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

+ CM(M) 520/2023, CM APPL. 15495/2023--stay

G. K. DAIRY & MILK PRODUCTS PRIVATE LIMITED

..... Petitioner

Through: Mr. Siddhartha Patra, Adv.

versus

SWIFT SECURITAS PRIVATE LIMITED

..... Respondent

Through: Mr. Arun Mehta, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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05.03.2024

1. The present petition under Article 227 of the Constitution of India has been filed for impugning the order dated 08.08.2022 and 10.02.2023 passed by the learned Additional District Judge-04, North-West district, Rohini Court, Delhi, in case no. C.S. DJ 1066/2017 titled as "*Swift Securitas Pvt. Ltd. vs. G.K. Dairy and Milk Products Pvt. Ltd.*", whereby the application under Order XVII Rule 1 Civil Procedure Code ("CPC") was dismissed. The petitioner herein is the defendant before the learned Trial Court.

2. It is submitted that respondent filed suit for recovery of Rs. 8,09,851/- along with future interest @ 18% p.a. against the petitioner. Written statement was filed by petitioner on 29.05.2018. On 28.03.2019, respondent filed its evidence by way of affidavit and matter was adjourned for 26.08.2019 as witness was absent. On the said date authorized representative of respondent was again absent. Thereafter on 23.01.2020, 27.10.2020, 15.03.2021, 20.09.2021, authorized representative was again



not present.

3. Learned counsel submits on 02.03.2023, learned counsel for the petitioner partly cross-examined witness of respondent. On 08.08.2022, counsel for the petitioner could not appear due to severe back pain and proxy counsel requested for pass-over. However, learned Trial Court rejected the request to proceed under Order XVII CPC and discharged the witness. Moreover, the learned Trial Court listed the matter for final arguments.

4. It is further submitted that on 24.10.2022, petitioner filed review application of the order dated 08.08.2022. Vide order dated 10.02.2023, learned Court proceeded under Order XVII CPC even though neither did the proxy counsel on 08.08.2022 nor learned counsel for petitioner on 10.02.2023 asked for adjournment.

5. Learned counsel for the petitioner submits that learned Trial Court has erroneously dismissed the application moved on behalf of the petitioner herein under Order XVII CPC without considering the fact that the proxy counsel had sought passover on the ground of the medical condition of the counsel for the petitioner and not an adjournment as the learned counsel for the petitioner was willing to appear in post lunch session to further cross-examine the witness of the respondent i.e. PW-1 however, instead of considering to the said request, the learned Trial Court erroneously discharged the witness and closed the opportunity of the petitioner herein to cross-examine PW-1.

6. It is further submitted that as per Order XVII CPC, the petitioner is at liberty to avail three opportunities to cross-examine the witness of the opposite side whereas in the present case no such adjournments was taken



on behalf of the petitioner.

7. The arguments have been controverted on behalf of the respondent by submitting that this Court has limited jurisdiction under Article 227 to supervise the orders of the learned Trial Court in case the same are perverse or are illegal. The learned counsel for the petitioner is unable to point out any illegality on the face of the impugned order dated 08.08.2022, thus the present petition is not maintainable.

8. It is further submitted that the learned Trial Court by way of impugned order has correctly pointed out the conduct of the petitioner to delay the trial of the case of the respondent. Accordingly, the right of the petitioner on 08.08.2022 was closed to further cross-examine PW-1. Learned counsel submits that thereafter the review petition was filed with the motive to further delay the proceedings as, in such cases, review is not maintainable. It is submitted that the impugned order thus does not require any interference and is to be upheld.

9. Needless to observe under Article 227 of Constitution of India, this Court has limited scope while exercising supervisory jurisdiction which is not to be confused with appellate jurisdiction of the Court.

10. It is worth to mention the observations of the Hon'ble Supreme Court with respect of supervisory superintendence of the Court under Article 227 of the Constitution of India in the case of ***M/s Garment Craft vs. Prakash Chand Goel***, 2022 SCC OnLine SC29, wherein it is 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.

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)*

“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.”

11. In the light of framework of jurisdiction as manifested above, the impugned order is to be given thought to.



12. As per the learned Trial Court orders, the evidence by way of affidavit on behalf of respondent's PW-1 was filed on 28.03.2019, advance copy of which was not furnished to the respondent so that the respondent could prepare himself for cross-examination of the witness. The copy was furnished on the same date and recording the said reason, the matter was adjourned for cross-examination of PW-1 on 26.08.2019 on which date the learned Presiding Officer was on leave thereafter, the Covid period emerged and the matter was listed on which date the adjournment was requested on behalf of the petitioner as new counsel was engaged and the adjournment was allowed. The matter was posted by the learned Trial Court for 15.03.2021 on the joint adjournment requested on behalf of the parties the case was adjourned to 08.08.2022. On the said date of hearing PW-1 was present for his further cross-examination, when the proxy counsel appearing on behalf of the petitioner submitted that he had no instructions for cross-examination of the witness and that the main counsel shall be available at 02:00 P.M and he had also mentioned that the main counsel had gone to attend another matter. Accordingly, the learned Trial Court observed that due to the heavy pendency of the cases, the Court could not provide the passover and the witness was discharged under Order XVII CPC and the right to cross-examination was closed the matter was posted for final argument on 27.10.2022. However, the petitioner herein preferred a review petition on the date of hearing itself i.e. 27.10.2022. By way of impugned order, the learned Trial Court after mentioning the details with respect to the adjournments dismissed the review petition and posted the matter for final arguments for 29.03.2023.

13. Having considered the above submissions, the impugned order and



the orders of the learned Trial Court put before this Court, impugned order dated 08.08.2022 is set aside. It is stated that the next date of hearing before the learned Trial Court is 06.04.2024, on the said date of hearing the respondent shall ensure that the PW-1 shall appear before the learned Trial Court and the petitioner shall cross-examine the witness on the same date of hearing. No further opportunities than 06.04.2024 shall be granted to the petitioner to cross-examine the witness. Thereafter, only one opportunity shall be granted to the petitioner to lead his argument with respect to the date as per convenience to be fixed by the learned Trial Court.

14. Learned counsel for the petitioner submits that the cost imposed to be waived off as petitioner is a sick company. Keeping in view the conduct of the petitioner herein and the fact that the trial has been delayed on behalf of the petitioner this Court does not deem fit to waive off the cost.

15. In the interest of justice, above opportunity is granted to the petitioner subject to cost of Rs. 10,000/- to be paid to the respondent before the learned Trial Court on the next date of hearing i.e. 06.04.2024.

16. With above observations, the petition along with pending applications stands disposed of.

SHALINDER KAUR, J.

MARCH 5, 2024/SDS