

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP no. 976/2018
CM no. 1848/2019 [1/2019]
IA no. 1/2018
CM no. 532/2020

Reserved on 29.06.2022
Pronounced on:13.07.2022

Ghulam Hassan Khanyari

.... Petitioner(s)

Through: Mr Z. A. Shah, Sr. Advocate with
Ms Humaira Shafi, Advocate

V/s

Reyaz Ahmad Bhat and another

... Respondent(s)

Through: Mr Zahoor Ahmad Shah, Advocate

CORAM:

Hon'ble Ms Justice Moksha Khajuria Kazmi, Judge

JUDGMENT

1. This writ petition filed in terms of Article 227 of the Constitution is filed to seek setting aside of the order dated 17th April, 2018, for short impugned order, passed by the court of learned 1st Additional District Judge, Srinagar, for short court below, dismissing an application filed before it by the defendant no. 1, petitioner herein, in terms of Order VI Rule 4 of the Code of Civil Procedure, CPC, on the grounds taken therein.

BRIEF FACTS

2. A civil suit titled *Reyaz Ahmad Bhat v. Ghulam Hassan Khanyari and anr.*, has been filed by the plaintiff/ respondent no. 1 herein, before the court below for declaration, ejectment, possession and mandatory injunction on 7th May, 2013, pleading *inter alia* therein that he has purchased land measuring 2 kanals and 4 marlas bearing Khasra no. 2482/2150/393, Khewat No. 324, Khata No. 1118-Min situated at Gupt Ganga, Srinagar, along with super structure standing over it from the defendant no. 2/ earlier respondent no. 2 herein, substituted by his wife after his demise, but the possession of the said property has not been delivered to him as the defendant no. 1, petitioner herein had remained in possession of the same as trustee, brother of the defendant no. 2/ respondent no. 2 who is refusing to deliver the possession to the plaintiff/ respondent no. 1 herein. The respondent no. 1/plaintiff had further, alongside the suit, filed an application for grant of ad-interim relief. The Court below, upon consideration of the matter, on motion

hearing, had dispensed with the requirement of prior notice as envisaged by Order 39 Rule 3 CPC and granted the interim relief in favour of the plaintiff/ respondent no. 1 herein to the effect that no third-party interest in respect of the suit property shall be created till the objections are filed by the non-applicants/petitioner and respondent no. 2 herein, and the same are considered.

3. It appears that the petitioner as also the respondent no. 2 herein has appeared before the court below and filed their written version. While the respondent no. 2/ defendant no. 2 in the suit, has admitted the sale of the suit property to the plaintiff, the petitioner/ defendant no. 1 before the court below, has chosen to contest the same and has accordingly refuted the claim of the plaintiff/ respondent no. 1 herein in terms of the averments contained in the written statement filed by him before the court below.

4. During the pendency of the said suit, the defendant no. 1, is stated to have filed an application under Order VI Rule 4 of the CPC on 13th June, 2017, seeking leave of the court to incorporate better particulars in the written statement filed by him earlier.

5. The respondent no. 1/plaintiff before the court below, contested the application by filing his objections, stating therein that the defendant no. 1/ petitioner herein is trying to prolong the matter and deprive the plaintiff/ respondent no. 1 herein of his property rights.

6. The Court below, on consideration of the matter and after hearing the learned counsel for the parties, did not find merit in the application and accordingly dismissed the same, vide the impugned order, holding that if the application is allowed and the particulars/ pleadings as are mentioned therein are incorporated in the written statement, the same will cause prejudice to both the defendants/ respondents herein, as they would be required to reply the contents against the object of Order VI Rule 4 of the CPC. It has further been held by the court below that allowing the application would mean allowing an amendment of the pleadings of the written statement.

7. Feeling aggrieved of the impugned order, the petitioner/ defendant no. 1, has filed the petition in hand in terms of Article 227 of the Constitution seeking setting aside of the same *inter alia* on the grounds that the impugned order is bad in law as it converted a bilateral controversy into a triangular one; all controversies would have got settled had the application been allowed as it would have concretized the issues before the court below; the application deserved to be allowed even if it would have resulted in amendment of the written statement as the defendant in a

suit is entitled to amend the written statement and in doing that the defendant does not suffer the same limitations as the plaintiff; the petition against the order impugned is maintainable before this court as there is no other remedy available to the petitioner under law.

8. Heard learned counsel for the parties and considered the submissions made.

9. The learned counsels during the course of arguments have reiterated the grounds taken by them in their respective pleadings.

10. Since the petition is filed in terms of Article 227 of the Constitution, therefore, before the merits of the matter are divulged, its maintainability against the order impugned needs to be first addressed.

11. It needs no reiteration that the Hon'ble Supreme Court has been consistently holding that the petitions filed under Article 227 of the Constitution are not to be treated as writ petitions and deprecated the practice of entertaining the petitions under Article 227 of the Constitution against the orders against which revision is barred in terms of amended Act of CPC. The Apex Court in case titled *Shalini Shyam Shetty v. Rajendra Shankar Patil* reported as **2010 AIR SCW 6387**, has laid down the following principles to be followed by the High Courts in exercising jurisdiction under Article 227 of the Constitution:

“a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of

superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be

unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.”

12. The Hon’ble Supreme Court has also in cases, referred to and relied upon by the learned counsel for the respondents, titled ***Babubhai Jamnadas Patel v. State of Gujarat and others; Radhey Shyam and anr. v. Chhabi Nath and othes*** reported as ***(2009) 9 SCC 610 & AIR 2015 SC 3269*** respectively, taken a similar view.

13. The plain reading of the principles laid down by the Hon’ble Supreme Court would make it clear that the petition under Article 227 of the Constitution is subject to high degree of judicial discipline and is not to be taken recourse of for setting right the mere irregularities occurring in the subordinate court orders. The power, however, is not *ipso facto* curtailed to be exercised when it is so warranted. The ‘border line’, therefore, for the purposes of exercising jurisdiction under Article 227 of the Constitution, has been drawn and the jurisdiction, as such, is warranted to be exercised to keep the Tribunals and courts subordinate to it within the bounds of their authority; to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them; when there is patent perversity in the orders of Tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted; and is not to be exercised to correct mere errors of law or just because another view than the one taken by the Tribunals or Courts subordinate to it, is a possible view.

14. It is very axiomatic that this court can exercise its power of superintendence vested with it under Article 227 of the Constitution only when the order challenged in the said petition falls within any of the aforesaid categories. The perusal of the order impugned would make it clear that the court below has certainly exercised the jurisdiction that is vested with it and has not also declined to exercise the jurisdiction vested with it. The court below does not also appear to have traversed beyond the bounds of its authority, nor does the impugned order appear to be perverse so as to cause a manifest failure of justice or the basic principles of natural justice have been flouted.

15. Having said that, the petition in hand, against the impugned order, is not maintainable. However, the submission of the learned senior counsel for the petitioner, that there is no efficacious alternate remedy available to the petitioner to challenge the order impugned and the petition in hand is the only possible course that could be adopted in the circumstances, carries weight and the petition only on such count is entertained for adjudication.

16. Be that as it may, it is stated at the cost of repetition that the application filed by the petitioner under Order VI Rule 4 of the CPC has been, by the order impugned, dismissed on the ground that it would amount to amending the written statement, therefore, is impermissible in law. The contention of the learned senior counsel that the order impugned is bad in law as the right to press into service the provision of law, Order VI Rule 4 of the CPC, cannot be taken away even if it amounted to amendment does not appear to be carrying weight, for, the mandate of the Order VI Rule 4 of the CPC is quite limited. It provides for stating the particulars in the pleading in all cases where the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary. The Rule 4 of the Order VI, being relevant, is taken note of hereinbelow, thus:

“4. Particulars to be given where necessary.- In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”

17. The Supreme Court in case titled **V. S. Vishwavidyalaya v. Raj Kishore** reported as **AIR 1977 SC 615** has held as under:

*“9. We do not think it is enough to state in general terms that there was ‘collusion’ without more particulars. This Court said in **Bishundeo v. Seogeni Rai, 1951 SCR 548 (at p. 556) = (AIR 1951 SC 280 at page 283)** as under:*

“General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however, strong the language in which they are couched may be, and the same applies to undue influence and coercion.”

18. It is evident from the aforesaid provision that as per Rule 4, particulars with dates and items are clearly required to be stated in the pleading *inter alia* in cases of misrepresentation, fraud, breach of trust, willful default or undue influence, for the reason that the opposite party knows the case it has to meet; the issue is not enlarged and the court is enabled to determine the controversy at the earliest. The plain reading of the provision of law makes it quite clear that the party seeking to press into services Order VI Rule 4 of the CPC has to be specific to the relevant particulars only. It does not come to fore as to what prevented the petitioner/defendant no. 1 before the court below, to invoke the provision of Order VI Rule 17 to seek amendment of the written statement. The application filed before the court below by the petitioner has certainly sought to enlarge the scope of the provision of law which is impermissible. Further in view of the ratio laid down by the Hon'ble Supreme Court in the *V. S. Vishwavidyalaya v. Raj Kishore* case *supra* the contents of the application filed by the petitioner before the court below do not qualify to mean fraud, coercion or undue influence.

19. The application filed by the petitioner before the court below is not in conformity with Order VI Rule 4 of the CPC as it is seeking to elaborate what is already pleaded in the written statement filed by him prior in time. Such elaboration certainly amounts to amending the earlier written statement which could not have been done and the court below has rightly rejected the same as what the law prohibits directly cannot be done indirectly. Even otherwise, the application filed before the Court below by the petitioner nowhere refers to fraud, breach of trust misrepresentation, willful default or undue influence vis-à-vis the respondent no. 1, plaintiff before the court below, which would mean that the requirements of Order VI Rule 4 of the CPC are not fulfilled.

20. The petition is dismissed along with connected CM on the above lines. It goes without saying that this court has not expressed any opinion on the merits of the case. The court below shall decide the matter without getting influenced, in any way, by any of the observations made by this court in this order.

(Moksha Khajuria Kazmi)
Judge

Srinagar
13.07.2022
Amjad Lone, Secretary

Whether the order is reportable:	Yes/No
Whether the order is speaking:	Yes