



2024 : DHC : 461



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

% **Pronounced on: 23rd January, 2024**

+ C.R.P. 271/2023 & CM APPL. 50574/2023

RAJESH DUA

..... Petitioner

Through: Mr. Lal Singh Thakur, Mr. Sahil Gandhi, Anurag Sharma and Mr. Rachit Singh, Advocates

versus

RAJIV GOYAL & ANR.

..... Respondents

Through: Mr. Anil Airi, Sr. Advocate with Mr. Pranaya Goyal, Mr. Dharav Shah, Mr. Mudit Ruhella and Mr. Shubham Sain, Advocates

+ C.R.P. 95/2023 & CM APPL. 20124/2023 & CM APPL. 20125/2023
& CM APPL. 20126/2023

RAJESH DUA

..... Petitioner

Through: Mr. Lal Singh Thakur, Mr. Sahil Gandhi, Mr. Anurag Sharma and Mr. Rachit, Advocates

versus

RAJIV GOYAL & ANR.

..... Respondents

Through: Mr. Anil Airi, Sr. Advocate with Mr. Pranaya Goyal, Mr. Dharav Shah, Mr. Mudit Ruhella and Mr. Shubham Sain, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 24.01.2024
16:37:03

C.R.P. 271/2023 and other connected matter

Page 1 of 61



J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The present civil revision petitions have been filed on behalf of the petitioner under Section 115 of the Code of Civil Procedure, 1908 (hereinafter “CPC”). In C.R.P no. 95/2023 (hereinafter “1st revision petition”), the petitioner has challenged the impugned order dated 9th January, 2023 (hereinafter “1st impugned order”) vide which the defence of the petitioner, i.e., the defendant before the learned Trial Court stood struck off. In C.R.P no. 271/2023 (hereinafter “2nd revision petition”), the petitioner has challenged the impugned order dated 26th August, 2023 (hereinafter “2nd impugned order”) vide which the petitioner’s application to seek permission to cross-examine the plaintiff witness was dismissed.

2. Since, the facts and issues in the present petitions are common, and emanate from the similar grounds *qua* the right to defence and cross examine the plaintiff witnesses, therefore, for the sake of convenience, contentions advanced in C.R.P no. 271/2023, i.e., the 2nd revision petition, are being taken up for adjudication of both the petitions. The petitioner in the 2nd civil revision petition is seeking the following reliefs:

“It is, therefore, most respectfully prayed that in the aforesaid facts and circumstances, this Hon’ble Court may kindly be pleased set aside, modify the Order dated 26.08.2023 passed by the Ld. Trial Court of Sh. Sunil Chaudhary in Civil Suit No. 596/2021 having title as “RAJIV GOYAL & ANR Vs RAJESH DUA”, in the interest of justice;



Or pass any other order, which this Hon'ble Court may deem fit and proper, including the cost of the suit, in favour of the Petitioner and against the defendants, in the interest of justice.”

FACTUAL MATRIX

3. The respondent, i.e., the plaintiff before the learned Trial Court, had filed the civil suit bearing CS DJ no. 596/2021, against the petitioner, i.e., the defendant before the learned Trial Court, seeking recovery of possession of the suit property, arrears of rent and damages for illegal, unauthorized use and occupation of suit property. The facts leading to the filing of the said civil suit are as follows:

- a. The respondents are the co-owners of the property bearing address 2nd floor, House no. 196, Vaishali, Pitampura, Delhi-110034 (hereinafter “suit property”) with 1/4th proportionate share in the stilt parking.
- b. The parties to the present petition had a verbal agreement in the year 2015, whereby, the respondent had agreed to lease the suit property to the petitioner. It has been stated that although there was a verbal agreement but at the request of the respondent, a lease deed dated 12th November, 2018 was drawn and executed by the parties. As per the said lease deed, the rent of the suit property was fixed at Rs. 73,452/- per month for the first year of tenancy and it was also stated therein that the rent shall increase by Rs.77,125/- for the



2024 : DHC : 461



second year of tenancy. Further, the said lease deed was to remain in operation till 31st January, 2020.

- c. Since there was default in payment of rent, the respondents sent a legal notice 4th December, 2019; 25th August, 2020 and 28th January, 2021, for eviction from the suit property. Meanwhile, due to the then prevailing COVID-19 pandemic, the petitioner suffered losses hence there was delay in the payment of rent. Aggrieved by the non-compliance of the legal notice issued for eviction, the respondents filed the above said civil suit against the petitioner.
- d. In the said civil suit, the petitioner filed its written statement on 24th December, 2021, wherein, the petitioner *inter alia* denied the contentions of the respondent and further stated that the respondents (plaintiffs therein) have concealed the fact that the petitioner had made payment of rent till July, 2021. In response to the same, the respondents filed their replication along with an application under Order XVA of the CPC on 4th February, 2022. In the said application, the respondents had prayed before the learned Court below that the since the petitioner, i.e., the defendant therein had failed to deposit the arrears of rent duly admitted as well as the damages, the written statement/defence thereof be struck off.
- e. Thereafter, the said application was listed for hearing on various date and vide order dated 26th March, 2022, the



2024 : DHC : 461



learned Court below directed the present petitioner to pay the arrears of rent due for several months within two months and further directed to continue to pay the rent of Rs. 77,125/- before the 10th of every month to the present respondents till the trial of the suit failing which the defence of the present petitioner/defendant will be struck off. In view of the said terms, the application under Order XVA was disposed of.

- f. Meanwhile, the respondents herein filed an application under Section 151 of the CPC, before the learned Trial Court on 28th August, 2022. In the said application, it was prayed by the respondents that despite the clear directions, the defendant therein had failed to make any payments in the time period fixed and accordingly, the defence of the defendant is liable to be struck off in accordance with the observations/directions made in order dated 26th March, 2022, passed by the learned Trial Court.
- g. The learned Trial Court vide the order dated 9th January, 2023 adjudicated upon the respondent's above said application and held that as per the law, the defence of the petitioner, i.e., the defendant therein, stood struck off due to non compliance of the directions passed in the order dated 26th March, 2022.



2024 : DHC : 461



- h. Being aggrieved by the impugned order dated 9th January, 2023, i.e., the 1st impugned order, the petitioner has approached this Court under its revisional jurisdiction in C.R.P no. 95/2023. The said revision petition was filed on 18th April, 2023.
- i. Subsequently, the suit before the learned Trial Court was fixed for examination of witnesses and as per order dated 1st May, 2023, the learned Trial Court observed that when the matter was fixed for examination of PW-1 and affidavit of PW-1 was being tendered, the learned counsel appearing on behalf of the defendant, i.e., the petitioner herein, left the learned Court without any intimation, and accordingly, the above said witness was discharged and the suit was fixed for final arguments on 26th August, 2023.
- j. Thereafter, the petitioner filed another application before the learned Trial Court. By virtue of the said application, the petitioner herein sought permission of the learned Court below to cross-examine PW-1. The learned Trial Court whilst adjudicating upon the said application rejected the petitioner's prayer vide order dated 26th August, 2023 and held that the petitioner, i.e., the defendant therein can only be allowed to cross-examine PW-1 on legal points, i.e., the jurisdiction and limitation at the time of passing final orders



2024:DHC:461



in the suit, and accordingly, it dismissed the petitioner's application being devoid of any merits.

- k. Being aggrieved by the impugned order dated 26th August, 2023, i.e., the 2nd impugned order, the petitioner has approached this Court under its revisional jurisdiction in C.R.P no. 271/2023. The said revision petition was filed on 20th September, 2023.

SUBMISSIONS

(On behalf of the petitioner)

4. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court erred in passing the impugned orders as it failed to take into consideration the entirety of the facts and circumstances of the instant dispute.

5. It is submitted that the learned Court below passed the impugned orders in a hasty manner without taking account several facts which would warrant petitioner his right to defence and cross examine the witness and hence, it committed an error of jurisdiction whilst passing the impugned orders.

6. It is submitted that the petitioner had agreed for the lease deed in writing, whereas, from the year 2015 onwards, the said lease was renewed orally at the instructions of the respondents. Further, the respondents stated that the execution of the lease deed was only a formality. The time-period mentioned was from 1st February, 2018 to 31st January, 2020.



2024 : DHC : 461



7. It is submitted that petitioner had suffered losses due to the pandemic COVID-19, and due to the same there was some delay in the payment of rent, which was duly informed to the respondents, and they had agreed to the petitioner's request considering the COVID-19 situation and losses that the petitioner was facing.

8. It is submitted that the respondents with *mala fide* intentions and ulterior motive stated that the tenancy of the petitioner stood terminated in January, 2020 but the respondents failed to disclose that the petitioner had already made payment of rent till July, 2021.

9. It is submitted that the petitioner neither received any legal notice as has been stated in the plaint filed by the respondents, nor the respondents have stated the true facts that they had received the rent till July, 2021. Moreover, the respondents intentionally hid the fact that the lease deed stood renewed orally after January, 2020.

10. It is submitted that the petitioner was going through some health issues and was not in a position to conduct his business properly due to which the petitioner suffered losses. Further, due to his worsening medical and financial situation of the petitioner, he could not pay the rent of October, 2022 and November, 2022 along with the 3 months arrear accrued thereto but had paid Rs. 6,17,000/- for the period of 29th June, 2022 to 3rd September, 2022.

11. It is submitted that the above narrated facts and circumstances tantamount to triable issues and in view of the same it is evident that the



2024:DHC:461



petitioner has a *bona fide* and reasonable defence, therefore, the learned Trial Court's decision is not in accordance with the law.

12. It is submitted that the learned Trial Court failed to appreciate that the cross-examination is only to be done in respect of the facts of the case and no cross-examination is required to be done in the name of cause of action and question of limitation as well as the jurisdiction since the same are purely legal issues.

13. It is further submitted that the cross-examination in the present case is necessary in order to test the testimony advanced by the respondent and to prove the petitioner's case. The facts in question are required to be cross-examined to establish the truth which will lead to proper adjudication of the suit. The denial of the same to the petitioner is arbitrary and against the settled principles of law. To strengthen his arguments, the learned Counsel has placed reliance upon the judgment dated 18th November, 2006, passed in the matter titled as *Niranjan Kumar versus Poonam Chawla, CM (M) No.3167/2005*, wherein, it has been held that as per the law nothing precludes a party from confronting a witness in cross-examination.

14. It is submitted that the learned Trial Court failed to adhere to the settled law as it erred in not giving the petitioner a fair chance to prove his defence. It passed the impugned orders in mechanical manner, without applying judicial mind and thereby, deprived the petitioner his right to prove the incorrect facts submitted by the respondent before the learned Court below.



2024 : DHC : 461



15. It is submitted that the reasoning given in the impugned orders is perverse, arbitrary, irrational, and has no basis whatsoever in law, equity or justice.

16. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the impugned orders dated 26th August, 2023 and 9th January, 2023, may be set aside.

(On behalf of the respondent)

17. *Per Contra*, Mr. Anil Airi, the learned senior counsel appearing on behalf of the respondents vehemently opposed the instant petition submitted to the effect that both the petitions are liable to be dismissed since the same are devoid of any merits.

18. It is submitted that the petitioner's contentions are baseless due to the reason that the learned Court below has exercised its jurisdiction in accordance to the settled legal propositions and there is no infirmity in the impugned orders passed by it.

19. It is submitted that the learned Trial Court has taken into consideration the entire facts and circumstances and only after such due consideration, it reached to the conclusion, whereby, it dismissed the petitioner's plea.

20. It is submitted that the present revision petitions are liable to be dismissed on the grounds that the petitioner has failed to bring up any substantial question of law or any wrong exercise of the provisions of law by the learned Court below.



2024 : DHC : 461



21. It is submitted that the present revision petitions are *ex facie* baseless, frivolous and without any merit whatsoever. The 1st impugned order as well as the 2nd impugned order does not suffer from any error apparent from the record, thereby, necessitating exercise of powers by this Court under Section 115 of the CPC.

22. It is submitted that the impugned orders have been passed only after considering the entire facts and circumstances of the dispute, and also the conduct of the petitioner before the learned Court below. The said impugned orders have been passed in accordance with the law.

23. It is submitted that the conduct of the petitioner before the learned Trial Court and this Court, evinces that the revision petitions are an abuse of process of law and in fact, a ploy employed by the petitioner to delay his vacation from the suit property by dragging the suit before the learned Trial Court on one pretence or another.

24. It is submitted that neither the relationship of the landlord and tenant nor the rate of monthly rent has not been disputed by the petitioner. Furthermore, non-compliance of the order dated 26th March, 2022 passed by the learned Trial Court on the Application under Order XVA of the CPC, is also not disputed since the same has been passed after considering the conduct of the petitioner. In regard to the same, the learned senior counsel has relied upon paragraph nos. 3, 2 & 4 of the 1st revision petition.

25. It is submitted that the petitioner in 1st revision petition gave an undertaking before this Court on 4th May, 2023 that he will pay the rent



2024 : DHC : 461



arrears and will also pay monthly rents. However, admittedly, the said undertaking of the petitioner was also never honoured by him.

26. It is submitted that this Court on 25th August, 2023 in 1st revision petition passed an order that the learned Trial Court may proceed with the matter and accordingly, it heard the suit and has reserved it for the pronouncement of judgment on 14th October, 2023.

27. It is further submitted that as per the law laid down by the Hon'ble Supreme Court, no civil revision petition can be filed or is maintainable or can even be entertained after the matter is reserved for pronouncement of judgement.

28. It is submitted that despite the clear directions of the learned Trial Court to pay the arrears of 5 months by 26th May, 2022, no payments were made by the petitioner to the respondents by such date. Therefore, as per the order dated 26th March, 2022, the defence of the petitioner stood struck-off. Thereafter, once again, few erratic payments were made and even then, the arrears were not cleared. In these circumstances, the respondents had filed the Application on 27th August, 2022 under Section 151 of the CPC, *inter alia* to bring on record the petitioner's non-compliance with the order dated 26th March, 2022 of the learned Trial Court.

29. It is submitted that apart from the arrears of rent for 5 months as specified in the order dated 26th March, 2022, the petitioner had, between the duration of 24th September, 2020 and 17th July, 2021 (i.e., a period of 10 months) made erratic payments at the rate of Rs.75,000/- per month, purportedly claiming to be rent; when in fact the admittedly the last rent



2024 : DHC : 461



payable as per the Lease Deed was Rs.77,125/- per month. Therefore, even this purported payment was not as per the last payable rent and was merely ad hoc payment.

30. It is submitted that Order XV A of the CPC, *inter alia* provides that in a suit for eviction of a lessee on the ground of default in payment of rent, the lessee is mandatorily required to pay the arrears of rent failing which the defence shall be struck off.

31. It is further submitted that the petitioner is a defaulter who has no intent to clear the arrears of rent despite multiple opportunities granted by the learned Trial Court and this Court and the petitioner has failed to comply with the undertakings given by him to this Court. Considering the foregoing discussion, it can be inferred that the 1st impugned order does not suffer from any error let alone any error apparent on the face of it and hence, the 1st revision petition ought to be dismissed by this Court with costs.

32. It is submitted that petitioner's allegation that he was not granted a right to cross-examine PW-1 and that the respondents filed their evidence, entered the witness box and were discharged all in one day is false.

33. It is further submitted that the Affidavit of Evidence on behalf respondent no.1 was filed on 27th August, 2022. The learned Trial Court fixed the date of examination of PW-1 on 9th January, 2023 which is 1st May, 2023. Accordingly, the petitioner and his counsel had almost 9 months to examine/peruse the above said Affidavit of Evidence and were aware of the date fixed for examination 4 months prior.



2024 : DHC : 461



34. It is submitted that on 1st May, 2023, the petitioner's counsel before the learned Court below did not cross-examine the respondent no.1, i.e., PW-1 and left the court premises without intimation. It was in such circumstances that the learned Trial Court vide its Order dated 1st May, 2023 discharged the respondents' witness and listed the suit for final hearing on 26th August, 2023. Pertinently, the petitioner has not challenged the order dated 1st May, 2023 and therefore, the same has attained finality. Accordingly, petitioner's right to cross-examine witness was rightly closed.

35. It is submitted that even though a defendant has a right to cross examine a plaintiff's witness, however, a defendant cannot be permitted to recall a witness when such right was granted in the first instance and not availed by the defendant.

36. It is further submitted that the power of the learned Trial Court to recall a witness is limited and ought to be used sparingly and only to clarify any issue or doubt which may arise. The said power cannot be exercised to allow the cross-examination of a witness which was not done at the first instance. In order to strengthen his arguments, the respondents have placed reliance upon the judgments of *K.K Veluswamy v. N. Palanisany*, (2011) 11 SCC 275 and *Ram Rati v. Mange Ram (D) through LRs*, (2016) 11 SCC 296.

37. Learned senior counsel placed further reliance upon the judgment passed by the Hon'ble Supreme Court in *Shukla Malhotra & Ors. V. Dee PEE Kagajudyog Pvt. Ltd.*, 2001 SCC OnLine Del 840, wherein, it has been held that where defence is struck off, in no circumstances, cross-



examination can be permitted to travel beyond the legitimate scope of pointing out legal infirmities or patent illegalities which the case of the plaintiff suffers from or even the falsity of the case itself.

38. It is further submitted that in light of the judgments relied upon by the respondents, evidently, neither the 1st impugned order nor the 2nd impugned order suffers from any error of jurisdiction and hence, both are passed in accordance with the law.

39. Therefore, in view of the submissions made above, it is submitted that both the civil revision petitions are devoid of any merit and the same may be dismissed.

ANALYSIS AND FINDINGS

40. The matter was heard at length with arguments advanced by the learned counsels on both sides. This Court has also perused the entire material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties, and pleadings presented by the learned counsel of the parties.

41. At this stage, before delving into the technical paraphernalia of the facts of the instant matter, it is pertinent for this Court to set out the scope of Section 115 of the CPC, under which the petitioner has challenged the impugned orders before this Court. The said Section has been reproduced for reference hereunder:

“115. Revision.—⁴ [(1)] The High Court may call for the record of any case which has been decided by any Court



subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

Explanation.— In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]”

42. Section 115 of the CPC invests all High Courts with revisional jurisdiction. It declares that the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court wherein no appeal lies, to satisfy itself on three aspects; (i) that the order passed by the subordinate Court is within its jurisdiction; (ii) that the case is one in which the Court has power to exercise its jurisdiction; and (iii) that in exercising jurisdiction the Court has not acted illegally, that is, breach of



some provision of law, or with material irregularity, that is by committing some error of procedure in the course of trial which is material in that it may have affected the ultimate decision.

43. In the landmark case of ***Major S.S. Khanna v. Brig. F.J. Dillon, (1964) 4 SCR 409***, the Hon'ble Supreme Court stated that the said Section consists of two parts, *first* prescribes the condition in which jurisdiction of the High Court arises, i.e., there is a case decided by the subordinate Court in which no appeal lies to the Court of higher jurisdiction, *second* sets out the circumstances in which the jurisdiction may be exercised by the High Court. If there is no question of jurisdiction, the concerned decision cannot be corrected by the High Court in the exercise of revisional powers. The relevant paragraphs of ***Major S.S. Khanna (Supra)*** have been reproduced herein:

“6. The jurisdiction of the High Court to set aside the order in exercise of the power under Section 115 of the Code of Civil Procedure is challenged by Khanna on three grounds:

(i) that the order did not amount to “a case which has been decided” within the meaning of Section 115 of the Code of Civil Procedure;

(ii) that the decree which may be passed in the suit being subject to appeal to the High Court; the power of the High Court was by the express terms of Section 115 excluded; and

(iii) that the order did not fall within any of the three clauses (a), (b) and (c) of Section 115.

The validity of the argument turns upon the true meaning of Section 115 of the Code of Civil Procedure, which provides:



“The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.”

The section consists of two parts, the first prescribes the conditions in which jurisdiction of the High Court arises i.e. there is a case decided by a subordinate Court in which no appeal lies to the High Court, the second sets out the circumstances in which the jurisdiction maybe exercised. But the power of the High Court is exercisable in respect of “any case which has been decided”. The expression “case” is not defined in, the Code, nor in the General Clauses Act. It is undoubtedly not restricted to a litigation in the nature of a suit in a civil court : Balakrishna Udayar v. Vasudeva Aiyar [LR 44 IA 261] ; it includes a proceeding in a civil court in which the jurisdiction of the Court is invoked for the determination of some claim or right legally enforceable. On the question whether an order of a Court which does not finally dispose of the suit or proceeding amounts to a “case which has been decided”, there has arisen a serious conflict of opinion in the High Courts in India and the question has not been directly considered by this Court. One view which is accepted by a majority of the High Courts is that the expression “case” includes an interlocutory proceeding relating to the rights and obligations of the parties, and the expression record of any case includes so much of the proceeding as relates to the order disposing of the interlocutory proceeding. The High Court has therefore power to rectify an order of a Subordinate Court at any stage of a suit or proceeding even if there be another



remedy open to the party aggrieved i.e. by reserving his right to file an appeal against the ultimate decision, and making the illegality in the order a ground of that appeal. The other view is that the expression “case” does not include an issue or a part of a suit or proceeding and therefore the order on an issue or a part of a suit or proceeding is not a “case which has been decided”, and the High Court has no power in exercise of its revisional jurisdiction to correct an error in an interlocutory order.”

44. The provision thus takes within its limited jurisdiction, the irregular exercise or non-exercise of it, or the illegal assumption of it. It is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. In other words, it is only in cases where the subordinate Court has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the jurisdiction of the High Court may be properly invoked.

45. The term ‘jurisdiction’ has not been defined in the CPC. The definition of the same has been defined by the Hon’ble Supreme Court and various High Courts by way of judgments. The said term means ‘the power of a Court to hear and decide a case or to pass a certain order’ and ‘the right or authority to apply laws and administer justice’. The expression ‘jurisdiction’ is a verbal cast of many colors the adoptive definition of the same has to be interpreted subjectively, i.e., depending upon the nature of the facts and circumstances of each case.



46. It is a settled principle of law that the lower Courts have jurisdiction to decide the case, and in context of the provision of revision, even if the Court below decides the case wrongly, they do not exercise their jurisdiction illegally or with material irregularity. Section 115 of the CPC, deals with the High Court's power of revision. Briefly stated, in a case which is not subject to appeal, the High Court is empowered to call for the records of the case decided by the Court below, and if the Court below has exercised a jurisdiction vested in it by law, or failed to exercise jurisdiction vested by law or acted with material irregularity, etc. in the exercise of its jurisdiction, the High Court may interfere.

47. The CPC, however, enables the High Court to correct, when necessary, the errors of jurisdiction committed by subordinate Courts and provides the means to an aggrieved party to obtain rectification in a non-appealable order. In other words, for the effective exercise of its superintending powers, revisional jurisdiction is conferred upon the High Court. The said principle has been reaffirmed by the Hon'ble Supreme Court in the judgment of *Manick Chandra Nandy v. Debdas Nandy*, (1986) 1 SCC 512. The Hon'ble Court in the said judgment had observed as follows:

“5. We are constrained to observe that the approach adopted by the High Court in dealing with the two revisional applications was one not warranted by law. The High Court treated these two applications as if they were first appeals and not applications invoking its jurisdiction under Section 115 of the Code of Civil Procedure. The nature, quality and extent of appellate jurisdiction being exercised in first appeal and of revisional jurisdiction are very different. The limits of



revisional jurisdiction are prescribed and its boundaries defined by Section 115 of the Code of Civil Procedure. Under that section revisional jurisdiction is to be exercised by the High Court in a case in which no appeal lies to it from the decision of a subordinate court if it appears to it that the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law or has acted in the exercise of its jurisdiction illegally or with material irregularity. The exercise of revisional jurisdiction is thus confined to questions of jurisdiction. While in a first appeal the court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to reexamine or reassess the evidence on record and substitute its own findings on facts for those of the subordinate court. In the instant case, the respondents had raised a plea that the appellant's application under Rule 13 of Order IX was barred by limitation. Now, a plea of limitation concerns the jurisdiction of the court which tries a proceeding, for a finding on this plea in favour of the party raising it would oust the jurisdiction of the court. In determining the correctness of the decision reached by the subordinate court on such a plea, the High Court may at times have to go into a jurisdictional question of law or fact, that is, it may have to decide collateral questions upon the ascertainment of which the decision as to jurisdiction depends. For the purpose of ascertaining whether the subordinate court has decided such a collateral question rightly, the High Court cannot, however, function as a court of first appeal so far as the assessment of evidence is concerned and substitute its own findings for those arrived at by the subordinate court unless any such finding is not in any way borne out by the evidence on the record or is manifestly contrary to evidence or so palpably wrong that if allowed to stand, would result in grave injustice to a party.”



48. The scope and extent of the revisional powers of this Court has been discussed in depth in the foregoing paragraphs. Now, advertent to the facts of the instant case.

49. Briefly stated, the case as set out by both the parties before this Court is that a Lease Deed dated 12th November, 2018 was executed between the parties with respect to the suit property and the same ended on 31st January, 2020. Even prior thereto, by virtue of defaults in payment of monthly rent on various occasions, the respondents had on multiple occasions and ultimately by way of a legal notice dated 4th December, 2019, terminated the lease deed and called upon the petitioner to forthwith vacate the suit property. Despite the same and even after expiry of the term of the said lease deed, the petitioner failed to vacate the suit property. Considering the foregoing, the respondents instituted the above said civil suit seeking recovery of possession of the suit property, arrears of rent and damages for illegal, unauthorized use and occupation of suit property before the learned Trial Court *inter alia* seeking eviction of the petitioner from the suit property

50. The learned Trial Court passed an order in an application filed by the respondents under Order XVA of the CPC *inter alia* directing the petitioner to clear the entire arrears of rent within a period of 2 months from the date of passing of the said order and to continue to pay an amount of Rs. 77,125/- per month till the disposal of the suit failing which the petitioner's defence shall be struck off.

51. Since the petitioner failed to clear the arrears of rent as well as pay the rent pending adjudication of the suit, the respondents filed another



2024 : DHC : 461



application under Section 151 of the CPC *inter alia* bringing the said facts on record. The learned Trial Court then passed the 1st impugned order *inter alia* striking off the defence of the petitioner on account of non-compliance of the order dated 26th March, 2022. Notably, the suit was subsequently directed to be listed for trial and recording of oral evidence on 1st May, 2023.

52. The petitioner then filed the 1st revision petition *inter alia* challenging the 1st impugned order dated 9th January, 2023. The 1st revision petition was listed before this Court and was adjourned to 4th May, 2023 at the petitioner's request. Subsequently, the learned Trial Court vide order dated 1st May, 2023 discharged PW-1 after it tendered his evidence and held that the counsel for the petitioner therein left the court room without any intimation. In view of the same, the petitioner herein filed an application before learned Trial Court seeking permission to cross examine PW-1 and the said request of the petitioner was rejected by the learned Court below vide order dated 26th August, 2023, and permitted the petitioner to cross-examine PW-1 on legal points i.e., the jurisdiction and limitation at the time of passing final orders in the suit.

53. In regard to the above facts, the petitioner has submitted before this Court that the impugned orders whereby the petitioner has been denied the opportunity to lead his defence and cross-examine PW-1 have been passed without taking into consideration the fact that the dispute before the learned Trial Court involves triable issues and in the event a judgment is passed without granting an opportunity to the petitioner, the same would lead to



2024 : DHC : 461



miscarriage of justice. It has been submitted that the respondents, i.e., the plaintiffs before the learned Court below have concealed crucial facts which makes it necessary for the petitioner to lead his defence and to cross-examine PW-1.

54. The learned counsel appearing on behalf of the petitioner has submitted that the learned Trial Court has passed the impugned orders in a hasty manner and the same is against the principles of justice and equity. It has been argued that due to the worsening medical and financial situation of the petitioner, he could not pay the rent for the month of October, 2022 and November, 2022 along with the 3 months arrear accrued thereto but eventually paid Rs. 6,17,000/- for the period of 29th June, 2022 to 3rd September, 2022. Further, as per the oral agreement among the parties, it was agreed that the above said lease deed was to be renewed orally. Therefore, the fact that the lease period ended in January, 2020 is a false and fabricated submission put forth by the respondents and the same can be corroborated with the fact that the petitioner had paid the rent till July, 2021 which the respondents intentionally did not disclose before the learned Trial Court.

55. It has been contended on behalf of the petitioner that the learned Trial Court has not applied judicial mind and proceeded to pass the impugned orders in a mechanical manner which has ultimately led to deprivation of the petitioner's right to defend the suit filed against him. The 2nd impugned order, by virtue of which, the petitioner has been denied the cross-examination of PW-1 is against the settled law as per which the cross-



2024 : DHC : 461



examination is done in respect of the facts of the case and no cross-examination is required to be done in the name of cause of action, or question of limitation as well as the jurisdiction, considering the same are purely legal issues. No result could be inferred by cross-examining the respondents on legal issues as the same is unnecessary and the petitioner's case before the learned Trial Court relies upon the question of facts and evidences.

56. In rival submissions, the learned senior counsel appearing on behalf of the respondents has vehemently opposed both the revision petitions submitting to the effect that the same have been filed at a belated stage and the petitioner is himself not a diligent litigant. The respondents have denied the contentions advanced by the petitioner and have submitted that the instant revision petitions are merely an abuse of process of law which have been file with the sole intention to harass the respondents and to deny them their legally vested rights *qua* the suit property.

57. It has been contended on behalf of the respondents that the conduct of the petitioner is merely a part of his dilatory tactics, employed in order to evade its liabilities of payment of rent. The petitioner has neither denied the jural relationship which existed amongst the parties nor the rent due to be paid by him. Upon perusal of the same, it is evident that there is no merit in the petitioner's defence which is sham and uncogent. The learned Trial Court decided that the petitioner's defence stood stuck off and that petitioner cannot cross-examine PW-1. The said order has been passed in accordance with the law and taking into consideration the conduct of the petitioner



2024 : DHC : 461



which was also observed by the learned Court below in its order dated 1st May, 2023.

58. It has been contended that despite the clear directions of the learned Trial Court to clear the arrears of 5 months by 26th May, 2022, no payments were made by the petitioner to the respondents by the said date. Therefore, as per the order dated 26th March, 2022, the defence of the petitioner stood struck-off and the same cannot be said to be against the law as the petitioner had sufficient opportunities to make his case, however he remained non-diligent. Thereafter, the petitioner made few erratic payments but did not adhere to the direction that he is required to clear the entire arrears of rent and even then, the arrears were not cleared.

59. In these circumstances, the respondents' Application filed under Section 151 of the CPC, *inter alia* to bring on record the factum of petitioner's failure of non-compliance with the order dated 26th March, 2022 was allowed by the learned Court below which is completely in consonance with the settled legal principles. Moreover, the petitioner in 1st revision petition had given an undertaking before this Court on 4th May, 2023 that he will clear the arrears of rent and will also pay monthly rents thereafter. However, admittedly, the said undertaking of the petitioner was also never honoured by him.

60. It has been further contended that the respondents had, in time, served and filed the Affidavit of Evidence of respondent no.1 on the petitioner which is on 27th August, 2022. The records indicate that on 9th January, 2023, the learned Trial Court fixed the date which is 1st May, 2023 for



examination of PW-1. Accordingly, the petitioner and his counsel had almost 9 months to examine/peruse the above said Affidavit of Evidence, and were aware of the date fixed for examination 4 months prior. The petitioner's counsel before the learned Court below did not cross-examine the respondent no.1, i.e., PW-1 and left the court premises without giving any intimation to the learned Court. In view of the same, the learned Trial Court vide its order dated 1st May, 2023 discharged the respondents' witness and listed the suit for final hearing on 26th August, 2023. Pertinently, the petitioner has not challenged the order dated 1st May, 2023 and therefore, the same has attained finality. Accordingly, petitioner's right to cross-examine witness was rightly closed vide the 2nd impugned order dated 26th August, 2023.

61. Now adverting to the issue at hand which is ***whether the learned Trial Court erred in striking off the petitioner's right to defence and committed an error by not allowing the petitioner to cross-examine PW-1.***

62. In order to adjudicate the instant issue, it is apposite to reproduce the impugned orders and the relevant portion of the same are as follows:

1st Impugned order dated 9th January, 2023 :

“Present : None.

File is perused.

The plaintiff is bringing the facts about non compliance of order dated 26.03.2022 by the defendant and that the said order has not been challenged by the defendant and has attain finality.



The plaintiff has filed the present suit for recovery of possession and arrears of rent alongwith damages of unauthorized possession of the suit property by the defendant. The plaintiff filed on application under Order 15 A CPC, the ld Predecessor of this court vide order dated 26.03.2022 disposed off the same directing the defendants to pay the arrears of rent within two months from the date of order. It was also directed that defendant will continue to pay rent before the 10th of every month to the plaintiff till the trial of this case failing which defence of the defendant will be struck off. The defendant in the reply to the application has stated that the payment has been made. The details of the payment as mentioned in the reply is from 29.06.2022 onwards. In the reply it is also mentioned that due to ill health of the defendant, the defendant could not make the payment in respect of two months arrears i.e. October 2022 and November 2022 and three months arrears. The defendant has undertaken to comply the order in strict sense for filing the reply.

The facts, mentioned in the application sought to be bring on record are taken on record accordingly. In the facts, as per law, the defence of the defendants stood struck off due to non compliance of order dated 26.03.2022. The application is disposed off.

The plaintiff to lead evidence for 01.05.2023.”

2nd Impugned order dated 26th August, 2023 :

“..One application is filed on behalf of defendant for permission to cross examine the plaintiff witness and it is stated that application filed for adjournment on the last date of hearing is still pending. The application was filed for adjournment of the matter after the matter was taken up for hearing and was adjourned for today after conducting the



proceedings. On the last date of hearing plaintiff no. 1 was present for his examination and Sh. Prashant Solanki appeared for the defendant and during the tendering of the affidavit of the witness, he left the court without intimation. The witness was discharged. It is stated that the defence of the defendant is struck off vide order dated 09.01.2023 so the defendant is not having any rights to cross examine the witness. The reliance is placed by the counsel for the plaintiff on K. K. Velusamy vs. N. Palanisamy (2011) sec 275 and Ram Rati Vs. Mange Ram (D) through LRs and Others AIR 2016 SC 1343.

Vide order dated 09.01.2023 the defence of the defendant was struck off due to non compliance of orders dated 26.03.2022 passed by the court on the application under Order 15 A CPC. Thus, in a case where the defence of the defendant has struck out the defendant is allowed to cross examine the witness only on legal points. The court is duty bound to consider the legal point i.e. jurisdiction and limitation at the time of passing final orders in the suit. Thus, the application is dismissed being devoid of merits.

Arguments heard on behalf of plaintiff and the counsel also filed written submissions. Copy of the same is supplied to the counsel for defendant who filed an application seeking adjournment of the matter stating that complete file has not been provided by the defendant to him for the arguments on the case. Opposed by the counsel for the plaintiff.

Considering the facts, the defendant is given one week time to file the written arguments and copy be supplied to the opposite counsel.

Matter is adjourned for 22.09.2023 for consideration in post lunch session..”.



63. Since the question in the 1st impugned order is with respect to the right of the petitioner to his defence, therefore, at this stage, it is necessary to refer to the applicable provisions. Order XVA of the CPC which talks about ‘*striking off defence in a suit by a lessor*’ is a provision which is generally invoked by a lessor or by the Courts in the event a lessee is found to be in violation of the order of the Court to pay the arrears of rent etc. The relevant portion of the aforesaid provision is read as under:

**“ORDER XVA
STRIKING OFF DEENCE IN A SUIT BY A LESSOR**

(A) In any suit by a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears upto the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the Court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed.

In the event of any default in making the deposit as aforesaid, the Court may subject to the provisions of Sub-rule (2) strike off the defence.

(2) before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.



(3) The amount deposited under this rule shall be paid to the plaintiff owner/lessor or his Advocate and the receipt of such amount shall not have the effect of prejudging the claim of the plaintiff and it would not also be treated as a waiver of notice of termination...”

64. Order XVA of the CPC, unambiguously provides that in case a defendant fails to deposit the rent as per the directions of the Court, the Court may subject to the provisions of Sub-rule (2) strike off the defence. Order XVA was introduced in the CPC as applicable in Delhi vide notification published in the Delhi Gazette dated 14th November, 2008. The same provides that in a suit by an owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears upto the date of the order and thereafter, shall continue to deposit in each succeeding month the rent claimed in the suit as the Court may direct. It further provides that upon default by the defendant in making the deposit, the defence of such defendant may be struck off.

65. In regard to the said provision, this Court has relied upon a judgment passed by the Division Bench of this Court in ***Raghubir Rai v. Prem Lata***, 2014 SCC OnLine Del 3045, wherein, it was observed as under:

“24. We are of the view that the Court, in exercise of powers under Order XV-A of the CPC is empowered to direct deposit at such rate as the erstwhile tenant/defendant may on the basis of material on record be found to have agreed to pay to the landlord for the said period even if the tenant before the Court may not have admitted the same or disputed/controverted the same. Similarly, in a suit between the owner of immovable



property and an unauthorized occupant, Order XV-A empowers the Court to direct the defendant who though may not be liable to be ejected/dispossessed immediately without trial but who, on preponderance of probabilities may not be found to have a right to continue in possession of the property, to deposit during the pendency of the suit such amount as may appear to be reasonable, to safeguard the right of the owner of the property and to ensure that such owner is compensated at least for the time taken in adjudication of a false defence taken up by the defendant in unauthorized occupation. This, in our view is necessary to avoid the process of the Court being abused by unscrupulous litigants and to curb the growing tendency of using the process of litigation as a tool of oppression.”

66. In the afore cited judgment, it was held that in exercise of powers under Order XVA of the CPC, the Courts are empowered to direct the tenant to deposit the rent at a rate at which the tenant is found to have agreed to pay rent to the landlord on the basis of documents on record even if the tenant disputes or controverts the same. The said judgment of the Division Bench of this Court has also been followed by Coordinate Benches of this Court in the catena of judgments such as ***Sunil Dutt Sharma v. Rajni Sharma, 2021 SCC OnLine Del 4779, Madho Singh Chauhan v. Smriti, 2022 SCC OnLine Del 1059 and Narsingh Shah v. BDR Developers (P) Ltd., 2022 SCC OnLine Del 4067.***

67. The purpose of the provision as contemplated herein is intended to benefit the lessor. The object is to mitigate the hardship to the landlord on account of long pendency of an eviction suit, during which the lessor should



2024 : DHC : 461



not be deprived of the rent payable by the lessee or the future mesne profits that might accrue to the lessor.

68. Perusal of the 1st impugned order says that the learned Trial Court had directed the petitioner to pay the arrears of rent within two months from the date of order. It was also directed that the petitioner will continue to pay the rent before the 10th of every month to the respondents and in the event of failure to comply with such directions the defence of the petitioner will be struck off. The respondent had filed an application bringing on record the fact that the petitioner has failed to comply with the learned Trial Court's order of payment of rent arrears within a specified time period. Accordingly, the learned Trial Court, on the basis of the said facts, proceeded to strike off the petitioner's defence.

69. This Court is of the view that in light of the observations made in the foregoing paragraphs and principle enshrined in Order XVA of the CPC, the learned Trial Court rightly recorded the reasons to strike out the defence of the petitioner. Moreover, the petitioner had ample time to comply with the learned Trial Court's directions; still it failed to adhere to the same which led to his defence being struck off.

70. Thus, considering the mandate of Order XVA of the CPC, and the conduct of the petitioner before the learned Trial Court, this Court is of the view that the learned Court below had no option but to strike off the defence of the defendant, i.e., the petitioner herein. Consequently, the application of the respondents filed under Section 151 of the CPC, was rightly allowed and



2024 : DHC : 461



in light of the same, it is held that the defence of the defendant has been struck off in accordance with the law.

71. The learned Trial Court did not commit any error as it had duly considered the contentions of the petitioner made before it. Upon perusal of the impugned order, the learned Court below evidently gave proper consideration to the submissions that the defendant has made the payment and the details of the payment as mentioned in the reply is from 29th June, 2022 onwards. In the reply to the application of the respondents before the learned Trial Court, the petitioner had also mentioned that due to his ill health, he could not make the payment in respect of two months arrears i.e. October, 2022 and November, 2022 and further three months arrears. Notably, the defendant undertook to comply the order in strict sense however, it failed to do so. Therefore, this Court is of the considered view that the petitioner has not been able to show any infirmity in the impugned order since the learned Trial Court followed the mandate of the provisions and the petitioner had sufficient opportunities to comply with the directions which is also evident from the order dated 4th May, 2023 passed by the Predecessor Bench of this Court in the 1st revision petition as per which the petitioner was directed to pay the arrears by 15th August, 2023.

72. Accordingly, it is held that the 1st impugned order suffers from no errors of jurisdiction and there is no merit *qua* the 1st revision petition.

73. Now advertent to the 2nd revision petition. The question in the 2nd impugned order is with respect to the petitioner's right to cross-examine PW-1. A bare perusal of the same shows that the petitioner had filed an



application for permission to cross-examine the plaintiff witness, i.e., PW-1. As per the impugned order, on the last date of hearing, i.e., 1st May, 2023, plaintiff no. 1 was present for his examination and Sh. Prashant Solanki appeared for the defendant (petitioner herein) and during the tendering of the affidavit of the witness, the counsel for the defendant left the court without intimation, and accordingly, the learned Trial Court discharged the witness. Hence, the learned Trial Court proceeded to decide that since the defence of the petitioner stood struck off vide order dated 9th January, 2023 and the petitioner remained absent during the examination of PW-1, the petitioner can only be allowed to cross examine the respondents on legal points since the Court is duty bound to consider legal points such as jurisdiction and limitation.

74. The law regarding the right to cross-examine once the defence is struck off has been discussed in a catena of judgments. This Court in ***United Auto Tractors (P) Ltd v. Urvashi Rohtagi, 1974 RCR 167***, took the view that in spite of defence of a tenant having been struck off, he cannot be absolutely expunged from the proceedings. He can still address the Court in order to convince him that apart from the defence raised against the eviction petition, the eviction petition by itself is liable to fail because of patent illegality. Similar view was taken in ***N.C. Moitra v. Bhupsndra Kumar Chatterji, 1978 (1) RCJ 373*** that a tenant whose defence against delivering of possession has been struck out, is still permitted to contend before the Court and take the defence on the point of non-service or invalidity of the notice and in doing so the tenant is also permitted to cross-



examine plaintiff's witnesses and challenge other evidence adduced from the aforesaid point. It was further observed that tenant would not be entitled to take any other plea or cross-examine plaintiff's witnesses on any other point or examine his own witnesses on any point whatsoever.

75. The above principle has been also discussed by the Hon'ble Supreme Court in ***Modula India v. Kamakshya Singh Deo***, (1988) 4 SCC 619, wherein it had observed the following:

“14. On the other hand, the aspects stressed by the defendant are:

“(a) The expression ‘defence being struck out’ obviously relates to the consideration of a document being ruled out. It suggests that the intention is only that the written statement should be excluded from consideration. Even treating the expression as equivalent to a direction that the court should proceed as if the defendant had not entered appearance at all, the tenant's position cannot be worse than that of a similarly placed defendant under the Original Side Rules of the Calcutta High Court or under CPC.

(b) It is well established that mere absence of defence cannot make the plaintiff entitled to a decree straightway. Defence or no defence, the plaintiff in a suit has to satisfy the court that he has a case which deserves to be decreed. In particular, in an eviction suit, under the rent laws, the court has to be satisfied that the statutory conditions justifying, eviction are fulfilled. This the plaintiff can establish only by leading evidence and such evidence will not be worth anything unless tested by cross-examination. The cross-examination of the plaintiff's witnesses is more an integral part of the plaintiff's case than an aspect of defence.



(c) The Calcutta High Court has uniformly held that, even in an undefended action, a challenge on ground of non-issue or invalidity of the notice under Section 13(6) would be available to the defendant. Though the notice has to be issued prior to the institution of a suit and, in this sense, is a precondition to the filing of the suit, its non-issue or invalidity is just one of the pleas that can be raised in defence. If a tenant whose defence is struck off can raise that plea, there is no reason why he should not be allowed to do other things to show that the plaintiff is not entitled to a decree.

(d) The observations of this Court in Sangram Singh [AIR 1955 SC 425 : (1955) 2 SCR 1 : 10 ELR 293] , Paradise Industrial Corpn. [(1976) 1 SCC 91] and Babbar Sewing Machine Company [(1978) 4 SCC 188] are categorical and directly on this aspect of procedural law and deserves to be followed in the context of like provisions of tenancy legislations as well.”

22. A third safeguard which we would like to impose is based on the observations of this Court in Sangram Singh case [AIR 1955 SC 425 : (1955) 2 SCR 1 : 10 ELR 293] . As pointed out therein, the essence of the matter in all such cases is that the latitude that may be extended by the court to the defendant in spite of his having filed a written statement, should not cause prejudice to the plaintiff. Where the defendant does not file a written statement or where he does not appear to contest the case the plaintiff proceeds on the basis that there is no real opposition and contents himself by letting in just enough evidence to establish a prima facie case. Therefore, the court should ensure that by permitting the defendant at a later stage either to cross-examine the witnesses or to participate in the proceeding the plaintiff is not taken by surprise or gravely prejudiced. This difficulty however can be easily overcome in practice, because there is a wide discretion with the court and



it is always open to the court, where it believes that the plaintiff has been misled, to exercise its discretion to shut out cross-examination or to regulate it in such manner as to avoid any real prejudice to the interests of the plaintiff...”

76. Further, in one of the widely cited judgment of **K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275**, the Hon’ble Supreme Court held as under:

“11. There is no specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.

19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may



exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

20. *If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.*

21. *Ideally, the recording of evidence should be continuous, followed by arguments, without any gap. The courts should constantly endeavour to follow such a time schedule. The amended Code expects them to do so. If that is done, applications for adjournments, reopening, recalling, or interim measures could be avoided. The more the period of pendency, the more the number of interlocutory applications which in turn add to the period of pendency...”*



77. In *Gayathri v. M. Girish*, (2016) 14 SCC 142, the Hon'ble Supreme Court while following the observations made by it in *K.K. Velusamy (Supra)* and *Shiv Cotex v. Tirgun Auto Plast (P) Ltd.*, (2011) 9 SCC 678, held as under:

“8. In this context, we may fruitfully refer to Bagai Construction v. Gupta Building Material Store [Bagai Construction v. Gupta Building Material Store, (2013) 14 SCC 1 : (2014) 2 SCC (Civ) 382] . In the said case the Court had expressed its concern about the order passed by the High Court whereby it had allowed the application preferred under Order 18 Rule 17 that was rejected by the trial court on the ground that there was no acceptable reason to entertain the prayer. Be it stated, this Court set aside the order passed by the High Court. In the said case, it has also been held that it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. That apart, it has also been held that the courts should constantly endeavour to follow such a time schedule so that the purpose of amendments brought in the Code of Civil Procedure are not defeated. Painfully, the Court observed: (SCC p. 7, para 15)

“15. ... In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents



have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC.”

9. In the case at hand, as we have stated hereinbefore, the examination-in-chief continued for long and the matter was adjourned seven times. The defendant sought adjournment after adjournment for cross-examination on some pretext or the other which are really not entertainable in law. But the trial court eventually granted permission subject to payment of costs. Regardless of the allowance extended, the defendant stood embedded on his adamant platform and prayed for adjournment as if it was his right to seek adjournment on any ground whatsoever and on any circumstance. The non-concern of the petitioner-defendant shown towards the proceedings of the court is absolutely manifest. The disregard shown to the plaintiff's age is also visible from the marathon of interlocutory applications filed. A counsel appearing for a litigant has to have institutional responsibility. The Code of Civil Procedure so command. Applications are not to be filed on the grounds which we have referred to hereinabove and that too in such a brazen and obtrusive manner. It is wholly reprehensible. The law does not countenance it and, if we permit ourselves to say so, the professional ethics decries such practice. It is because such acts are against the majesty of law.”

78. In light of the aforementioned judgments, it is evident that the law, with regard to the issue at hand which is whether the petitioner in view of the circumstances could be permitted to cross-examine PW-1 once his



defence has been struck off and PW-1 stands discharged, is clear. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the Court should reject the application. Accordingly, this Court is of the view that no litigant has a right to abuse the procedure provided in the CPC. The burden of the proof to claim their entitlement to cross-examine a witness is on the party seeking it. The concerned party must show a sufficient cause which is beyond the observations and finding of the Court which has closed such right. The same can also be supported by the peculiar observations made by the Hon'ble Supreme Court in *Shiv Cotex (Supra)*, wherein, the Hon'ble Court held as follows:

“16. No litigant has a right to abuse the procedure provided in CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in the proviso to Order 17 Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order 17 Rule 1 CPC should be maintained. When we say “justifiable cause” what we mean to say is, a cause which is not only “sufficient cause” as contemplated in sub-rule (1) of Rule 1 of Order 17 CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside;



an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive.

17. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit—whether the plaintiff or the defendant—must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril.”

79. During the course of arguments, the petitioner had contended that the learned Trial Court failed to appreciate that the cross-examination is only to be done in respect of the facts of the case and no cross-examination is required to be done in the name of cause of action and question of limitation as well as the jurisdiction since the same are purely legal issues. Further, the cross-examination in the present case is necessary in order to test the testimony advanced by the respondent and to prove the petitioner's case. The facts in question are required to be cross-examined to establish the truth which will lead to proper adjudication of the suit. The denial of the same to



2024 : DHC : 461



the petitioner is arbitrary and against the settled principles of law. This very contention of the petitioner is rejected by this Court in light of the judgment mentioned herein above.

80. This Court is of the view that in the event a defendant does not appear before the Court within the stipulated time period, the said case proceeds under the category of ‘undefended’ and then it is not possible for the defendant, without obtaining leave of the Court, to appear before it. He has a limited right to cross-examine the witnesses adduced on behalf of the plaintiff if he appears at the time when the undefended case is listed for hearing; but this position is only applicable upon a party who has been precluded from defending the suit since he failed to appear before the Court in time.

81. Perusal of the record shows that PW-1 was discharged by the learned Trial Court vide order dated 1st May, 2023 and the reason for the same was that the petitioner’s counsel before the learned Court below had left the Court without any intimation during the examination of witness. *Prima facie* the petitioner has not challenged the said order before any forum. Thereafter, as per the record available, the next date of hearing was fixed for 26th August, 2023 and on the same date the petitioner had moved an application seeking time/adjournment for final argument on behalf of the defendant due to the reason that the petitioner had changed his counsel and that the new counsel did not have the file to prepare for the arguments.

82. The learned Trial Court granted the petitioner a week’s time to file written arguments. Subsequently, the learned Court below fixed the matter



2024 : DHC : 461



for 22nd September, 2023, on which date it was noted by the learned Trial Court that no compliance has been done by the petitioner, i.e., the defendant therein as he was directed to file written arguments and bearing in mind the conduct of the petitioner, it adjourned the matter to 14th October, 2023 for orders, and meanwhile, the present revision petitions were taken up for arguments on 14th October, 2023 when the same were reserved by this Court for judgment.

83. Observations made by this Court in preceding paragraphs *qua* the conduct of the petitioner and finding of the learned Trial Court clearly establishes that there is no force in the propositions put forth by the petitioner. This Court is of the view that the petitioner's past conduct in the in the proceedings before the learned Court below plays a pivotal role. A party to the suit is not at liberty to proceed with the trial at its own leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit—whether the plaintiff or the defendant—must cooperate with the Court to ensure that effective work is carried out on the date of hearing for which the matter has been fixed. If a party doesn't, then the concerned party does the same at its own peril. Accordingly, the present petitioner had sufficient opportunities to first make payment of arrears, then to lead his defence, then to cross-examine PW-1, then to file written arguments, instead, he remained negligent and pursued the suit at his whims and fancies.

84. Therefore, permitting recalling of witness, i.e., PW-1 at this stage is not appropriate. Even the law with regard to the recalling of a witness is



settled and states that the Court has the discretion to recall a witness or even permit fresh evidence.

85. However, while acting as per its discretion, it must ensure that the process does not become a protracting tactic. Bearing the same in mind, this Court is of the considered view that the application filed by the petitioner seeking permission to cross-examine PW-1 was mischievous, frivolous and a blatant attempt to cover up his negligence or lacuna, hence, by dismissal of the said application, *ex facie*, no illegality or infirmity can be made out in the 2nd impugned order, therefore, it was rightly rejected by the learned Trial Court.

86. Accordingly, it is held that the petitioner has not been able to make out his case bringing the 2nd impugned order within the ambit of the revisional jurisdiction of this Court and in view of the same, this Court finds no merit in the 2nd revision petition.

87. At this juncture, this Court finds it imperative to adjudicate upon ***whether the present revision petitions are maintainable in light of the fact that the date on which the instant revision petitions were reserved, the suit before the learned Trial Court was already fixed for pronouncement of judgment.***

88. It is pertinent to note here that the present revision petitions were reserved by this Court on 10th October, 2023 and on the said date of hearing; it was informed by the learned counsel for the parties that the suit pending for adjudication before the learned Trial Court is fixed for pronouncement of judgment on 14th October, 2023. Accordingly, this Court had kept the suit



pending for pronouncement in abeyance vide order dated 10th October, 2023 passed by this Court.

89. During the course of arguments, the learned senior counsel appearing on behalf of the respondents had submitted that the petitioner's challenge against the impugned orders cannot be entertained by this Court at this stage in view of the aforesaid subsequent development. Hence, both the revision petitions are liable to be dismissed on the grounds of non-maintainability.

90. This Court while deciding the aforesaid issue has referred to one of the earlier judgment passed by the Hon'ble Supreme Court in **Arjun Singh v. Mohindra Kumar, 1963 SCC OnLine SC 43**, wherein, it was observed as under:

“..20. On this submission, which we might mention has been urged for first time in this court, the first question that arises is whether the Court has the inherent jurisdiction which learned counsel contends that it has. For the purpose of the discussion of the question in the context of the relevant provisions of the Code, it is unnecessary to embark on any detailed or exhaustive examination of the circumstances and situations in which it could be predicated that a Court has the inherent jurisdiction which is saved by Section 151 of the Civil Procedure Code. It is sufficient if we proceed on the accepted and admitted limitations to the existence of such a jurisdiction. It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words if there are specific provisions of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers



conferred by the Code. The prohibition contained in the Code, need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates. We shall confine our attention to the topic on hand, namely applications by defendants to set aside exparte orders passed against them and reopen the proceedings which had been conducted in their absence. Order IX. Rule 1 requires the parties to attend on the day fixed for their appearance to answer the claim of the defendant. Rule 2 deals with a case where the defendant is absent but the Court from its own record is apprised of the fact that the summons has not been duly served on the defendant in order to acquaint him with the proceedings before the Court. Rule 2 contains a proviso applicable to cases where notwithstanding the absence of service of summons, the defendant appears. Rule 3 deals with a case where the plaintiff alongwith the defendant is absent when the suit is called on and empowers the Court to dismiss the suit. Rule 5 deals with a case where the defendant is not served properly and there is default on the part of the plaintiff in having this done. Having thus exhausted the cases where the defendant is not properly served, Rule 6(1)(a) enables the Court to proceed exparte where the defendant is absent even after due service. Rule 6 contemplates two cases : (1) The day on which the defendant fails to appear is one of which the defendant has no intimation that the suit will be taken up for final hearing for example, where the hearing is only the first hearing of the sui, and (2) where the stage of the first hearing is passed and the hearing which, is fixed is for the disposal of the suit and the defendant is not present on such a day. The effect of proceeding exparte in the two sets of cases would obviously mean a great difference in the result. So far as the first type of cases is concerned it has to be adjourned for final disposal and, as already seen, it would be open to the defendant to appear on that date and defend the suit. In the second type of cases, however, one of two things might happen. The evidence of the



plaintiff might be taken then and there and judgment might be pronounced. In that case Order IX, Rule 13 would come in. The defendant can, besides filing an appeal or an application for review have recourse to an application under Order IX. Rule. 13 to set aside the exparte decree. The entirety of the evidence of the plaintiff might not be concluded on the hearing day on which the defendant is absent and something might remain so far as the trial of the suit is concerned for which purpose there might be a hearing on an adjourned date. On the terms of Order IX. Rule. 7 if the defendant appears on such adjourned date and satisfies the court by the showing good cause for his non-appearance on the previous day or days he might have the earlier proceedings recalled — “set the clock back” and have the suit heard in his presence. On the other hand, he might fail in showing good cause. Even in such a case he is not penalised in the sense of being forbidden to take part in the further proceedings of the suit or whatever might still remain of the trial, only he cannot claim to be relegated to the position that he occupied at the commencement of the trial. Thus every contingency which is likely to happen in the trial vis-a-vis the non-appearance of the defendant at the hearing of a suit has been provided for and Order IX. Rule. 7 and Order IX. Rule 13 between them exhaust the whole gamut of situations that might arise during the course of the trial. If, thus provision has been made for every contingency, it stands to reason that there is no scope for the invocation of the inherent powers of the Court to make an order necessary for the ends of justice. Mr. Pathak, however, strenuously contended that a case of the sort now on hand where a defendant appeared after the conclusion of the hearing but before the pronouncing of the judgment had not been provided for. We consider that the suggestion that there is such a stage is, on the scheme of the Code, wholly unrealistic. In the present context when once the hearing starts, the Code contemplates only two stages in the trial of the suit : (1) where the hearing is adjourned or (2) where the hearing is completed.



Where, the hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order XX. Rule 1 permits judgment to be delivered after interval after the hearing is completed. It would, therefore, follow that after the stage contemplated by Order IX. Rule 7 is passed the next stage is only the passing of a decree which on the terms of Order IX. Rule 6 the Court is competent to pass. And then follows the remedy of the party to have that decree set aside by application under Order IX. Rule 13. There is thus no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the lines of Order IX. Rule 7. We are, therefore, of the opinion that the Civil Judge was not competent to entertain the application dated May 31, 1958 purporting to be under Order IX. Rule 7 and that consequently the reasons given in the order passed would not be res judicata to bar the hearing of the petition undo Order IX. Rule 13 filed by the appellant...”

91. The above cited judgment was further considered by the Hon’ble Supreme Court in ***Andhra Pradesh Southern Power Distribution Power Co. Ltd. v. Hinduja National Power Corpn. Ltd., (2022) 5 SCC 484***, where the Hon’ble Court made the following observations:

“95. It can be seen that this Court in Arjun Singh case [Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993 : (1964) 5 SCR 946] has held that CPC contemplates two stages of the trial in the suit : (1) where the hearing is adjourned; and (2) where the hearing is completed. It has been held that where the hearing is completed, the parties have no further rights or privileges in the matter and it is only for the convenience of the court that Order 20 Rule 1 permits judgment to be delivered after an interval after the hearing is completed. It has been held that there is no hiatus between the two stages of reservation of judgment and



pronouncing the judgment so as to make it necessary for the court to afford to the party the remedy of getting orders passed on the lines of Order 9 Rule 7.”

92. The High Court of Orissa, in the judgment of ***Bharati Behera v. Jhili Prava Behera***, 2014 SCC OnLine Ori 408, which was also considered by the Hon’ble Supreme Court in ***Hinduja National Power Corpn. Ltd. (Supra)***, held as under:

“7. In the case of Arjun Singh (supra) the question of applicability of Order 9 Rule 7, C.P.C., after the ex parte hearing is completed, was in issue. Hon’ble Supreme Court, on a thorough discussion of the provisions of Order 9 Rule 7, Rule 13, Rule 6(I)(a), Rule 1, Section 151 and Order 20 Rule 1 of the C.P.C., held thus : -

“.....In the present context when once the hearing starts, the Code contemplates only two stages in the trial of the suit - (1) where the hearing is adjourned, or (2) where the hearing is completed. Where the hearing is completed, the parties have no further rights or privileges in the matter and it is only in the convenience of the Court that Order 20 Rule 1 permits, judgment to be delivered after an interval, after the hearing is completed. It would therefore follow that after the stage contemplated by Order 9 Rule 7 is passed, the next stage is only passing of a decree, which, on the terms of Order 9 Rule 6 the Court is competent to pass. And then follows the remedy of the party to have that decree set aside by application under Order 9 Rule 13. There is, thus, no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the line of Order 9 Rule 7”



Same is the view of Hon'ble Supreme Court in the case of Rasiklal Manikchand Dhariwal (supra) while dealing with the scope of Order 9 Rule 7. In that case also Hon'ble Court has held that once the suit is closed for pronouncement of judgment, there is no question of further proceeding in the suit.

8. Though in both the aforesaid cases Hon'ble Supreme Court were dealing with the scope and ambit of Order 9 Rule 7, C.P.C. when ex parte hearing in a suit has been completed, but the principle decided therein so far as reservation of a judgment and pronouncement of a judgment is concerned, is applicable to the facts of the present case in as much as there is no difference between closure of an ex parte hearing or closure of a contested hearing. Whatever be the case after closure of hearing, the obvious stage is pronouncement of judgment. The dictum of Hon'ble Supreme Court to the effect that there is no hiatus between the two stages of reservation of judgment and pronouncing the judgment in full vigour apply to both the aforesaid categories of cases.

9. Hon'ble Supreme Court, in the case of K.K. Velusamy (supra) was dealing with the scope of Order 18 Rule 17, C.P.C. read with Section 151 thereof. In that case the two applications, one under Section 151, C.P.C. and another under Order 18 Rule 17, C.P.C. were filed with prayer to re-open the evidence and to recall P.Ws.1 and 2 for cross-examination when the arguments were in progress. Those petitions having been rejected by the Trial Court and the High Court concerned, the matter was brought before Hon'ble the Supreme Court. Hon'ble Supreme Court, ruling on the scope and ambit of Section 151, C.P.C. by referring to a number of judgments, in paragraph 16 of the judgment held thus : -

“16. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various



amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the Court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the Court may exercise its discretion to recall the witnesses or permit the fresh evidence. But it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the Court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the Court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

So far as the aforesaid case of K.K. Velusamy is concerned, hearing in the case had not yet been closed. Petitions under Section 151, C.P.C. and Order 18 Rule 17, C.P.C. were filed with prayer to re-open the evidence and to recall P.Ws.1 and 2 for cross-examination when the arguments were still in



progress. We shall find out as to what is the meaning of “closure of a case/suit” is.

10. Andhra Pradesh High Court, in the case of Sultan Saleh Bin Omer v. Vijayachand Sirimal, A.I.R. 1966 Andhra Pradesh 295, took into consideration the provisions of Order 9, 10, 11, 12, 14, Order 15 Rules 1 & 3, Order 18 Rules 1, 2 & 17 and Order 20 Rule 1, and held thus : -

“(17) A combined reading of all these provisions makes it abundantly clear that the Code has not provided for hearing of arguments as a distinct stage in the trial of the suit. On the other hand, according to O.15, R.3, the hearing of the suit includes both production of evidence, as well as argument. It is in the option of the parties to argue their case after the evidence in the suit is closed, and it is for them to decide whether they will exercise their privilege or not. In other words, once the trial of the suit is taken up and the examination of the witnesses has commenced, the hearing of the suit is said to begin; and that hearing comes to an end only with the delivery of the judgment, or when the suit is posted for judgment where it is reserved.”

From the aforesaid observation of the Hon'ble Andhra Pradesh High Court and from different provisions of the C.P.C. it is clear that a case or a suit is closed when the case is posted for judgment or for delivery of judgment on a future date.

After a case is closed, the judgment is to be pronounced either at once or at a future date, as has been provided in Order 20 Rule 1, C.P.C. If judgment is not pronounced at once, the record is kept by the Presiding Officer of the Court for preparation and pronouncement of judgment on a future date. Once the judgment is reserved, the next obvious stage is pronouncement or delivery of the judgment. Hon'ble Supreme Court in the case of Arjun Singh (supra) has ruled that there is



no hiatus between reserving the judgment and pronouncing the judgment. If there is no hiatus or gap between the two stages (as aforesaid), can it be legally and logically held that any party has an endeavour to make in between to get the case re-opened for his purposes? The answer would obviously be “no”. The Civil Judge (Junior Division) in the present case having not been acted as a Civil Court, provision of Section 151, C.P.C. does not apply to assist the opposite party. No other provision is also applicable to get the case re-opened at such stage. If the judgment has been reserved, the next step is to pronounce the judgment by the prescribed time.....

93. This Court has also referred to the judgment passed by the Division Bench of High of Karnataka in ***Rabiya Bi Kassim M. v. Country Wide Consumer Financial Service Ltd., 2004 SCC OnLine Kar 195***, and the relevant portion of the same is as follows:

“9. On consideration, we are of the opinion that once the matter has been finally heard and posted for judgment, as held by the Supreme Court in Arjun Singh's case (supra) nothing is required to be done by the Court except to pronounce the judgment, and therefore the decision in Laxminarayan Enterprises case is not helpful. Admittedly, Clause (4) of Order 18 Rule 2, of CPC has been deleted and therefore the respondent-plaintiff cannot take advantage of Laxmin Arayan's case in the facts of the given case. Even if we assume it for the sake of argument without accepting, in view of the amendment in CPC, as we find, the law relating to procedure in suits and civil proceedings are governed by CPC. The CPC has been amended from time to time. Recently also, in order to cut short the delays at various levels in disposal of civil cases, CPC was amended by the Amendment Act of 1999 with effect from 1.7.2002. In the facts of the given case, sufficient opportunity was given to the plaintiff to complete his evidence, but he has



not availed the opportunity at appropriate time and thereafter his evidence was closed. The case was fixed for defendant's evidence and ultimately the case was heard and reserved for judgment on 20.6.2001. In our view, if the matter is reserved for pronouncement of judgment, such an application is not maintainable as otherwise it will defeat the very object of amendment in speedy disposal of the cases.

*10. As discussed above, in the facts of the case on hand, we are of the opinion that making an interlocutory application to reopen the case and record further evidence after the matter is reserved for pronouncement of judgment is not permissible. We answer the question referred for decision by holding that no application can be filed after the final arguments have been heard and the matter is posted for judgment. The Single Bench decision of this Court in *Laxminarayan Enterprises v. Laxminarayan Textile* is not applicable in view of the decision of the Supreme Court and as stated above...”*

94. Furthermore, the Hon'ble Supreme Court while passing the judgment in *Hinduja National Power Corpn. Ltd. (Supra)* considered the observations made by the Division bench of High Court of Rajasthan in the matter of *Puja Sindhi Panchayat v. Prof. C.L. Mishra, 2002 SCC OnLine Raj 51*, wherein, it was held as follows:

“8. In our considered opinion, pendency of the said application under Article 226 of the Constitution of India read with Order 1 Rule 10 CPC, which was filed by the petitioner-Society in D.B. Civil Writ Petition No. 6051/97 for impleading as party to that writ petition, would have no effect would not give any benefit or cause of action or would not create any right in favour of the petitioner-Society in any manner to seek review of the Division Bench judgment of this Court dated 8.5.2000, because of the following reasons:—



- (1) *That after hearing the parties, the judgment in D.B. Civil Writ Petition No. 6051/97 was reserved by the Division Bench of this Court on 16.3.2000.*
- (2) *That the said application under Article 226 of the Constitution of India read with Order 1 Rule 10 CPC for impleading as party to the writ petition was filed by the petitioner-Society on 22.3.2000 meaning thereby it was filed after the judgment was reserved by the Division Bench of this Court.*
- (3) *That when once the hearing starts, the Code of Civil Procedure contemplates only two stages in the trial of the suit; (1) where the hearing is adjourned or (2) where the hearing is completed. Where hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order 20 Rule 1 permits judgment to be delivered after an interval after the hearing is completed. It would, therefore, follow that after the judgment is reserved, there remains no stage in any case. Thus, there is no hiatus (break) between the two stages of reservation of judgment and pronouncing it. For that, the decision of the Hon'ble Supreme Court in Arjun Singh v. Mohindra Kumar (1), may be referred to.*

Since in the present case, the judgment was reserved by the Division Bench of this Court on 16.3.2000 and the application under Article 226 of the Constitution of India read with Order 1 Rule 10 CPC was filed on 22.3.2000 i.e. after the judgment was reserved, therefore, the said application would have no effect and it would be treated as if no such application was filed before the Division Bench of this Court..."

95. Upon perusal of the above referred judgments passed by the Hon'ble Supreme Court and various High Courts, it can be interpreted that in the



event a judgment is reserved before a Court, in such event, a party must not be allowed to delay the pronouncement of said judgment by filing miscellaneous application either in the same Court or assailing a particular interim order before a Court of higher jurisdiction. The said principle is based upon the principle that once a matter is heard after following due process of law, the pronouncement cannot be delayed as the same might lead to gross injustice to the other party. Further, a party always has a right to challenge a particular order/judgment after the matter is heard and the judgment thereto is pronounced. There cannot be a situation which can lead to unfair treatment and injustice either deliberately or unintentionally.

96. The law regarding the instant issue lies behind the interpretation of the observations made by the Hon'ble Supreme Court and various High Courts depending upon the facts and circumstances of each case. In regard to the same, this Court, before narrating its findings has to take into consideration the facts, the stage, the conduct of the parties and most importantly the consequences that would affect the parties in any manner.

97. This Court is of the view that rights and privileges of a party are forfeited once a matter is heard finally by the adjudicating Court. It is only for convenience of the Court that under Order XX Rule 1 of the CPC, a judgment is permitted to be delivered after an interval upon completion of hearing. Furthermore, as also observed by the Hon'ble Supreme Court, there is no hiatus between the two stages of date of reservation of the judgment and the date of pronouncing of the judgment. It would, therefore, follow that after the judgment is reserved, there remains no stage in any case.



2024 : DHC : 461



98. Contemplation of the above makes it evident that a party does not have any rights and privileges after a judgment is reserved and there is no hiatus between the stage of reserving and pronouncing a judgment. Even though the revision petitions were filed before the learned Trial Court reserved the judgment and fixed the matter for pronouncement, this Court is of the considered view that the petitioner's case cannot be adjudicated by this Court as the same would lead to injustice to the other party.

99. Furthermore, taking into account that a considerable time has been spent as the suit was filed in the year 2021; it is in the interest of justice and equity that the suit should proceed with pronouncement. Also, in light of the observations made in the preceding paragraphs, the petitioner may pursue its remedy which is his right to file an appeal against the final decision of the learned Court below and making the illegality thereto, if any in the order, a ground of that appeal.

100. Moreover, as also noted above, once the judgment is reserved, the next obvious stage is pronouncement or delivery of the judgment. The Hon'ble Supreme Court has ruled that there is no hiatus between reserving the judgment and pronouncing the judgment. If there is no hiatus or gap between the two stages, it cannot be held to be logically and legally coherent that any party has an endeavor, to make in between, to get the case re-opened for his purposes.

101. Hence, the present petitions are, hereby, held to be not-maintainable in light of the subsequent development, i.e., the suit before the learned Court below being pending for pronouncement of judgment as it will lead to



2024 : DHC : 461



procedural chaos thereby resulting into creation of an obstacle in the process of imparting justice and conducting a fair trial.

102. Due to the aforesaid subsequent development in the suit pursuant to filing of the petitions, the present revision petitions are not-maintainable and accordingly, the instant issue is decided against the petitioner.

CONCLUSION

103. The mere fact that a decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any illegality or a material irregularity. Only those matters are to be allowed under the revisional jurisdiction of the High Court, wherein, there has been an irregular exercise, or non – exercise, or the illegal assumption of the jurisdiction by the Court below. It is a settled law that under Section 115 of the CPC, this Court has to look only into the issue of the jurisdiction of the Court below in deciding any application and shall not go into the merits of the case.

104. The approach of the petitioner is very hyper technical which this Court is not inclined to entertain. Considering the aforesaid, it is held that there is no illegality or material irregularity in the eyes of this Court that could be drawn from the perusal of the impugned orders, and accordingly, this Court is of the considered view that the learned Trial Court has rightly passed the impugned orders. It has been deliberated by way of the aforementioned judgments and discussions of facts that there are no errors of jurisdiction, and there is no force in the arguments advanced by the petitioner, hence, not inviting any interference of this Court.



2024:DHC:461



105. Therefore, it is held that the petitioner has been unable to make out a case for grant of relief of revision of the impugned orders under Section 115 of the CPC. The learned Trial Court has exercised its jurisdiction in accordance with the law and hence, the arguments advanced by the petitioner against the impugned orders are rejected.

106. In light of the above discussion of facts and law, impugned orders dated 9th January, 2023 and 26th August, 2023, passed by the learned ADJ-04, North West, Rohini Courts, Delhi, in CS DJ no. 596/2021, are, hereby, upheld.

107. Accordingly, the captioned revision petitions stand dismissed on the grounds of non-maintainability as well as on merits.

108. Pending applications, if any, also stand dismissed.

109. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JANUARY 23, 2024
gs/ryp/db