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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1114/2022 & CM APPL. 45141/2022, CM APPL. 45142/2022

SH. AKSHAT KEDIA Petitioner
Through: Mr. Abhishek Chandra Mishra,
Adv.

versus

M/S MLK RETAIL PRIVATE LIMITED Respondent
Through:

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

J U D G M E N T (O R A L)
18.10.2022

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1. This petition, under Article 227 of the Constitution of India, assails order dated 6th September 2022, passed by the learned District Judge (Commercial Court) (“the learned Commercial Court”) in CS (Comm) 627/2019 (*M/s MLK Mega Retail Pvt. Ltd. v. Akshat Kedia*), whereby the application filed by the petitioner, as the defendant in the suit, under Order VII Rule 10 of the Code of Civil Procedure, 1908 (CPC), has been dismissed.

2. The only ground on which the petitioner had predicated his application under Order VII Rule 10 of the CPC was that the suit was bad for want of territorial jurisdiction, as territorial jurisdiction, to adjudicate on the lis forming subject matter of the suit, vested in

courts at Bangalore. The learned Commercial Court has observed that the issue would require leading of evidence and has, therefore, not agreed to return the petitioner's suit at the very outset under Order VII Rule 10 of the CPC. Nonetheless, the learned Commercial Court has protected the petitioners' interest by framing a specific issue as to whether the court of the learned Commercial Court had territorial jurisdiction to entertain the suit.

3. In my considered opinion, this petition is yet another example which illustrates the complete lack of comprehension regarding the exact scope and the ambit of jurisdiction vested in High Courts under Article 227 of the Constitution of India.

4. Time without number, this Court has had occasion to cite the authoritative pronouncements on the point being *Estralla Rubber v. Dass Estate (P) Ltd.*¹, *Garment Craft v. Prakash Chand Goel*², *Puri Investments v. Young Friends & Co.*³, *Sadhana Lodh v. National Insurance Co. Ltd.*⁴ and *Ibrat Faizan v Omaxe Buildhome*⁵, as delineating, sharply, the contours of Article 227.

5. The relevant passages from the said decisions may be reproduced thus:

Estralla Rubber¹:

¹ (2001) 8 SCC 97

² (2022) 4 SCC 181

³ 2022 SCC OnLine SC 283

⁴ (2003) 3 SCC 524

⁵ 2022 SCC OnLine SC 620

“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*⁶ 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*⁷. This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte*⁸ 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 Craft²

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel v. Garment Craft*⁹] 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*¹⁰] The jurisdiction exercised is in the nature of

⁶ AIR 1972 SC 1598

⁷ AIR 1954 SC 215

⁸ AIR 1975 SC 1297

⁹ 2019 SCC OnLine Del 11943

¹⁰ (2010) 1 SCC 217

correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd*¹ has observed : (SCC pp. 101-102, para 6)

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

Puri Investments³

“14. In the case before us, occupation of a portion of the subject-premises by the three doctors stands admitted. What has been argued by the learned counsel for the appellant is that once the Tribunal had arrived at a finding on fact based on the principles of law, which have been enunciated by this Court, and reflected in the aforesaid passages quoted from the three authorities, the interference by the High Court under Article 227 of the Constitution of India was unwarranted. To persuade us to sustain the High Court's order, learned counsel appearing for the respondents has emphasized that full control over the premises was never ceded to the medical practitioners and the entry and exit to the premises in question remained under exclusive control of the respondent(s)-tenant. This is the main defence of the tenant. We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are: —

- (i) Erroneous on account of non-consideration of material evidence, or
- (ii) Being conclusions which are contrary to the evidence, or
- (iii) Based on inferences that are impermissible in

law.

15. We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.

16. In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum.”

6. The High Court, exercising jurisdiction under Article 227 of the Constitution of India, does not even judicially review the order under challenge. All that the High Court is empowered to do, under Article 227, is to examine whether the court below has exercised jurisdiction in a manner which calls for supervisory correction. In case the manner of exercise of jurisdiction by the court below does not call for supervisory correction, the High Court would hold its hand without entering into the question as to whether the order was correct or incorrect.

7. Still less would be the scope of interference where the impugned order is discretionary in nature.

8. Yet another factor which should influence the exercise of

jurisdiction by the High Court under Article 227 is the question of whether the impugned order results in any irreparable prejudice to the Article 227 petitioner.

9. Tested on any of these touchstones, the order impugned in the present case cannot be said to justify interference by this Court under Article 227.

10. CS (Comm) 627/2019, which was instituted by the respondent against the petitioner, sought recovery, from the petitioner, of ₹ 14,91,074/-, against readymade garments stated to have been supplied by the respondent to the petitioner, during the period 25th June 2018 to 25th August 2019. It appears that purchase orders were placed by the petitioner on the respondent, against which garments were supplied by the respondent to the petitioner under invoices.

11. It appears that the purchase orders raised by the petitioner on the respondent and the invoices raised by the respondent on the petitioner each contained exclusive jurisdiction clauses, which were contrary in terms. The purchase orders vested exclusive jurisdiction, in respect of disputes which arose thereunder, in courts at Bangalore, whereas the invoices vested exclusive jurisdiction, to adjudicate disputes with the Hindustan Mercantile Association, Delhi.

12. The petitioner moved an application in CS (Comm) 627/2019 under Order VII Rule 10 of the CPC, submitting that the suit was bad for want of territorial jurisdiction. Reliance was, needless to say,

placed by the petitioner on the exclusive jurisdiction clause contained in the purchase orders placed by the petitioner on the respondent, which vested exclusive jurisdiction, with respect to disputes which arose thereunder, in courts at Bangalore.

13. Opposing the application, the respondent contended that, as the invoices raised by the respondent on the petitioner vested exclusive jurisdiction in respect of disputes in courts at Delhi, the suit was within jurisdiction.

14. Observing that the rival contentions addressed at the Bar raised disputed issues of fact which required adjudication consequent on trial, the learned Commercial Court has, *vide* the impugned order dated 6th September 2022, declined to entertain the petitioner's application under Order VII Rule 10 of the CPC which has, accordingly, been dismissed. Even so, the learned Commercial Court has, while framing issues in the suit, on the same day, included a specific issue as to whether the court of the learned Commercial Court had territorial jurisdiction to entertain the suit.

15. The issues framed by the learned Commercial Court on the said date read thus:

“1. Whether the plaintiff is entitled to recovery of Rs.14,91,074/- alongwith interest from the defendant as alleged? OPP

2. Whether this court has no territorial jurisdiction to entertain the present suit? OPD

3. Whether plaintiff has concealed material facts? OPD
4. Relief.”

16. Mr. Mishra initially sought to contend that the petitioner had not received the invoices raised by the respondent.

17. No such contention has been advanced before the learned Commercial Court and, therefore, the contention is clearly in the nature of an afterthought.

18. On this aspect of the matter being pointed out to Mr. Mishra, he now seeks to contend that the exclusive jurisdiction in the purchase orders placed by the petitioner on the respondent, ousted the jurisdiction of all other courts to adjudicate on the matter, as it used the expression “only” whereas the clause in the invoices did not confer such exclusive jurisdiction of courts at Delhi.

19. This, in my considered opinion, would be a completely artificial way of reading the jurisdiction clause in the invoices raised by the respondent on the petitioner. The invoices clearly envisage all disputes being decided by “*Delhi Hindustan Mercantile Association (Regd.), Delhi*”, as per its rules and regulations. It is not the case of the petitioner that the Delhi Hindustan Mercantile Association has an office at Bangalore.

20. In that view of the matter, this contention of Mr. Mishra is, in

the opinion of this Court, bereft of merit and is accordingly rejected.

21. The learned Commercial Court was, in my considered opinion, perfectly justified in declining the prayer, of the petitioner, to return the suit instituted by the respondent under Order VII Rule 10 at the initial stage, in view of the disputed contentions of fact addressed before him. The interest of the petitioner has been adequately protected by the issue regarding territorial jurisdiction which the learned Commercial Court has specifically framed.

22. It defeats comprehension as to how the petitioner could expect the court, exercising supervisory jurisdiction under Article 227 of the Constitution of India, to interfere with the manner in which the learned Commercial Court has exercised jurisdiction in the present case.

23. The petition is, accordingly, dismissed *in limine*, with no order as to costs.

C. HARI SHANKAR, J.

OCTOBER 18, 2022

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