



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-4879-2024 (O&M)
Date of decision : 15.10.2024

Abhimanyu Rai Petitioner

versus

Isha Singla Rai Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Shvetanshu Goel, Advocate
for the petitioner.

Mr. Sarthak Gupta, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Present revision petition is directed against order dated 30.07.2024 (Annexure P-10), that against 05.08.2024 (Annexure P-14) and that dated 06.08.2024 (Annexure P-15).
2. Vide order dated 30.07.2024, application filed by the petitioner for depositing the diet money for witnesses stands dismissed holding that for two years, the case is pending for evidence of the petitioner. He never bothered to file process fee, diet money and list of witnesses within the time granted by the Court vide order dated 16.08.2022. Despite availing six effective opportunities spreading over a period of two years, no iota of evidence was led by the petitioner.
3. Vide order dated 05.08.2024, the evidence of the petitioner was ordered to be closed by order of the Court.



4. Vide order dated 06.08.2024 whereby application filed by the petitioner seeking rectification of the order dated 15.07.2024 and that 24.07.2024 seeking extension of time to enable the petitioner to lead evidence stands rejected observing as under:-

“File put up before me by Sh. Deepak Sharma, Reader of this court, who informed the court that after the case was adjourned and zimini was recorded yesterday. Sh. Ashok Kumar Tyagi, Advocate (who is Local Commissioner for recording the evidence) placed on record Affidavit Ex.PWI/A along with statement of petitioner recorded by him regarding the tendering thereof. The said act of Local Commissioner is highly uncalled for because he had no authority to do the above, after the evidence of petitioner was closed by the order of court and case was posted for evidence of respondent, regarding which zimini was also recorded.

When Sh. Ashok Kumar Tyagi, Advocate was asked about the matter, he made statement in writing that on 05.08.2024 till 1600 hours, the affidavit of petitioner was incomplete as many blank spaces were therein apart from the fact that the documents mentioned therein were not there. He further stated that at about 1615 hours i.e after the undersigned had left for some meeting. Sh Akash Jangra, counsel for petitioner came and pressurized him to record statement of petitioner in respect tendering of his incomplete Affidavit Ex.PWI/A, which he did and even at that time, no documents were there with his affidavit.

Then, a perusal of statement of petitioner recorded by the LC on 05.08.2024 shows that even the single line statement regarding tendering of Affidavit Ex.PWI/A is incomplete, which is being reproduced for ready reference.

I tender my affidavit-Ex. PW-1/A along with document Ex.P-10...

Meaning thereby that by 1400 hours on 05.08.2024, when evidence of petitioner was closed by the order of court, neither his complete affidavit nor the documents to be placed on record by him, were ready. In the peculiar circumstances, it is ordered that Affidavit Ex.PWI/A (which is not only incomplete but also, the documents referred therein are not



annexed) shall not form part of the record.

At this stage, learned counsel for the petitioner filed an application seeking rectification of order dated 15.07.2024 and 24.07.2024 with a prayer that time be extended to enable the petitioner to lead evidence and sufficient opportunity be granted to him to do so.

If the petitioner has any grievance against the order passed by this court on 15.07.2024 and 24.07.2024, the proper and effective opportunity available with him is impugne the same before the Hon'ble Punjab and Haryan High Court. Instead of availing the proper remedy, the petitioner has moved the said application, which is not maintainable. Hence, the application filed by petitioner today stands dismissed. The file be put up 29.08.2024 i.e. date already fixed.”

5. The present *lis* has arisen out of matrimonial discord. Both the parties i.e. the petitioner as well as respondent have filed separate applications under Section 13 of the Hindu Marriage Act seeking decree of divorce. Both the parties were called in person with an intent to pursue them to enter into an amicable settlement. The same could not fructify.

6. Husband filed present revision petition. It was emphatically argued by senior counsel representing the petitioner that the list of witnesses was filed on 03.04.2024, yet Court has non-suited the petitioner. List of witnesses has been placed on record with the present petition as Annexure P-18. The same reads as under:-

“LIST OF WITNESS ON BEHALF OF PETITIONER

MOST RESPECTFULLY SHOWETH:-

That the present matter is pending adjudication before this Hon'ble Court. That in the matter the Petitioner desires to have the following witnesses summoned as witnesses for his case:-

1. Officials from Hero Motocorp Ltd. Address: Grand plaza, Plot No 2, Nelson Mandela Marg, Pocket 4, Vasant Kunj II, Vasant Kunj, New Delhi, Delhi 110070



2. Officials from DSLR Technologies Address: G-1-28, Apparel park, above Saiba expo, near, Mahal Rd, near Apparel park fire station, Jagatpura, Jaipur, Rajasthan 302017
3. Officials from Click Labs Address: Netsmartz House, Phase - 1, Sector 13, Chandigarh, Panchkula, Chandigarh 160101
4. Officials from Asian Leadership Institute
Adil Moloobhoy, Asian Leadership Institute, C/o A. S. Moloobhoy Group of Companies Marathon Futurex, B-501, Mafatlal Mills, N.M.Joshi Marg, Lower Parel, Mumbai – 400013
5. Officials from Income Tax Department
6. National Securities Depository Ltd., NSDL Trade World, A wing, 4th Floor, Kamala Mills Compound, Lower Parel, Mumbai – 400013
7. Officials from Ansal API 115, Ansal Bhawan 16, Kasturba Gandhi Marg New Delhi – 110001
8. Officials from HDFC Bank for details on account number 501000593335233, 50200074675851, 10981610001181 Officials from Income Tax Department
9. Official from Commissioner Of Police, District Gurugram
10. Concerned Official from District court, Gurugram.”

7. A bare perusal of the same would reveal that the list of witnesses submitted is not only vague, but is not feasible to be complied with. Officials from various private as well as public concerns have been summoned without specifying the record to be summoned and their designation.

8. On 05.09.2024, following order was passed:-

“I have perused list of witnesses furnished on behalf of the petitioner qua which the petitioner seeks opportunity to lead evidence. The list of witnesses is totally vague. There are 06 officials summoned from private establishments



without specifying any designation. Apart from the official summoned from HDFC Bank, there is no specification with respect to the record that the officials from the private establishments are required to bring. Even the official summoned from the Income-tax Department, Office of the Commissioner of Police District Gurguram and the District Court, Gurugram are also without any specification which itself shows that the list of witnesses is vague and with an intent to delay the proceedings.

Mr. Sharma prays for time to place on record fresh list of witness specifying the official/record and the relevance of the witness sought to be summoned, so that this Court can formulate opinion with respect to necessity to examine the witness.

On his request, adjourned to 10.09.2024.”

Thereafter fresh list of witnesses was furnished before this Court alongwith CM No.15752-CII of 2024.

9. The petitioner has invoked Article 227 of the Constitution of India by filing present revision petition. The scope of Article 227 of the Constitution of India has been spelled out by Supreme Court in the case of **Sadhana Lodh vs. National Insurance Company Limited and others, (2003) 3 SCC 524** observed as under:

“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 re-weigh the evidence upon which the inferior court or Tribunal



purports to have passed the order or to correct errors of law in the decision.”

10. While dealing with revisional proceedings arising out of order deciding application seeking amendment of pleadings, Apex Court in the case of **M/s Estralla Rubber vs. Dass Estate (Pvt.) Ltd., (2001) 8 SCC 97** dealt with the scope of Article 227 of Constitution of India observing as under:

“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 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 duty expected or required by 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 courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if 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 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.

7. This Court in **Ahmedabad Mfg. & Calico Ptg. Co. Ltd vs. Ramtahel Ramanand and Ors. [AIR 1972**



SC 1598] 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 & Anr. vs. Amarnath & Anr. [1954 SCR 565]**. This court in **Babhutmal Raichand Oswal vs. Laxmibai R. Tarte and Anr. [AIR 1975 SC 1297]** 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.”

11. Aforesaid dictum has been reiterated by Apex Court in the case of **M/s Garment Craft vs. Prakash Chand Goel, (2022)4 SCC 181** observing as under:

“18. Having heard the counsel for the parties, we are clearly of the view that the impugned order 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. [1*] 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. Explaining the scope of jurisdiction under Article 227, this Court in ***Estralla Rubber v. Dass Estate (P) Ltd. (2001) 8 SCC 97*** has observed:-

[1* *Celina Coelho Pereira (Ms) and Others v. Ulhas Mahabaleshwar Kholkar and Others, (2010) 1 SCC 217*]

"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."

12. ***M/s Garment Craft's case*** (supra) was further relied upon in the case of **Ibrat Faizan vs. Omaxe Buildhome Private Limited, 2022 AIR Supreme Court 2363** observing as under :

"14. xxxx However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

14.1 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., (2001) 8 SCC 97***, 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, 2022 SCC Online SC 29***). 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.”

13. Same is the ratio of law laid down in the case of **M/s Puri Investments vs. M/s Young Friends and Co. and others, 2022 (1) RCR (Rent) 311** wherein Apex Court held as under:

“13. There was no perversity in the order of the Appellate Tribunal on the basis of which the High Court could have interfered. In our view, the High Court tested the legality of the order of the Tribunal through the lens of an appellate body and not as a supervisory Court in adjudicating the application under Article 227 of the Constitution of India. This is impermissible. The finding of the High Court that the appellate forum’s decision was perverse and the manner in which such finding was arrived at was itself perverse.”

14. Thus, the scope of the revision under Article 227 of the Constitution is not to substitute the conclusions or to correct error of fact. While exercising jurisdiction under Article 227, this Court has to deal with the manner in which the Court below exercised jurisdiction rather than correctness of the order. Applying the aforesaid parameters to the present case, even if it is to be held that Trial Court ought to have dismissed the application filed by the petitioner to file process fee and diet money alongwith list of witnesses, as already held hereinabove, the list of witnesses was too vague to be allowed to file. The material challenge in the petition is to the order dated 05.08.2024 whereby the evidence of the petitioner has been closed by order of the Court. Ordinarily, the revision ought to have been allowed by granting an opportunity to the petitioner to lead evidence, but the conduct of the petitioner as reflected in order dated 06.08.2024 cannot be ignored. From the perusal of the order dated 06.08.2024, it is evident that the



petitioner tried to overreach the process of law. On 05.08.2024, after his evidence was closed by order, an attempt was made by him and his counsel to pressurize local commission appointed by the Court to record statement of petitioner. As stated by the Commission before the Court even the affidavit Ex.PW-1/A was incomplete. No documents were filed alongwith affidavit. The statement tendered was also incomplete. Thus, no fault can be found with the manner in which the Courts below have dealt with the litigant whose intent as discernible from the record is not to take the *lis* to a logical end, but to abuse the process by lingering on the dispute.

15. Resultantly, the present petition is dismissed.
16. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

15.10.2024
Dinesh

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No