



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 10.01.2024
Judgment pronounced on: 04.03.2024

+ CM(M) 457/2019, CM APPL. 13008/2019 (stay)

CHANDRA KANTA AGARWALA Petitioner

Through: Mr. Satyam Thareja and Mr.
Pratyaksh Sikodia, Advocates.

versus

AJAY GAUR & ANR Respondents

Through: Mr. Harpreet Singh and Mr. Rajesh
Gupta, Advocates for R1.
Mr. Sanyat Lodha, Ms. Surbhi Arora
and Mr. Lavam Tyagi, Advocates for
R2.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition is filed under Article 227 of the Constitution of India seeking to set aside the order dated 04.01.2019 passed by the learned CCJ-cum-ARC (Central), Tis Hazari Courts, Delhi (hereinafter as "Trial Court") in Eviction Petition No. 878/2017 titled as "*Chandra Kanta Agarwala vs Ajay Gaur*" whereby the learned trial court dismissed the application moved by the petitioner seeking production of record in CS No. 94917/2016 titled as "*Ajay Gaur vs. Vijay Gaur*" & for grant of permission to take photographs of the admitted signatures of the respondent no. 2 on the affidavit, for verification by the handwriting expert.
2. Shorn of superfluities, the facts of the case at hand are that the petitioner on 01.06.1981 executed an unregistered rent agreement with 4



persons namely (i) respondent no. 1, (ii) respondent no. 2, (iii) their brother Shri Jai Prakash Gaur and (iv) their late father Shri M.P. Gaur, with respect to property bearing no. 1877/2 Mahalaxmi Market, Chandni Chowk, Delhi-6 (hereinafter as “tenanted premises”). The tenanted premises was let out to the tenants for a commercial purpose and in pursuance of the same they set up a partnership business vide partnership deed dated 01.07.1981, under the name of M/s Gaur Electric Co.

3. Thereafter, respondent no. 2 Vijay Gaur and Shri Jai Prakash Gaur relinquished their tenancy rights in the tenanted premises by way of affidavits dated 21.12.1992 and 17.02.1993, respectively. Resultantly, the tenanted premises remained under the control and occupation of the two remaining partners in the partnership i.e. respondent no. 1 Ajay Gaur and late Shri M.P. Gaur. The partnership was also reconstituted with only two remaining partners vide partnership deed dated 21.05.1992.

4. Mr. M.P. Gaur expired on 18.01.1999 and by virtue of the Will of his father, dated 21.05.1992, respondent no. 1 became the sole proprietor in the partnership business and also became the sole tenant of the tenanted premises who continued to pay rent to the petitioner. The rent receipts were also issued by the petitioner in his name alone, acknowledging sole tenancy.

5. In the meanwhile, a partnership deed dated 01.04.2009 was entered into between the respondent no. 1 and his brother respondent no. 2, to induct the latter as a partner back in the partnership. However, the petitioner remained unaware of this development.

6. Sometime in 2010, the respondents filed a petition under section 27 of Delhi Rent Control Act, 1958 (hereinafter as “DRC Act”) wherein the respondents alleged themselves to be the tenants in the tenanted premises.



Petitioner received a notice in the petition and subsequently, filed the objections therein. The respondent no. 2 deposited the rent for the period from 01.01.2015 to 31.12.2015.

7. Subsequent to obtaining permission by the competent authority, slum vide order dated 05.09.2017, the petitioner filed the present eviction petition under Section 14(1)(b) of DRC before the learned trial court on the ground of sub-letting the premises to respondent no. 2 by the respondent no. 1, without the consent of the petitioner.

8. The controversy that revolves around the impugned order and the present petition relates to verification of signature by respondent no. 2 Vijay Gaur by the handwriting expert, on the copy of the affidavit on which the petitioner relies and formed basis for eviction. The said affidavit is dated 21.12.1992 whereby the respondent no. 2 relinquished his tenancy rights with respect to the tenanted premises. The respondent no. 2 has denied the signature on the aforesaid affidavit to be his. The said affidavit has been filed in the case titled "*Ajay Gaur vs Vijay Gaur*" in CS No. 94917/2016 which is pending before the learned Civil Judge, Tis Hazari Courts, Delhi. Later, petitioner moved an application in the petition seeking permission to take photographs of the admitted and disputed signature of respondent no. 2 for handwriting expert for the purpose of preparation of report of his signature on the documents surrendering the rights in the tenanted premises.

9. Vide the impugned order, the learned trial court rejected the application of the petitioner seeking the aforesaid reliefs and thus, the present petition before this court.



Contentions of the parties

10. Learned counsel for the petitioner submitted that the learned trial court erred in declining to exercise jurisdiction vested in it to summon the record relating to Civil Suit No. 94917/2016 titled “*Ajay Gaur vs Vijay Gaur and Anr*”.

11. Learned counsel submitted that the handwriting expert’s evidence is imperative to controvert the averments made by respondent no. 2 in proceedings before the learned trial court and to show his conduct before the learned trial court wherein he had given categorical denials.

12. Learned counsel for petitioner further submitted that the learned trial court exceeded jurisdiction while appreciating the relevancy of the document i.e., the affidavit in question, particularly at the stage of hearing of the application which amounted to shutting the case of petitioner without following the rule of *audi alteram partem*. Further, the learned trial court erred in holding that no purpose will be served by taking the photographs of the disputed and admitted signature and seeking an expert opinion on the same. Reliance placed on *Nandkumar vs Vishwas* [(2011) 5 AIR Bom R 747], *Smt. Aditi Rani Biswas v. Sri Khagendra Nath Dutta & Anr.* [(2011) SCC OnLine Cal 42]. Further relied on the Hon’ble Supreme Court’s judgement in *Laxmipat Choparia & Ors. V. State of Maharashtra* [AIR 1968 SC 938].

13. Conversely, learned counsel for the respondent no. 2 submitted that the petitioner is neither a party to the alleged affidavit nor had any knowledge of the execution of the same. Petitioner not being privy to the contents therein and reliance placed by the petitioner on the alleged affidavit is vehemently denied by respondent no. 2.



14. Further submitted that the scope of interference under Article 227 of the Constitution of India is very limited and even mere errors of law cannot be corrected in exercise of the power of judicial review under Article 227. Furthermore, the application sought reliefs under section 151 of the CPC, the powers under 151 CPC are discretionary powers of the civil court and cannot be exercised without caution. The inherent power of the court should not be treated as carte blanche to grant any relief. The learned trial court keeping in mind the aforementioned circumstances exercised discretion and dismissed the application. Therefore, no interference is required by this court in absence of any infirmity with the impugned order.

Reasons and Conclusions

15. Reiterating the well settled position of law with respect to the limited powers of this Court under Article 227 of the Constitution of India, it is trite law that this Court in exercise of its supervisory power doesn't adjudicate as an appellate court rather the role is to exercise supervisory jurisdiction. The law stipulates that while exercising the supervisory powers, the Court has to check certain parameters such as (i) if there is violation of principles of natural justice, (ii) perversity and illegality in the impugned order, if any and (iii) if the decision of the Trial Court either lacks jurisdiction or is in violation of the fundamental rights of a person.

16. The Hon'ble Supreme Court has summarized the scope of Article 227 in *Mohd. Yunus v. Mohd. Mustaqim*; [(1983) 4 SCC 566], wherein it held that unless there is failure on the part of the trial court to exercise its jurisdiction, or it acted in disregard of principles of natural justice, or the procedure adopted by him was not in consonance with the procedure



established by law, only then the High Court will exercise the supervisory jurisdiction to rectify the errors in the decision.

17. The aforesaid position of law has been further established in the case of ***Estralla Rubber v. Dass Estate (P) Ltd.*** [(2001) 8 SCC 97] as under:

“...Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

18. It is thus manifestly clear that the scope of intervention by this Court under Article 227 of the Constitution of India is limited, findings and facts cannot be disturbed, unless a question of law is raised.

19. Before this Court the impugned order is challenged on the ground of illegality and perversity by submitting that the learned Trial Court was not required to check relevancy of the document at the stage of disposal of an interim application which can be done at the stage of final disposal of the case. Thus, the findings of the learned Trial Court on the basis of wrong premises is patently illegal which can be corrected under supervisory jurisdiction of this Court.

20. Accordingly, it is relevant to mention the findings of the learned Trial Court in the impugned order, which are as follows:-

“The affidavit which is already Ex. PW-1/6 on which the petitioner is relying is allegedly deposed by respondent no. 2 Vijay Gaur whereby he has relinquished his tenancy rights in favour of other co-tenants. It is not the case of the petitioner that any surrender of tenancy has been done by the respondent no. 2 in his favour by way of this affidavit. Hence, even if



the signature of respondent no. 2 on the said affidavit are proved, though denied by respondent no. 2, it cannot be treated as a relinquishment of tenancy in favour of the co-tenant by the tenant in case the same was not within the knowledge/with permission of the petitioner. Moreover, an affidavit cannot take the place of a relinquishment deed. Even if there is any such arrangements between the co-tenants, the landlord cannot rely on it, he being not a party to the same. Therefore, no purpose will be served by taking the photographs of the disputed and admitted signature and seeking expert opinion on the same.

In view of the above discussions, the present application moved on behalf of the petitioner for taking the photographs of the admitted and disputed signature of respondent no. 2 by the handwriting expert is dismissed. Further in view of the above order, the application for summoning of the record in case titled Ajay Gaur v. Vijay Gaur in CS No. 94917/16 which is pending before the Court of Shri Kamran Khan, L.d. Civil Judge, Tis Hazari Courts is also dismissed. It is clarified that the observations made while disposing of the present application will not tantamount to finding on merits of the case.”

21. Now, as far as the opinion of an expert is concerned, it is relevant to note the provision under Section 45 and 47 of the Indian Evidence Act, 1872, for a better grasp on the issue:

“45. Opinions of experts.—When the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.”

“47. Opinion as to hand-writing, when relevant.—When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the hand-writing of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.”

22. Accordingly, on a conjoint reading of the aforesaid provisions, the same pertains to relevancy and weightage given to the opinion of an expert



with respect to handwritten documents. A litigant under the law of evidence is well within the rights to seek an opinion of an expert to prove his case and to prove the controversy arising out of disputed contents of a document, through a handwriting expert. The assistance and value of an expert opinion is indisputable, however, the purpose of an expert's opinion is merely to assist the court and the same is not binding on it. The Court has to form its own opinion in conjunction with the evidence and the report of the expert. [*Malay Kumar Ganguly vs Dr. Sukumar Mukherjee and Ors*; (2009) 9 SCC 221]

23. In the present case, the petitioner sought assistance of a professional handwriting expert to prove his case with respect to admitted and disputed signatures of the respondent no. 2. According to petitioner, the alleged affidavit bears the signatures of respondent no. 2 which he has candidly denied before the learned Trial Court. It is not disputed that the original affidavit is filed in the case titled '*Ajay Gaur vs. Vijay Gaur*' for mandatory and permanent injunction pending in the Court of Civil Judge, Tis Hazari Court, Delhi which is filed by respondent no. 1 herein against respondent no. 2 and petitioner herein was impleaded as defendant no. 2.

24. Pertinently, as the original affidavit alleged to be signed by respondent no. 2 is lying in the record of another court, i.e., Civil Judge, thus, the learned Trial Court cannot permit the petitioner to take photographs of the same, by summoning the same before it, however, the court of Civil Judge is competent to allow such application if moved before the said court.

25. Accordingly, the petitioner is at liberty to move an appropriate application before the court of learned Civil Judge, where the original affidavit is filed and the learned court after issuing notice of the application



to all the parties appearing before it shall permit the handwriting expert of the petitioner to take photographs of the disputed signatures on the affidavit as per law. Needless, to say that the learned Trial Court shall permit the petitioner to obtain photographs of the admitted signatures on the documents available on the record of petition under Section 27 of the DRC Act as per law. Consequently, the petition along with pending application stands disposed of.

SHALINDER KAUR, J.

MARCH 04, 2024
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