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

+ **CM(M)-IPD 17/2022 & CM APPL. 35609/2022**

ATCOM TECHNOLOGY CO. LTD Petitioner

Through: Mr. Shailen Bhatia, Mr. Anuraj
Tirthankar, Ms. Janhvi Chadha, Ms. Preeta
Panthaki and Ms. Neelam Pathak, Advs.

versus

RAHUL GUPTA & ORS Respondents

Through: Ms. Rajeshwari H and Mr.
Deepanshu Nagar, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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20.02.2023

1. This petition under Article 227 of the Constitution of India assails order dated 4th July 2022, whereby the learned District Judge (Commercial Court) (“the learned Commercial Court”) allowed an application dated 24th November 2021 filed by the respondents, as the defendants before the learned Commercial Court, to take certain documents, filed by the defendants on 17th August 2021.

2. The proceedings arose out of CS (Comm) 179/2020 instituted by the petitioner against the respondents, alleging that the respondents were infringing the copyright held by the petitioner in the logo

atcom

and were also passing off their product as the product of the petitioner. Injunctive reliefs were, therefore, sought in the plaint. As this court is concerned only with the issue of whether the decision of the learned Commercial Court, to permit the additional

documents filed by the respondents to be taken on record merits interference under Article 227 of the Constitution of India, it is not necessary to advert any further to the merits of the substantive disputes between the parties.

3. Summons, in the suit instituted by the petitioner, were served on the respondent on 10th November 2020. Written statement was filed by the respondent on 5th March 2021. No documents were filed with the written statement. Replication, to the written statement filed by the respondent, was filed by the petitioner on 5th April 2021.

4. Thereafter, on 17th August 2021, the respondents filed certain documents, in support of the written statement. By order dated 9th October 2021 – which has not been challenged – the learned Commercial Court granted liberty to the respondents to move an application to take the said documents on record. An application, for the said purpose, was moved by the respondents on 24th November 2021. The impugned order dated 4th July 2022 allows the said application.

5. When this matter had earlier came up before this Court on 6th September 2022, it was thus recorded:

“2. The present petition has been filed challenging the impugned order dated 4th July, 2022 passed by the Id. District Judge East/Karkardooma District Courts (hereinafter "Commercial Court") in CS(COMM) 179/2020 titled Atcom Technology Co. Ltd. v. Rahul Gupta & Ors. Vide the said order, the Commercial Court allowed an application under Order XI Rule 1 CPC, filed by the Defendants-Respondents (hereinafter "Defendants"), subject to a cost of INR 7000 rupees. The case of the Plaintiff-Petitioner (hereinafter "Plaintiff") is that the application could not have been allowed by the Commercial Court, as it is contrary to Rule 14 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018 (hereinafter "Original Side Rules"), which states that parties cannot

file documents after completion of pleadings in a suit, except as provided in Order XII of the CPC or the Original Side Rules.

3. The question that has thus arisen in this petition, is whether the Original Side Rules would apply to the Commercial Courts functioning in the various districts of Delhi. Id. Counsel for the Plaintiff has relied upon the decision of a Co-ordinate Bench of this Court in M/s OK Play India Pvt. Ltd. v. M/s A.P. Distributors & Anr. [CM(M) 346/2020, decision dated 25th October, 2021], to argue that this issue is no longer res Integra and the Id. Single Judge has held that the Original Side Rules would apply to Commercial Courts. In the said judgement the Id. Single Judge has relied upon certain Practice Directions issued by the Delhi High Court.

4. Ms. Rajeshwari, Id. Counsel for the Defendants, opposes this submission and submits that Rule 3 of the Original Side Rules is clear that the said Rules only apply to the Original Side of the Delhi High Court and not to the Commercial Courts at the district level. She also relies upon the Practice Directions annexed as Annexure E, issued along with the Original Side Rules, and Section 18 of the Commercial Courts Act, 2015, to establish that the Practice Directions only supplement the law when CPC/Commercial Courts Act/Original Side Rules are already applicable. They cannot be used to apply the Original Side Rules to a Court.

5. At this stage, it is also brought to the attention of the Court that the Defendants have filed a cancellation petition seeking cancellation of the Plaintiffs mark before this Court. The suit CS(COMM) 179/2020, in which the impugned order has been passed and which was pending before the Commercial Court in Karkardooma, is also now sought to be transferred to the the High Court, by way of T.R.P. (C.) 61/2022, stated to be listed before the Id. Joint Registrar on 7th September, 2022.

6. Accordingly, let this petition be listed on 15th November, 2022, with the said cancellation petition being CO (COMM. IPD-TM) 188/2022 and the suit (numbered as CS (COMM.) 179/2020 in the Commercial Court, Karkardooma), sought to be transferred pursuant to T.R.P. (C.) 61/2022 filed before this Court. The legal issue that has arisen in this case would also be considered on the said date.”

6. Today, Mr. Shailen Bhatia, learned Counsel for the petitioner, has not canvassed the plea which was urged before this Court on 6th September 2022. He has, however, challenged the impugned order on other grounds. I would, however, consider, in the present order, all the

contentions advanced by Mr. Bhatia including those which were advanced in the order dated 6th September 2022.

7. Mr. Bhatia has drawn my attention to Order XI Rule 1(10)¹ of the Code of Civil Procedure, 1908 as amended by the Commercial Courts Act, 2015. His contention is that, once the written statement was filed without any documents, any additional documents could be permitted to be taken on record only if the pre-requisites of Order XI Rule 1(10) was satisfied. The essential pre-requisite to be satisfied in this context, he submits, was “reasonable cause for non-disclosure along with the written statement”. Drawing my attention to the application filed by the respondents to take the aforesaid documents on record, Mr. Bhatia submits that the application does not disclose any sufficient cause for the failure, on the part of the respondents, to file the documents with the written statement. For ready reference, paras 2 and 3 of the said application may be reproduced thus:

“2. That the Defendants had filed the written statement on 04.03.2021 along with admission/denial of documents of the Plaintiff. *It is submitted that the Defendants had filed its written statement on urgent basis during the Covid pandemic due to which some documents filed by the Defendants were missed out due to inadvertent error and could not be filed with the written statement.* The Documents were filed by the Defendants on 17.08.2021. The documents filed are belated and have already been pleaded by the Defendants in their pleadings.

3. That the present application is filed as per the order of this Hon'ble court dated 09.10.2021 wherein the Defendants were allowed to move appropriate application for taking the documents on record. These documents include Trademark Certificate No. 4132551, Chartered Accountant certificate certifying expenditure, ledger showing expenditure incurred by the Defendant in promoting its trademark 'ATCOM', invoices and email correspondences between plaintiff and Defendant. The Defendants seeks liberty to bring the documents filed, on record in order to

¹ 1. Disclosure and discovery of documents.—

(10) Save and except for sub-rule (7)(c)(iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counter-claim, save and except by leave of court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counter-claim

establish their case before this Hon'ble Court.”

(Emphasis Supplied)

8. Mr. Bhatia submits that a bare reference to the COVID-19 pandemic could hardly constitute “reasonable cause” within the meaning of Order XI Rule 1(10) of the CPC. As to how the COVID-19 Pandemic impacted the working of the respondents or impeded them from filing the documents with their written statement, he submits, is not disclosed in the application, which is silent in that regard. A perfunctory reference to the COVID-19 pandemic, submits Mr. Bhatia, is completely insufficient as a ground to permit taking on record of the additional documents.

9. Besides, submits Mr. Bhatia, the documents were allowed to be taken on record after the petitioner had filed its replication to the written statement of the respondents. As such, the respondents had, being aware of the case that the petitioner was setting up in the replication, sought to counter that case by filing additional documents. This, submits Mr. Bhatia, is abuse of process and cannot be permitted.

10. Mr. Bhatia has placed reliance on my decision in *Bela Creatin Pvt. Ltd. v. Anuj Textiles*² in which, according to him, in similar circumstances, this Court upheld the decision of the learned trial court refusing to take additional documents on record. He also submits that, without amending the Statement of Truth filed with the written statement, the defendant could not be permitted to place any additional documents on record as the statement of truth expressly stated that all documents within power and possession of defendant had been placed on record.

² 2022 SCC OnLine Del 1366

11. In addition, it would only be fair for me to note the contention which was advanced before this Court on 6th September 2022, relying on the judgment of a learned Single Judge of this Court in *Ok Play India Pvt. Ltd. v. A.P. Distributors*³ Mr. Bhatia, with characteristic candour, did not press the said judgment into service, disclosing, fairly, that the decision stood reversed by the Supreme Court *vide* the following order dated 12th September 2022 in *A.P. Distributors v. Ok Play India Pvt. Ltd.*⁴:

“Leave granted.

Having heard learned counsel for the respective parties and in the facts and circumstances of the case and considering the fact that the written statement was filed on the 34th day of the service of notice of summons, however, the application for condonation of delay was filed which was beyond the period of 120 days, the High Court has taken too technical view in setting aside the order passed by the learned Commercial Court directing to accept the written statement filed on behalf of the appellants/defendants. The High Court was not justified in setting aside the order passed by the learned Trial Court directing to take the written statement on record.

In view of the above and for the reasons stated hereinabove, the present appeals succeed. The impugned judgment and orders passed by the High Court are hereby quashed and set aside and the order passed by the learned Trial Court directing to take written statement on record after condoning the delay in submitting the written statement is hereby restored.

The present Appeals are accordingly allowed. No costs.”

12. However, Mr. Bhatia submits that Rule 14⁵ in Chapter VII of the Delhi High Court (Original Side) Rules, 2018 (“the Original Side Rules”), nonetheless does not permit filing of documents after completion of pleadings except as provided in Order XIII of the CPC, or elsewhere in the Original Side Rules. As such, he submits that,

³ 2021 SCC OnLine Del 4809

⁴ SLP(C) 9733-9734/2022

⁵ 14. No documents to be filed after completion of pleadings.— Except as provided in Order XIII of the Code and these Rules, neither party shall be entitled to file any documents after completion of pleadings in the suit. Upon failure of parties to file their respective documents and/or file the respective documents on completion of filing of pleadings, in accordance with these Rules, the Registrar shall forthwith place the

even by operation of Rule 14 in Chapter VII of the Original Side Rules, the additional documents, having been filed after the replication had been filed by the petitioner, could not have been taken on record.

13. Responding to the submission advanced by Mr. Bhatia, Ms. Rajeshwari, learned Counsel for the respondents, submits that the delay in filing documents with the written statement, by her client, was *bona fide* and owing to the seriousness of the COVID-19 pandemic, which, at that time, was ravaging the country. She further points out that Order XI Rule 1(x) uses the expression “reasonable cause”, which has been held, by a coordinate Bench of this court in ***Hassad Food Company Q.S.C. v. Bank of India***⁶, to be wider than the expression “sufficient cause” and “good cause”. Paras 13 and 14 of ***Hassad Food Company***⁶ thereof read thus:

“13. Perusal of Order XI as noted above reveals that the plaintiff is bound to file all documents in its power, possession, control or custody with the plaint and in case of urgent filing of a suit if some additional documents are to be filed under sub-rule (1) of Rule 1 of Order XI, the plaintiff may seek leave of the Court to rely on additional documents which additional documents are required to be filed within 30 days of filing of the suit. Under sub-rule (5) of Rule 1 of Order XI, the plaintiff shall not be allowed to rely on documents which were in the plaintiff's power, possession, control or custody and not disclosed along with the plaint or within the extended period save and except by leave of the Court which leave can be granted only if the plaintiff establishes reasonable cause for non-disclosure along with the plaint. The language used in the sub-rule (5) is that the plaintiff is required to show "a reasonable cause" and not a "sufficient cause" as is ordinarily provided in other provisions.

14. While dealing with Order XIII Rule 2 CPC wherein the words used are: "unless good cause is shown", the Supreme Court in the decision reported as ***Madanlal v. Shyamal***⁷, noted the distinction between "good cause" and "sufficient cause" and held that "good cause" requires a lower degree of proof as compared to

matter before Court.

⁶ 2019 SCC OnLine 10647

(2002) 1 SCC 535

Signature Not Verified

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By: KAMLA KAWAT

Signing Date: 22.02.2023

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"sufficient cause" and thus the power under Order XIII Rule 2 CPC should be exercised liberally. Sub- Rule (5) of Rule 1 of Order XI of the Commercial Courts Act, 2015 uses the phrase "reasonable cause" which would require even a lower degree of proof as compared to "good cause".

14. Ms. Rajeshwari also relies on my decision in *Md. Islamuddin v. S.S. Kapoor*⁸, specifically on para 12 thereof, which reads as under:

"12. Significantly, all that the petitioner is required to show under Order XI Rule 1(5) of the CPC is whether the sufficient cause existed for the Petitioner having failed to file the additional documents with the plaint. If there is sufficient cause for the documents not been filed with the plaint, any subsequent or later delay in introducing the documents has not been regarded statutorily as a relevant consideration under Order XI Rule 1(5) of the CPC. In the present case, the failure to file the three invoices and the hand written documents along with the plaint has been sought to be explained by pointing out that the plaint was filed during the currency of the COVID-19 pandemic, during which period it was difficult to contact the counsel. Though the learned District Judge has not chosen to believe this contention, the law laid down by the Supreme Court in *Sugandhi* persuaded me to, in the interests of justice, to allow the documents which the petitioner sought to place, on record to be so placed, subject to costs of ? 15,000/- to be paid by the petitioner to the respondents within four weeks from today."

15. She further cites the judgment of the Supreme Court in *State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti*⁹ to contend that, in the absence of any such provision in the CPC as amended by the Commercial Courts Act, or in any other statutory enactment, the failure to file documents with the written statement could not per consequence, result in the documents being struck off the record.

16. I have heard learned Counsel and have considered the rival contentions advanced at the Bar.

17. Apropos Rule 14 in Chapter VII of the Original Side Rules, Ms.

Rajeshwari advanced two submissions. The first is that Rule 4(e)¹⁰ of the Original Side Rules clearly indicates that the said rules apply only to the Original Side of this Court and not to Commercial Courts lower in the judicial hierarchy. The expression “The Court” is defined in Rule 4(e), as referring to this Court, i.e., the Delhi High Court and would not, therefore, encompass courts at the district level.

Analysis

18. In my view, most of the issues which have been canvassed at the Bar do not really arise for consideration as the additional documents filed by the defendant cannot be regarded as having been filed beyond the time available in that regard, as provided in the CPC as amended by the Commercial Courts Act.

19. Order dated 4th January 2020 passed by the Supreme Court in *Re : Cognizance for Extension of Limitation Suo Motu Writ Petition (C) 3/2020*¹¹ and its impact

19.1. Summons in the suit were admittedly served on the defendants on 10th November 2020. The ordinary period of 30 days available to file written statement by way of response to the suit, would, therefore, expired on or around 10th December 2020. Where the normal period for filing pleadings expired between 15th March 2020 and 28th February 2022, the Supreme Court *vide* para 5.4 of its order dated 4th January 2022, passed in *Re : Cognizance for Extension of Limitation Suo Motu Writ Petition (C) 3/2020*¹¹ extended the time available for

⁹ (2018) 9 SCC 472

¹⁰ 4. **Definitions.**—In these Rules, unless the context otherwise requires:
(e) “The Court” or “this Court” means the Delhi High Court;

(2022) 3 SCC 117

filing pleadings till 28th February 2022:

“5.4. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, *outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*”

(Emphasis Supplied)

19.2. The aforesaid position was further recognised by the Supreme Court in its order dated 4th January 2022 in ***Centaur Pharmaceuticals Pvt. Ltd. v. Stanford Laboratories Pvt. Ltd.***¹², which read thus:

“Having heard the learned counsel for the respective parties, we are of the opinion that, in the facts and circumstances of the case, the High Court has not committed any error in extending the period of limitation in filing the written statement and consequently taking on record the written statement filed on behalf of the respondent-original defendant.

Even as held by this Court in the subsequent orders even the *period of limitation which could have been extended and/or condoned by the Tribunal/Court is excluded and/or extended even up to 07.10.2021.*

In that view of the matter, we see no reason to interfere with the impugned judgment and order passed by the High Court. Hence, the Special Leave Petitions stand dismissed. Consequent upon the dismissal of the Special Leave Petitions, the interim order passed by this Court stands vacated.

Pending applications stand disposed of.”

(Emphasis supplied)

19.3. In line with the aforesaid two orders, the Supreme Court held, in ***Babasaheb Raosaheb Kobarne v. Pyrotek India Private Limited***¹³ and ***Prakash Corporates v. Dee Vee Projects Ltd***¹⁴ that the effect of operation of the aforesaid orders passed by the Supreme Court was

¹² 2022 SCC OnLine SC 1607

¹³ 2022 SCC OnLine SC 1315

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that the statutory periods of limitation, prescribed under any statute or law applicable for the time being in force, stood extended till 28th February 2022. The period from 15th March 2020 till 28th February 2022, therefore, stands excluded, by operation of the orders passed by the Supreme Court, for the purposes of limitation, for filing any appeal, application, petition or other legal proceeding. The effect of such exclusion has been underscored, in para 28 of the report in *Prakash Corporates*¹⁴, which holds that “the excluded period, as a necessary consequence results in enlargement of time, over and above the period prescribed”

19.4. In this context, I may observe that there was, at one point of time, a prevalent view, based on the judgment of the Supreme Court in *Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd*¹⁵, that the benefit of the order passed by the Supreme Court would be available only where the normal period of limitation, for filing of a proceeding expired after 15th March 2020. It would not, therefore, be available where the normal period of limitation expired before 15th March 2020 and it was only the condonable period of limitation which expired after 15th March 2020. That view, however, no longer holds the field in view of the later orders passed by the Supreme Court in *Suo Motu Writ Petition*¹¹, based on which the Supreme Court has held, in *Centaur Pharmaceuticals*¹² that, even where the extended period of limitation condonable period of limitation expired after 15th March 2020, the litigant would be entitled to the benefit of extension of time as made available by the orders passed by the Supreme Court.

19.5. In such circumstances, I have taken a view, in several decisions

¹⁴ (2022) 5 SCC 112

¹⁵ (2021) 2 SCC 317

including *Kamlesh v. Sudhir Sharma*¹⁶, that where the normal period of limitation expired after 15th March 2020, it would be deemed to stand extended till 28th February 2022.

19.6. As such, the time of filing written statement by the respondents would also, consequent to issuance of summons in the suit, stand extended till 28th February 2022.

19.7. Admittedly, the written statement, as well as the documents which were filed thereafter, in support of the written statement, were both filed before 28th February 2022. They have, therefore, to be treated as having been filed within the normal period of limitation available in that regard. They cannot, therefore, be treated as having been belatedly filed.

19.8. Mr. Bhatia also drew my attention to Order XI Rule 1(10) which requires the documents to be filed with the written statement. Though Order XI Rule 1(10), *stricto sensu*, does say so, in my view, where the written statement and documents *are both filed by the defendant within the maximum period of 120 days* available under Order VIII Rule 1, though not filed together, the documents have to be taken on record.

20. As such, in the present case, it cannot be said that the documents, as filed on 17th August 2021, were filed beyond the normal statutory period of limitation available for filing the documents, though they were not filed along with the written statement. As both the written statement and the documents were

¹⁶ 2022 SCC OnLine Del 4069

filed within the normal statutory period available in that regard (by operation of the decision of the Supreme Court in *Suo Motu Writ Petition*¹¹ read with the judgements which followed and applied it, no fault can be found with the decision of the learned Commercial Court to allow the documents to be taken on record.

21. The remaining pleas as advanced do not really survive for consideration. However, as they were raised, it would be only fair to deal with them.

22. Re. Rule 14 in Chapter VII of the Original Side Rule

22.1. I am in agreement with Ms. Rajeshwari that Rule 14 of Chapter VII of the Original Side Rules would not apply to the present case. Even while providing that neither party would be entitled to file documents after completion of pleadings in a suit, save as provided in Order XIII of the CPC or elsewhere in the (Original Side) Rules, Rule 14 envisages, upon failure of parties to file their respective documents till pleadings are completed, placement of the matter by the registrar before the court. Rule 3 of the (Original Side) Rules makes this matter more explicit, by clearly stating that the (Original Side) Rules would govern “all proceedings on the original side of the court, instituted or transferred pursuant to provisions of the Delhi High Court Act of 1966 or any other law. “The court” is defined, in Rule 4 in Chapter I of the Original Side Rules as meaning the Delhi High Court i.e., this Court.

22.2. Significantly, relying on Order VIII Rule 1 of the CPC as amended by the Commercial Courts Act, this Court had held, in *Ok Play India*³ that a written statement, filed beyond 120 days from the date of service of summons could not be taken on record. That

decision has been overturned by the Supreme court by the order dated 12th September 2022, reproduced in para 11 *supra*. The Supreme Court has expressed the note that the view adopted by this Court was “too technical” and that this Court had erred in upsetting the order of the learned Trial Court in allowing the written statement to be taken on record. The Supreme Court has, therefore, affirmed the principle that, while examining requests for taking on record belatedly filed pleadings, the Court has to adopt an expansive view.

22.3. I see no reason why the approach that the Supreme Court has adopted in its order dated 12th September 2022 in *A.P. Distributors*⁴ would not apply, *mutatis mutandis*, to a case such as the present, the only difference being that, in the present case, the application deals with a request for taking documents accompanying the written statement on record.

22.4. Even for that reason, the present petition does not make out a case for interference with the impugned order.

23. Re. Reasons cited in application

23.1. Mr. Bhatia had also sought to submit that the reasons advanced in the application filed by the respondents for taking the additional documents on record were perfunctory and insufficient.

23.2. Paras 2 and 3 of the application stand reproduced hereinabove. The respondents had specifically stated that, as the written statement had been filed during the COVID-19 pandemic, the respondents had “missed out” filing of the necessary documents with the written statement.

23.3. The Supreme Court has, in *Sugandhi v. P. Raj Kumar*¹⁷, advocated a liberal approach in the matter of taking additional documents on record, where trial is yet to commence. Paras 8 and 9 of *Sugandhi*¹⁷ may be reproduced thus:

“8. Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straight jacket formula, this leave can be granted by the court on a good cause being shown by the defendant.

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).”

23.4. *Sugandhi*¹⁷ was a case which arose under Order VII Rule 14(3) of the CPC, as it dealt with a non-commercial suit. The only substantial difference between Order VII Rule 14(3) and Order XI Rule 1(10) is, however, that while Order VII Rule 14(3) requires leave of the court to be taken before additional documents, beyond those filed with the pleadings, are to be taken on record, Order XI Rule 1(10), as applicable to Commercial Courts, further stipulates that leave would be granted only on the party establishing reasonable cause for non-disclosure of the documents with the pleadings. Though showing of reasonable cause is not specifically mentioned in Order VII Rule 14(3), para 8 of the decision in *Sugandhi*¹⁷

(reproduced *supra*) reads this requirement into the provision, and equates Order VII Rule 14(3) of the CPC as applicable to non-commercial suits with Order XI Rule 1(5) or Order XI Rule 1(10) of the CPC as applicable to commercial suits. The *ratio decidendi* of *Sugandhi*¹⁷ would, therefore, equally apply to commercial suits.

23.5. There is also substance in the contention of Ms. Rajeshwari that the word “reasonable cause”, as employed in the Order XI Rule 1(x), are broader in their scope than the expressions “sufficient cause” or “good cause”. I respectfully concur with the view expressed in that regard, by the Coordinate Bench of this Court in *Hassad Food Company*⁶. The difficulties which were faced by litigants during the COVID-19 pandemic are well-known and courts have, time and again, been advised to adopt an expansive view in such cases.

24. Scope of Article 227

24.1. The present petition has been instituted under Article 227 of the Constitution of India. This Court, under Article 227, exercises only supervisory jurisdiction. The peripheries of limits of supervisory jurisdiction are well-known and stands enunciated in the following passages from *Estralla Rubber v. Dass Estate (P) Ltd.*¹⁸, *Garment Craft v. Prakash Chand Goel*¹⁹, *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.*²⁰, *Puri Investments v. Young Friends and Co.*²¹ and *Sadhana Lodh v. National Insurance Co. Ltd.*²²

Estralla Rubber

¹⁸ (2001) 8 SCC 97

¹⁹ 2022 SCC Online SC 29

²⁰ 2022 SCC Online SC 620

²¹ 2022 SCC Online SC 283

²² (2003) 3 SSC 524

“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*²³ 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*²⁴. This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte*²⁵ 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 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*²⁶] 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*²⁷] 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*¹⁸ 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

²³ AIR 1972 SC 1598

²⁴ AIR 1954 SC 215

²⁵ AIR 1975 SC 1297

²⁶ 2019 SCC OnLine Del 11943

²⁷ (2010) 1 SCC 217

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.” ”

Ibrat Faizan

“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***¹⁸, which has been consistently followed by this Court (see the recent decision of this Court in the case of ***Garment Craft***¹⁹). 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 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.”

Puri Investments

“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.”

Sadhana Lodh

“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)

Conclusion

25. In accordance with the said view, I am of the opinion that no case can be said to have been made out for this Court, in exercise of its jurisdiction under Article 227, to interfere with the impugned order dated 4th July 2022 passed by the learned Commercial Court in CS (Comm) 179/2020.

26. This petition is accordingly dismissed.

27. This judgment be uploaded on the website of this Court within 24 hours.

C. HARI SHANKAR, J

FEBRUARY 20, 2023

dsn

Click here to check corrigendum, if any