in the impugned order dated 8th August 2022.

4. This is a petition under Article 227 of the Constitution of India. Specifically dealing with the scope of jurisdiction of the Writ Court, exercising powers under Article 227 of the Constitution of India, against an order passed by the learned NCDRC in exercise of its appellate jurisdiction, the Supreme Court has, in *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.*², cautioned 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.*³, 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*⁴). 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

² 2022 SCC Online SC 620

³ (2001) 8 SCC 97

⁴ 2022 SCC OnLine SC 29

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.”

5. The relevant passages from in *Estralla Rubber*² and *Garment Craft*³, which are cited by the Supreme Court in *Ibrat Faizan*¹, may be reproduced thus:

Estralla Rubber²

“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*⁵ in para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, *for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors*. Reference also has been made in this regard to the case *Waryam Singh v. Amarnath*⁶. This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte*⁷ has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal 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.

(Emphasis supplied)

⁵ AIR 1972 SC 1598

⁶ AIR 1954 SC 215

⁷ AIR 1975 SC 1297

Garment Craft³

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [**Prakash Chand Goel v. Garment Craft**⁸] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. *The High Court exercising supervisory jurisdiction does not act as a court of first appeal to 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*⁹] *The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.*

16. Explaining the scope of jurisdiction under Article 227, this Court in **Estralla Rubber v. Dass Estate (P) Ltd**² has observed :

“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*

⁸ 2019 SCC OnLine Del 11943

⁹ (2010) 1 SCC 217

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.”

(Emphasis supplied)

6. Under Article 227 of the Constitution, the High Court does not review, judicially, the order of the learned Court below. Far less does it exercise jurisdiction which can be said to be akin, in any manner of speaking, to that exercised by an Appellate Court. The power vested in the High Court over the learned Court below, by Article 227, is one of *superintendence*. Article 227 jurisdiction is exclusively, and at all times, supervisory and correctional in nature. It is intended to correct the manner of exercise of jurisdiction by the Court below and not to review errors in the order under challenge. The following passage from *Sadhana Lodh v. National Insurance Co. Ltd*¹⁰, makes this position of law apparent:

“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

¹⁰ (2003) 3 SCC 524

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)

7. In view of this position, I have already held in ***Kushal Anand v. Mandhir Sachdeva***¹¹ as well as ***Shakuntala v. Rani***¹², that points, which are not argued before the Court below, cannot be raised in a petition under Article 227 of the Constitution of India, as the Court below cannot be treated as having erred in exercise of jurisdiction, as would call for correction in the exercise of supervisory jurisdiction, in failing to consider a point which was never urged before it. The mere fact that the submission may figure as a ground in the pleadings before the Court below would not be sufficient to justify interference under Article 227 of the Constitution of India. Every point that is pleaded in writing is rarely canvassed during arguments, and the Court cannot be expected to return findings on all points pleaded, even if the Counsel do not seek to urge them during oral arguments.

8. Mr. Yadav submits on instructions that, in fact, the point of jurisdiction was actually argued before the learned NCDRC though it is not reflected in the impugned order.

¹¹ 2022 SCC OnLine Del 2102

¹² 2022 SCC OnLine Del 2210

9. In that event, the Supreme Court has held in *Daman Singh v. State of Punjab*¹³, the remedy with the concerned litigant would be to re-approach the Court, which has passed the order and request it to consider the point in question, which was urged but has not been reflected in the decision.

10. Mr. Yadav seeks liberty to move the learned NCDRC with an appropriate application for that said purpose.

11. Leave and liberty is granted as prayed for.

12. Needless to say, it would be for the learned NCDRC to take a call as to whether a case for consideration of the said submission is made out or not. This Court does not express any view thereon. Nor this Court has expressed any view on the merits of the submission with respect to jurisdiction, which has been raised by Mr. Yadav.

13. The learned NCDRC is respectfully requested, on the petitioner moving an application in that regard, to decide the application as expeditiously as possible.

14. With liberty as aforesaid, this petition is disposed of. Miscellaneous applications are also disposed of.

C.HARI SHANKAR, J

OCTOBER 14, 2022/rb

¹³ (1985) 2 SCC 670