



\$~3(Appellate Side-2022 List)

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

+ **CM(M) 163/2022**

NARESH CHAUHAN Petitioner

Through: **Mr. Kuldeep Kumar, Adv.**

versus

JAGDISH AND ORS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

% **30.03.2022**

CM(M) 163/2022

1. This petition seeks judicial intervention by the Court with an order dated 18th February, 2020, passed by the learned ADJ, which reads as under:

“RCA DJ87/18

NARESH CHAUHAN Vs. JAGDISH AND ORS.

18.02.2020

Present: Sh. Deepak Verma, Ld. Proxy Counsel for appellant.

Sh. R.K. Kaishik, Ld. Counsel for respondent no.4 & 5.

An application for waiver of cost of Rs.50,000/-imposed on the appellant on the last date has been filed on behalf of appellant by the proxy counsel. Copy supplied.

Perused. Heard.

The case has been adjourned repeatedly at request of counsel for appellant. Even the suit of the appellant was dismissed



with costs.

It is stated in the application that appellant is still in custody accordingly cost be waived of.

Though the application has been filed for waiver of cost but arguing counsel for appellant is still not present to argue the matter.

Ld. Counsel for respondent opposed the application and submits that he is ready to argue on the appeal.

Keeping in mind the fact that despite the cost being imposed the counsel for appellant has not made himself available to argue on the appeal. Therefore, I am not inclined to allow the application. The same is accordingly dismissed.

It is made clear that if the Ld. Counsel for appellant is not present on the next date to address arguments, the arguments shall be heard from Ld. Counsel for respondent only and appeal shall be decided.

Be listed for arguments on **17.03.2020.”**

2. A bare reading of the impugned order reveals that the learned ADJ has, in imposing the costs had taken into account the fact that this case was adjourned repeatedly at the request of learned Counsel for the appellant and that, even on 18th February, 2020, learned Counsel for the appellant was not in a position to argue the matter.
3. When this petition was listed before the Court on 17th February, 2022, a statement was made to the effect that the petitioner had concluded arguments in the appeal, but that the respondents/ appellant before the learned ADJ have not addressed arguments despite several opportunities.
4. This Court, in the circumstances, directed learned Counsel for the petitioner to place the order sheets of the First Appellate Court on record.



5. That has been done. On perusal of the order sheets, it transpires that, on,

- (i) On 30th April, 2019, learned Counsel for the parties sought time to advance arguments.
- (ii) On 9th September, 2019, learned Counsel for the appellant sought an adjournment.
- (iii) On 8th January, 2020, learned Counsel for the appellant sought an adjournment in the appeal and a final opportunity was granted.
- (iv) On 31st January, 2020, learned Counsel for the appellant again sought an adjournment which was allowed subject to costs of ₹50,000/-.
- (v) Despite imposition of costs, learned Counsel for the appellant was not available to argue the appeal on the next date of hearing, i.e. 18th February, 2020. A yet another opportunity was granted on a clear understanding that the arguments would be heard on the next date of hearing.
- (vi) On 17th March, 2020, the matter was again adjourned for hearing arguments on the appeal on 28th April, 2020.
- (vii) On 11th December, 2020, the matter was again adjourned for arguments on 5th February, 2021.
- (viii) On 5th February, 2021, at request, the matter was again re-listed for arguments on 8th April, 2021.
- (ix) On 8th April, 2021, arguments were advanced by the appellant.

6. Thereafter, arguments were advanced on behalf of Respondents



4 and 5 on 8th September, 2021.

7. At this stage, the present petition came to be filed before this Court, under Article 227 of the Constitution of India on 5th October, 2021, seeking setting aside of the order dated 18th February, 2020.

8. The recital of the proceedings before the learned ADJ, above, discloses that the learned ADJ was more than justified in her observation that the appellant was repeatedly taking adjournments in order to argue the appeal, before the date when costs came to be imposed.

9. It was not, therefore, as though the learned ADJ has arbitrarily imposed costs, without due justification.

10. Ordinarily, such an order would not justify invocation of the jurisdiction vested in this Court by Article 227 of the Constitution of India, in view of the law laid down in *Estralla Rubber v. Dass Estate (P) Ltd.*¹, which has subsequently been followed in *Garment Craft v. Prakash Chand Goel*² and *Puri Investments v. Young Friends & Co.*³.

11. These decisions are *ad idem* on the fact that Article 227 jurisdiction is to be exercised only in rare cases where the authorities below are bound not to be acting appropriately exercising the jurisdiction vested in them, as Article 227 jurisdiction is supervisory,

¹ (2001) 8 SCC 97

² 2022 SCC OnLine SC 29

³ 2022 SCC OnLine SC 283



and not appellate in nature.

12. In view of the above mentioned facts, no occasion exists for this Court to exercise its jurisdiction under Article 227 of the Constitution of India.

13. This petition is accordingly dismissed.

14. Nonetheless, learned Counsel for the appellant requests that the costs may be reduced. Given the jurisdiction of this Court conferred by Article 227 of the Constitution of India, I am hesitant to pass such an order, as it would amount to setting out a wrong precedent. Nonetheless, this would not preclude the petitioner from moving the learned ADJ seeking reduction of the costs imposed and, on any such application being moved, the learned ADJ would be at liberty to take an appropriate view in the matter.

C.HARI SHANKAR, J

MARCH 30, 2022

SS