



2024:DHC:5284



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

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Judgment reserved on: May 21 , 2024
Judgment pronounced on: July 18, 2024

+ CM(M) 2629/2024, CM APPL. 30605/2024—stay

REETA LALWANI

..... Petitioner

Through: Mr. Ankit Jain, Mr. Varun, Ms. Alka
and Mr. Aashish, Advs.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS.

..... Respondents

Through: Mrs. Prabhsahay Kaur, SC with Mr.
Bir Inder Singh, Ms. Pragati Singh,
Advs. for R-1/DDA.
Mr. Mohd. Irshad, ASC with Ms.
Nasreen, Mr. Kunal Raj and Mr.
Shailesh Chauhan, Advs. for R-2.
Mr. D. Singh, Adv. for R-4 & 5.
Mr. Vaibhav Mahajan and Mr. Nikhil
Aswani, Advs. for R-12.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. This petition under Article 227 of the Constitution of India emanates from the order dated 06.05.2024 as well as the order dated 18.10.2023, passed by the Additional District Judge-01, Dwarka Courts, Delhi ("Trial Court") in CS/DJ/ADJ/122/2020 titled as "*Reeta Lalwani vs Delhi Development Authority & Ors*". The petitioner is aggrieved that the learned Trial Court vide order dated 18.10.2023 allowed the defendant



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no.12/respondent no.12 to place his written statement on record after closing the right to do so and framed two preliminary issues which are contrary to the material on record and thereafter vide the order dated 06.05.2024, dismissed the review application filed by the petitioner seeking to review the order dated 18.10.2023. The petitioner is the plaintiff and the respondents are the defendants before the learned Trial Court.

2. A brief factual background leading to the filing of the present petition is that in February 2020, the petitioner filed the present suit for declaration, partition, possession, mandatory and permanent injunction against the respondents herein. The contention of the petitioner in the suit is that her mother is the owner of the property bearing No.243, Block H, Vikas Puri, New Delhi which was sold by the respondents on the basis of will dated 05.02.2001. This being the main contention of the petitioner, it is not necessary to enumerate the other facts as mentioned before the learned Trial Court.

3. Summons for the settlement of issues were issued on 18.02.2020, however due to the ongoing COVID pandemic, summons were finally served upon the respondents on 26.07.2021. Respondent no.12 entered appearance on 06.01.2022 and on 30.08.2022, it was observed by the learned Trial Court that the statutory time to file the written statement had expired, however respondent no.12 was asked to file his written statement subject to the prescribed statutory period. Subsequent thereto, the respondent no.12 failed to file the written statement within the stipulated time period and the learned Trial Court vide order dated 14.12.2022, struck off the defence of respondent no.12.



4. Thereupon, the respondent no.12 moved two applications on the next day of hearing; one under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short “CPC”) and the other under Order IX Rule 7 of the CPC seeking setting aside of the order dated 14.12.2022, vide which the respondent no.12’s defence was struck off. The petitioner sought some time to reply to the said applications and the matter was listed for arguments on all pending applications. However, on 18.10.2023 to the dismay of the petitioner, the written statement of the respondent no.12 was ‘taken on record’. On the same day, the learned Trial Court framed two issues which are as follows:

- 1) *Whether the present civil suit is within limitation ? OPP*
- 2) *Whether the present civil suit is barred u/s 53 B of Delhi Development Act, 1957 ? OPD*

5. Finally, on 06.05.2024, an application was filed by the petitioner under Section 114 & Order XLVII Rule 1 read with Section 151 of the CPC, to review the order dated 18.10.2023 which came to be dismissed by the learned Trial Court wherein it was observed that the petitioner had no *locus standi* to seek review of the said order. The petitioner’s challenge to the framing of preliminary issues was also dismissed by the learned Trial Court as it has found no ground to review the framing of preliminary issues. Accordingly, the present petition was preferred by the petitioner, to invoke the supervisory jurisdiction of this Court under Article 227 of the Indian Constitution.

6. Mr. Ankit Jain, learned counsel for the petitioner submitted that the learned Trial Court had erroneously dismissed the review application filed by the petitioner, while the application moved by respondent no.12 under



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Order IX Rule 7 CPC was pending disposal for recalling the order dated 14.12.2022 vide which his defence was struck off..

7. The learned counsel submitted that with regard to the challenge of the preliminary issues, the learned Trial Court has wrongly observed that no ground has been made out in the review application, however, the submissions of the petitioner have not been recorded or considered by the learned Trial Court. It has further not been considered that compliance under Section 53-B of the Delhi Development Act, 1957 (DDA Act) by way of legal notice dated 06.06.2019 has been made. Therefore, there is no necessity of framing the aforesaid issue no.2, which has become redundant.

8. The learned counsel for the respondents, Mrs. Prabhsahay Kaur, while opposing the arguments made by the petitioner submitted that the petitioners' suit is barred by limitation as well as by Section 53-B of the DDA Act, accordingly the preliminary issues have rightly been framed by the learned Trial Court. The learned counsel further submits that the application moved under Order IX Rule 7 of the CPC could be disposed off by the learned Trial Court as the written statement filed on behalf of the respondent no.12 has been allowed to form part of the record, thus, there is no merit in the present petition.

9. I have heard the arguments at length on behalf of the parties and perused the record as well as the impugned order.

10. To begin with, it is relevant to note that this Court while exercising jurisdiction under Article 227 of the Constitution of India is not expected to examine the decision of the Court below by acting as a Court of first appeal. The supervisory jurisdiction is not to correct an error of fact or a legal flaw thereby substituting its own decision on the facts and conclusion as arrived



by the Court below. The importance of Article 227 has been examined by the Hon'ble Supreme Court in ***Celina Coelho Pereira vs. Ulhas Mahabaleshwar Kholkar*** (2010) 1 SCC 217, which held as under:

“The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.”

11. It is further relevant to mention the findings of Hon'ble Supreme Court in ***Puri Investments vs. Young Friends and Co.***, MANU/SC/0290/2022, which reads as under:-

“14. In the case before us, occupation of a portion of the subject-premises by the three doctors stands admitted. What has been argued by the learned counsel for the appellant is that once the Tribunal had arrived at a finding on fact based on the principles of law, which have been enunciated by this Court, and reflected in the aforesaid passages quoted from the three authorities, the interference by the High Court under Article 227 of the Constitution of India was unwarranted. To persuade us to sustain the High Court's order, learned counsel appearing for the respondents has emphasized that full control over the premises was never ceded to the medical practitioners and the entry and exit to the premises in question remained under exclusive control of the respondent(s)-tenant. This is the main defence of the tenant. We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were



perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse.

These are:--

- (i) Erroneous on account of non-consideration of material evidence,*
- or*
- (ii) Being conclusions which are contrary to the evidence, or*
- (iii) Based on inferences that are impermissible in law.”*

12. On a perusal of the judgments of the Apex Court, it is apparent that while considering the relief claimed under Article 227 of the Constitution of India, the High Court has to bear in mind the limited supervisory jurisdiction to be exercised by it.

13. It is further relevant to note that Section 114 of the CPC, which provides for power of the Court to review its own judgment or order, so as to correct any error or mistake appearing in such judgment or order either on account of some accidental slip or omission on account of some mistake or error of law apparent on the face of the record. Needless to say, the power of review can be exercised when a review petition is filed within 30 days from the date of judgment or order to be reviewed.

14. It is to be noted that the main grievance of the petitioner is that on 06.01.2022, the counsel for respondent no.12 appeared before the learned Trial Court and sought time to file its written statement, however, the written statement could not be filed by respondent no.12 on 28.03.2022 and also on 11.07.2022. Nonetheless, the learned Trial Court on 30.08.2022 further granted permission to respondent no. 12 to file written statement, subject to availability of statutory time, however, as the written statement could not be filed on 14.12.2022, the right to file written statement was closed as the statutory time had expired and accordingly, defence of respondent no.12 was struck off. The respondent no.12, then, moved an



application seeking to set aside the order striking of his defence which is still pending adjudication before the learned Trial Court.

15. The petitioner has further pleaded that on 25.07.2023, the written statement was filed and time was granted to the petitioner to file reply to the application moved by the respondent no. 12. It is further grouse of the petitioner in aforesaid circumstances, the learned Trial Court has committed a grave error on 18.10.2023 by recording that “*WS has been filed on behalf of defendant no. 12 alongwith supporting affidavit. Taken on record.*”

16. In this regard, it is also relevant to note the findings of the learned Trial Court vide impugned order dated 06.05.2024, which are as under:-

“Ms. Alka Chojar, Advocate, Ld. Counsel for the plaintiff has filed an application under section 114 of the CPC assailing the order dated 18.10.2023 passed by this court, by virtue of which she has assailed an order passed against D12 by which order defence of D12 was struck off. It is noticed that if the defence of D12 was struck off, then the locus standi to file this kind of application goes to D12 only and she as a counsel for plaintiff can’t file such an application. Secondly, she has assailed the preliminary issues framed by this court on 18.10.2023, in which the issue of limitation and section 53 B of the Delhi Development Act, 1957 is assailed. But, no ground has been mentioned in the application.”

17. It is noted from the record that the orders passed by learned Trial Court dated 14.12.2022 and 18.10.2023 are contradictory as on 14.12.2022, the learned Trial Court had struck off the defence of respondent no. 12 for not filing of the written statement within the stipulated period of time, but subsequently, vide order dated 18.10.2023 erroneously allowed the same to be “taken on record” even though the issue with regard to defence of respondent no. 12 having been struck off due to not filing of the written statement is still pending adjudication vide the application moved under Order IX Rule 7 of the CPC before the learned Trial Court.



18. In the light of the aforesaid, it is difficult to discern the reason assigned by the learned Trial Court while dismissing the review application by observing that the petitioner had no *locus standi* to file the review application. It appears that the learned Trial Court has misread and misinterpreted the averments made in the application.

19. Insofar, the submission of the learned counsel for the petitioner is concerned regarding framing of preliminary issues, it is noticed that parties are yet to address arguments on the said issues before the learned Trial Court. Hence, they would raise all the submissions before the learned Trial Court, as have been made before this Court, therefore, there is no infirmity with the impugned order dated 18.10.2023 vide which the preliminary issues have been framed and order dated 06.05.2024 dismissing the review application on this ground.

20. Taking into account the aforesaid circumstances, the impugned orders are modified to the extent that the written statement though filed before the learned Trial Court cannot form a part of the record till the application under Order IX Rule 7 CPC is disposed of by the learned Trial Court. The learned Trial Court to expeditiously dispose of the application within one month from today. With the above observations, the petition along with pending application, accordingly, stands disposed of.

SHALINDER KAUR, J.

JULY 18, 2024/ss