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

Date of decision: 18.08.2023

\+ CM(M) 396/2023 & CM APPL. 11706/2023

M/S INTELLI CARE ..... Petitioner

Through: Mr. Tushar Mahajan and Mr. Bhaavan Mahajan, Advocates.

versus

M/S ROOTS MULTICLEAN LTD ..... Respondent

Through: Mr. L A Vashishtha and Mr. Sanjay Vashishtha, Advocates.

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CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 13.02.2023 passed by the Civil Judge-01, South East District, Saket Courts ('Trial Court') in CS SCJ No. 190/2017, allowing the application filed by the Respondent under Order 7 Rule 14(3) of Code of Civil Procedure, 1908 ('CPC') read with Section 151 of CPC for placing on record additional documents i.e., three (3) invoices.

1.1. The Petitioner herein is the defendant and the Respondent herein is the plaintiff in the suit. The civil suit has been filed by the Respondent on 21.02.2017 for recovery of an amount of Rs. 1,97,961/- plus interest.

1.2. The issues were framed in the civil suit on 02.05.2019 and evidence by way of affidavit was filed on behalf of the Respondent on 14.05.2019.

However, before the affidavit of evidence was tendered, the Respondent herein filed an application under Order 7 Rule 14(3) of CPC to place on record three (3) invoices i.e., (i) 1111500152 of Rs.1,96,388/-, (ii) 1111500155 of Rs. 80,340/- and (iii) 1411500109 of Rs. 18,735/-, which form the subject matter of the claim of the recovery.

2. Learned counsel for the Petitioner states that the Trial Court erred in allowing the application filed by the Respondent on the ground that the filing of the said documents is in contravention of Order 7 Rule 14 of CPC, which governs the ordinary civil suit.

2.1. He states that the invoices which are now sought to be placed on record were neither mentioned in the list of reliance nor was it disclosed by the Respondent at the time of the filing of the plaint that the said documents are not in its power and possession. He states that, in fact, as is admitted on record, the said documents were in the knowledge and possession of the Respondent and the Respondent failed to file these documents along with the plaint.

2.2. He states that the said documents did not even find mention in the affidavit by way of evidence filed on 14.05.2019. He states that therefore, the Trial Court erred in permitting the Respondent to file these invoices by way of an application under Order 7 Rule 14(3) of CPC, at this belated stage. He states that the said invoices which have been produced now pre-date the institution of the suit and should have been filed along with the plaint.

2.3. He relies upon the judgments passed by the Courts in ***Chakreshwari Construction Private Limited vs Manohar Lal, (2017) 5 SCC 212***, ***Bhanumathi vs Sarvothaman, 2010 SCC Online Ker 3737*** and ***Gold Rock World Trade Ltd. vs Veejay Lakshmi Engineering Works Ltd., 2007 SCC Online Del 1140***.

3. In reply, the learned counsel for the Respondent states that the claim in the plaint itself is based on these three (3) invoices, which are now sought to be placed on record, as is evident from the averments made in the plaint and more specifically the ledger statement filed along with the plaint. He states that the averments in the plaint have to be read along with the ledger statement. He states that the number, date and amount of the said invoices is duly mentioned in the ledger filed with the plaint.

3.1. He states that it is the case of the Respondent that the Petitioner herein had made part payments towards each of the three (3) invoices as duly reflected in the ledger statement. He states that therefore, the filing of the invoices at this belated stage would neither change the claim made in the plaint nor introduce a new cause of action. He relies upon the judgment of the Supreme Court in ***Columbia Sportswear Company vs Harish Footwear & Anr., 2017 SCC OnLine Del 8122*** and ***M/s Vikram Roller Flour Mills Ltd. vs M/s KRBL Ltd., 2018 SCC OnLine Del 13407***.

3.2. He states that the said documents i.e., invoices, are necessary for determining the real issue between the parties. He states that the Respondent herein has nothing to gain by withholding the invoices and the circumstances in which the said invoices could not be filed initially with the plaint have been filed duly enumerated in the application filed under Order 7 Rule 14(3) of CPC.

4. This Court has heard the learned counsel for the parties and have perused the record. The operative portion of the impugned order passed by the Trial Court reads as under:

> *"5. Perusal of the record shows that plaintiff had in fact mentioned that the claim of recovery of amount of Rs.1,97,961/- is based on the invoices, however, the details of the invoices have not been mentioned in the plaint. Further in the list of documents annexed with the plaint, it has been mentioned that invoices*

are part of the documents relied upon by the plaintiff.

6. The case law titled as Krishan Kumar Wadhwa & Ors Vs. Arjun Som Dutt and Ors. CS (OS) 3316/2015 relied upon by the Ld. counsel for the defendant is not applicable to the present case since the facts of the present case are different from the facts of the case law relied up by the Ld. counsel for the defendant to the extent that in the relied case law, cross-examination of the plaintiff therein had already been conducted. <u>However, in the present case, the cross-examination of the plaintiff has not even initiated, Further, no prejudice shall be caused to the defendant since he shall have the opportunity to cross-examine the plaintiff qua invoices relied upon by the plaintiff</u>.

8. Considering the averments, and submissions and in the interest of justice, the application u/O 7 Rule 14 (3) r.w. Section 151 CPC is allowed and is disposed of subject to cost of Rs.2000/- to be paid by the plaintiff to the defendant. The invoices (i) 1111500152 of Rs. 1,96,388.00; (ii) 1111500155 of Rs.80,340.00 and (iii) 1411500109 of Rs.18,735.00 are taken on record."

(Emphasis Supplied)

5. At the outset, this Court would like to observe that this Court exercises supervisory jurisdiction under Article 227 of the Constitution of India. In the opinion of this Court, the exercise of jurisdiction by the Trial Court under Order 7 Rule 14 CPC falls within its jurisdiction and discretion. No statutory appeal has been provided in the CPC against such exercise of power by the civil Court. The intent therefore, is to make the civil Court the final arbiter of the issues decided in exercise of this discretionary jurisdiction and regulate the trial. The discretion exercised by the Trial Court in allowing the documents to be taken on record, cannot be lightly interfered with and this Court would be circumspect to exercise its jurisdiction under Article 227 of the Constitution of India.

6. An error of law which may have been committed by the said Trial Court also fails within its jurisdiction unless it can be shown that the order of the Trial Court is so perverse that it cannot be sustained in law. In this regard, it would be instructive to refer to the decision judgment of ***Garment Craft v. Prakash Chand Goel, (2022) 4 SCC 181***, wherein the Supreme Court has

held as under:

> "*15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel v. Garment Craft, 2019 SCC OnLine Del 11943] 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, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69] 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.*
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> *16. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd. [Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97] has observed : (SCC pp. 101-102, para 6)*
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> *"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."*
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> *17. The factum that the counsel for the appellant had applied for the certified copy would show that the counsel for the appellant was aware that the ex parte*

decree had been passed on the account of failure to lead defence evidence. This would not, however, be a good ground and reason to set aside and substitute the opinion formed by the trial court that the appellant being incarcerated was unable to lead evidence and another chance should be given to the appellant to lead defence evidence. The discretion exercised by the trial court in granting relief, did not suffer from an error apparent on the face of the record or was not a finding so perverse that it was unsupported by evidence to justify it. There could be some justification for the respondent to argue that the appellant was possibly aware of the ex parte decree and therefore the submission that the appellant came to know of the ex parte decree only on release from jail on 6-5-2017 is incorrect, but this would not affect the factually correct explanation of the appellant that he was incarcerated and could not attend the civil suit proceedings from 6-10-2015 to 6-5-2017. If it was felt that the application for setting aside the ex parte decree was filed belatedly, the court could have given an opportunity to the appellant to file an application for condonation of delay and costs could have been imposed. The facts as known, equally apply as grounds for condonation of delay. It is always important to take a holistic and overall view and not get influenced by aspects which can be explained. Thus, the reasoned decision of the trial court on elaborate consideration of the relevant facts did not warrant interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution."

(Emphasis Supplied)

7. In the facts of this case, this Court is of the opinion that no case has been made out for interfering with the impugned order. It would also be relevant to refer to the paragraph 4 of the plaint filed by the Respondent, which reads as under:

"4. That the defendant placed several orders upon the plaintiff and accordingly the plaintiff supplied the ordered materials to the defendant from time to time since a long time. The plaintiff raised its invoices which were duly acknowledged by the defendant and thus the defendant made the part payments. The plaintiff is maintaining a running account in the name of the defendant in the regular course of its business."

7.1. In the aforesaid paragraph, the Respondent i.e., the plaintiff has specifically averred that it had raised invoices on the Petitioner herein and the Petitioner had made part payments thereto. The Respondent in support of the said averments, placed on record the ledger enumerating the details of the invoices, the invoice number and the part payments received against each invoice. The Petitioner herein in its written statement while replying to the said paragraph no. 4 has not denied that it had been served with the said invoices. The relevant portion of the written statement reads as under:

> *"4. The Contents of Para No.4 under reply are matter of record but have been twisted to suggest that orders were raised by Defendant and Plaintiff raised its invoices which were acknowledged by the Defendant and Defendant made part payment. The fact is that the Defendant raised one consolidated order, with initial deposit of 33% upfront, with terms and conditions. Thereafter, the Plaintiff failed to deliver on time, failed to deliver quality machines which would operate at promised standards, and failed poorly to deliver after sales services to rectify the defects or replace the defective parts/machines at the first instance."*

7.2. This Court finds merit in the submissions of the Respondent that these invoices are crucial and relevant for deciding the real issue between the parties as regards the veracity of the claim of the Respondent in the suit with respect to the outstanding monies payable towards the invoices.

8. The existence of the invoices or there relevancy therefore, is not in dispute and the Petitioner herein wants to keep the said documents outside the trial only on the ground of delay. However, the matter is still at the stage where evidence of the plaintiff is yet to begin and therefore, the Petitioner i.e., the defendant has full opportunity to deal with the said invoices.

8.1. Learned counsel for the Petitioner for himself conceded during oral arguments that in terms of the judgment of the Courts, the Petitioner herein will have sufficient liberty to rebut the said invoices and therefore, no prejudice, admittedly, is being caused to the Petitioner by taking the said documents i.e., invoices, on record.

8.2. In fact, the Trial Court as well has observed as noted hereinbefore that the Petitioner herein will have sufficient opportunity to cross examine the plaintiff qua the invoices relied upon by the plaintiff.

9. Accordingly, this Court finds no merit in this petition. The same is

dismissed. Interim order stands vacated.

MANMEET PRITAM SINGH ARORA, J

AUGUST 18, 2023/msh/aa

Click here to check corrigendum, if any