

\$~ 59 (2022 Cause List)

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

Date of Decision:- 21st January, 2022

+ CM(M) 76/2022

SMT. USHA RANI

..... Petitioner

Through: Mr. Shiv Pandey, Advocate.

versus

SHRI ANIL SINGH KUSHWAH

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

CM APPL. 3857/2022 (for exemption)

Exemption allowed, subject to all just exceptions.

This application stands disposed of.

CM (M) 76/2022

1. This petition under Article 227 of the Constitution, is directed against an order dated 18.02.2020 passed by the court of learned Additional District Judge-03, East District, Karkardooma Courts, Delhi in M-10975/2016 [*Smt. Usha Rani vs. Sh. Anil Singh Kushwah*]. By the impugned order, an application filed by the petitioner-plaintiff [“the plaintiff”] under Order XXXIX Rule 2A of the Code of Civil

Procedure, 1908 [“CPC”], alleging violation by the respondent-defendant [“the defendant”] of an interim order dated 08.07.2009 was dismissed.

Facts

2. The suit before the Trial Court was filed in the year 2009, wherein the plaintiff claimed a decree for possession of the suit property (A-596-597, Out of Khasra No. 411, situated in abadi of New Ashok Nagar, Delhi-110096) [“the property”].

3. On the plaintiff’s application under Order XXXIX Rules 1 and 2 of the CPC, an interim order dated 08.07.2009 was passed. The order, as extracted in the impugned order dated 18.02.2020, reads as follows:-

“Present: Cl. for plt.

Cl. for deft. has filed vakalatnama & requested for adj. Put up on 9/9/09 for w/s. Meanwhile both parties are directed to maintain status quo in respect of the suit premises.”

4. The plaintiff thereafter filed an application under Order XXXIX Rule 2A of the CPC, stating therein that some part of the suit property had been demolished by the defendant from inside. Paragraph 4 of the said application reads as follows:-

“That the plaintiff was informed by someone that the defendant is demolishing the property in dispute and on that information the son of the plaintiff reached at the disputed site and found that some alteration was carried out by the defendant by demolishing the rooms on the ground floor and first floor portion of the disputed house

and the plaintiff's son immediately moved a complaint to the SHO of P.S. New Ashok Nagar, Delhi on 06.01.2013, but the police has taken no action against the defendant till date for being the matter of civil nature and subjudice in the present court fixed for 04.02.2013. Copy of the complaint dated 06.01.2013 is annexed herewith."

5. The Trial Court heard the application on evidence, after framing the following issues:-

"1. Whether the respondent is guilty of violating the order dated 08.07.2009? OPP

2. Whether the present application is not maintainable? OPR

3. Relief "

6. Evidence was led by the plaintiff and her son, as well as by the defendant. Issue No.2, on the maintainability of the application, was decided in favour of the plaintiff. However, issue No.1, on the merits, was decided against the plaintiff. It is in these circumstances, that this petition under Article 227 of the Constitution has been filed.

Submissions

7. Mr. Shiv Pandey, learned counsel for the petitioner, submits that the finding in the impugned order, to the effect that the order of *status quo* granted on 08.07.2009 would not encompass an injunction against the renovation of the property, is erroneous inasmuch as an unqualified order of *status quo* would cover both questions of title and possession, as well as the nature and character of the suit property. He further refers me to the report of the Local Commissioner dated 08.07.2015, to demonstrate that changes had been made to the suit

property during the pendency of the suit, and the subsistence of the interim order.

8. I am informed that a Local Commissioner was appointed by an order dated 02.07.2015 in the course of the proceedings under Order XXXIX Rule 2A of the CPC. The report of the Local Commissioner states as follows:-

“There are 11 Room on ground floor alongwith kitchen and washroom all room are found open.

There are 10 Room (8 small room 2 comparatively big in size) on first floor. Two washroom and an empty room having two slabs embedded on walls.

There are two rooms and one Big Hall alongwith attached store room at the second floor right side of the house. Washroom present on left side. Two room were plastered rest of the portion is non plastered bricks and other construction material also lying on the outside of hall red primer on gatter seen.”

9. Mr. Pandey submits that the contention that the defendant had demolished some rooms is established upon comparison of the report of Local Commissioner with the contents of paragraph 2 of the plaint, wherein the plaintiff had specifically averred that there were 14 rooms each on the ground floor and first floor and 2 rooms on the second floor of the suit property. Mr. Pandey submits that the said pleading of the plaintiff was not specifically traversed in the written statement filed by the defendant.

Analysis

10. The impugned order proceeds on two findings: the first finding

concerns an interpretation of the *status quo* order dated 08.07.2009, and the second finding is that the plaintiff, on evidence, was unable to establish any violation of the order. Having heard learned counsel for the petitioner, I am not persuaded that either of these findings are liable to interference under Article 227 of the Constitution.

11. On the first question, the learned Trial Court has come to the conclusion that the *status quo* order, read in the context of the averments in the plaint and in the application filed by the plaintiff under Order XXXIX Rules 1 and 2 of the CPC, would not cover an injunction against renovation of the suit property. The Trial Court has noted that the suit, and the injunction application, raise a claim regarding possession of the property, and held that the *status quo* order would not encompass something that was not prayed for in the suit or in the application.

12. The order dated 08.07.2009 does not clearly spell out the aspects in respect of which the order of *status quo* was passed. The Supreme Court in *Bharat Coking Coal Limited vs. State of Bihar and Others*¹ has noted that the term “status quo” is one of ambiguity and can give rise to doubts and difficulty in interpretation. In such circumstances, it was open to the Trial Court, particularly in proceedings under Order XXXIX Rule 2A of the CPC, to interpret the order narrowly. The following observations of the Supreme Court in *Food Corporation of India vs. Sukh Deo Prasad*² prescribe such an approach in applications under the said provision:-

¹ 1987 Supp SCC 394 [paragraph 5]

² (2009) 5 SCC 665

“38. The power exercised by a court under Order 39 Rule 2-A of the Code is punitive in nature, akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who complains of disobedience or breach has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. While considering an application under Order 39 Rule 2-A, the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the “order”, on surmises, suspicions and inferences. The power under Rule 2-A should be exercised with great caution and responsibility.”

13. In view of these judgments, no jurisdictional error can be discerned in the interpretation accorded to the *status quo* order by the Trial Court, such as to warrant the interference of the Court under Article 227 of the Constitution.

14. In any event, the Trial Court has not rested its decision only on this basis. The evidence led by the parties has been analysed. The plaintiff's evidence, as extracted in paragraph 13 of the impugned order, was that she had no personal knowledge about the alterations made in the suit property and had been so informed by her son, who was examined as AW-2. The plaintiff's son, in his evidence (extracted in paragraph 14 of the impugned judgment), stated that he had not entered into the suit property and had no personal knowledge regarding the internal condition of the suit property. His allegation

was based upon a conversation with the labourers present outside the property upon his making enquiries as he saw construction debris outside the property. The Trial Court has come to the conclusion that this evidence is insufficient to establish the plaintiff's allegation to any demolition by the defendant, as opposed to mere renovation of the property which may be necessary in the normal course, during the pendency of the suit.

15. In proceedings under Article 227 of the Constitution, the High Court is not called upon to enter into a re-appreciation of the evidence before the Trial Court. The judgment of the Supreme Court in *Estralla Rubber vs. Dass Estate (P) Ltd.*³ makes it clear that, so long as there is some evidence on the basis of which the Trial Court could have entered its findings, the High Court in its supervisory jurisdiction would not re-appraise the evidence. The Court held as follows:-

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of

³ (2001) 8 SCC 97

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.”

The judgment has been followed in the recent judgment of the Court in *Garment Craft vs. Prakash Chand Goel*⁴.

16. The judgment of the Trial Court is therefore not vulnerable to challenge on this score.

Conclusion

17. For the aforesaid reasons, I am of the view that the impugned order of the Trial Court does not warrant the exercise of the supervisory jurisdiction of this Court. This petition is accordingly dismissed.

PRATEEK JALAN, J.

JANUARY 21, 2022

‘vp’

⁴ 2022 SCC OnLine SC 29 [paragraph 18].