

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

CM(M) No. 39/2023  
CM No. 1199/2023  
Caveat No. 283/2023

*Reserved on : 17.03.2023  
Pronounced on : 11.05.2023*

**UT of J&K and others** .....Petitioner(s)/Appellant(s)

Through: Mr. Sajad Ashraf, GA

Vs

**Shabir Ahmad Dar and others** .....Respondent(s)

Through: Mr. Manzoor A. Dar, Advocate

**Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**JUDGEMENT**

01. Supervisory jurisdiction of this Court enshrined under Article 227 of the Constitution of India is being invoked by the petitioners for seeking quashment of order dated 21.12.2022 (for short "*impugned order*") passed by the Court of Additional District Judge (Bank Cases), Srinagar (for short "*the trial Court*") in case titled as, "**Shabir Ahmad Dar and Ors. vs. Commissioner-cum-Secretary and ors.**".

Heard learned counsel for the parties.

02. The background facts emerging from the record of the petition would reveal that the contesting respondents herein filed a summary suit under Order 37 of the Code of Civil Procedure (CPC) against the petitioners and the proforma respondent No. 7 herein for recovery of an amount of ₹ 57.23 lacs on the premise that the

plaintiffs/respondent Nos. 1 to 6 being piece workers have been associated with the Estates Department for execution of civil, electric, sanitary and other related works, executed upon submission of quotations invited by the Estates Department upon approval of rates on annual basis to meet exigencies of work to be completed by the Estates Department for meeting demands of various Govt. departments and their officials in relation to providing of accommodation, furniture, fixtures etc. and that the said works including renovation and repairs on annual basis are stated were executed on emergency basis by the plaintiffs/respondents herein as per the requirement of the Engineering Wing of the Estates Department, whereafter upon completion of the said works, bills for payments came to be submitted after the recording of measurements as also test checks conducted by the supervisory staff of the Estates Department and that the said bills used to be forwarded to the Executive Engineer after their certification for approval and payment and that funds in this regard used to be requisitioned and consequently payments thereof made periodically by the Estates Department to the plaintiff/respondents herein, and that to the dismay and disappointment of the plaintiffs/respondents herein, the works executed by them in the Estates Department post abrogation of Article 370 of the Constitution came to be withheld by the defendants/petitioners herein, against the works executed by the plaintiffs/respondents herein, amounting to ₹ 40 lacs despite the fact that in order to make payments and in order to meet the liability, an amount of ₹ 37.52 lacs had been kept available by the Assembly

Secretariat in the treasury and to be released by the Executive Engineer in favour of the plaintiffs/respondents herein, which however, could not be released on account of the emergent situation having cropped up on account of abrogation of Article 370 in the month of August, 2019 and conversion of MLA Hostel into a sub-jail for housing political detainees, which hostel upon the visit by the officials of the District Administration was ordered to be repaired on emergent basis resulting into consequent engagement of the plaintiffs/respondents herein by the defendant/petitioner No. 3 herein, whereupon the plaintiffs/respondents herein executed works to the tune of ₹ 18.35 lacs and raised bills after recording of certification by the engineering staff and that despite satisfactory completion of the works in question, the defendants/petitioners herein did not disburse payments in favour of the plaintiffs/respondents herein owing to the changes recorded in the codal formalities relating to the disbursement of the payments, which included execution of an agreement, and that on account of the failure of the defendants/petitioners herein to release the said payments in favour of the plaintiffs/respondents herein, a notice under section 80 CPC in the first instance came to be served upon the defendants/petitioners herein, as a pre-litigation proceedings, in response to which the defendants/petitioners herein replied and admitted the execution of work by the plaintiffs/respondents herein as also their entitlement thereof, though with the caveat of execution of an agreement besides that a post-facto sanction had been sought to get relaxation in making payment dispensing with the requirement of

“Online Pace System” of making payment and that owing to the failure of the defendants/petitioners herein to redress the grievances of the petitioner in pre-litigation forum, the plaintiffs/respondents herein got compelled to institute the summary suit supra before the trial Court.

03. Perusal of the record reveals that the trial Court upon taking cognizance of the suit as being commercial in nature, issued summons to the defendants/petitioners herein under Order 37 of the CPC whereafter the petitioners as also the proforma respondent No. 7 herein sought leave to defend the suit *inter-alia* on the ground of non-existence of a written agreement being a basic requirement for instituting a summary suit under Order 37 of the CPC together with objections related to the limitation besides the bar contained in Section 69 of the Partnership Act, **1932**.

04. The record would further demonstrate that the trial Court while dealing with matter of leave sought by the defendants/petitioners herein for defending the suit proceeded to pass the impugned order dated 21.12.2022 while taking into consideration the entire material before it including the admission made by the defendants/petitioners herein about the execution of work by the plaintiffs/respondent Nos. 1 to 6 herein and withholding of payments payable to the plaintiffs/respondents herein due to non-execution of written agreement and consequently granted leave to the defendants/petitioners herein to defend the suit subject to the deposition of ₹ 37.82 lacs earmarked for disbursement and kept as a reserve in the treasury.

05. The grant of leave to defend in a summary suit filed under Order 37(3) of the CPC has been dealt with by the Apex Court in the case of ***“IDBI Trusteeship Services Limited Vs Hubtown Limited”*** reported in ***(2017)1 SCC 568***, wherein at paragraph 17 following has been laid down:-

**“17.** Accordingly, the principles stated in para 8 of Mechelec’s case will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case as follows:-

- I. If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.
- II. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.
- III. Even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant’s good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.
- IV. If the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.
- V. If the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

- vi. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

It is also pertinent to refer to Section 8 of the Commercial Courts Act, 2015 being relevant and germane herein, which reads as under:-

**“8. Bar against revision application or petition against an interlocutory order—**

Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.”

06. Keeping in mind the aforesaid principles and provisions of law and reverting back to the case in hand, the validity and legality of the impugned order may be adverted to. It is pertinent to note here that during the course of hearing of the matter counsel for the plaintiffs/respondent Nos. 1 to 6 herein produced a copy of the objections filed by the defendant Nos. 2 to 4/ petitioners herein before the trial Court, filed in opposition to the motion laid by the plaintiffs/respondent Nos. 1 to 6 herein seeking initiation of the mediation process and would contend that in the said objections, the defendants/petitioners herein have had admitted the execution of works by the plaintiffs/respondent Nos. 1 to 6 herein as also the bill amount payable to them being of ₹ 37.82 lacs deposited in the Sadder Treasury

under Account Head 8443-DCW of MLA Hostel. The petitioners herein, however, have withheld this fact from this Court, yet it is manifest that the trial Court has rightly refused the grant of unconditional leave to the defendants/petitioners herein. The contentions raised and the grounds urged by the petitioners furthermore do not match the legal principles laid down by the High Court of Delhi in case titled as “*M/s Punjab Pen House Vs Samrat Bicycle Ltd.*” reported in *AIR 1992 Delhi 1*, wherein it has been held that the invoices/bills are “written contracts” within the contemplation of Order 37 of the CPC and, as such, the plea raised by the defendants/petitioners herein that there has been no written contract in existence between the plaintiffs/respondent Nos. 1 to 6 herein and the defendants/petitioners herein, entitling them to institute a summary suit under Order 37 of the CPC is not legally sustainable.

07. The next question that needs to be addressed in the instant case by this Court would be as to whether having regard to the facts and circumstances of the case, coupled with the provisions of Section 8 of the Commercial Courts Act, 2015, the supervisory jurisdiction of this Court enshrined under Article 227 of the Constitution of India is warranted. A reference in this regard to the judgements of the Apex Court passed in case of “*Jai Singh and others Vs Municipal Corporation of Delhi*,” reported in *(2010)9 SCC 385*, wherein at para-15, following has been held:-

**“15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved**

herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it cannot substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial tribunals. The power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice.”

In “*Garmet Craft Vs Prakash Chand Goel*,” reported in (2022) 4 SCC 181, at Paras-15 & 16, it has been held as under by the Apex Court:-

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. 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.

16. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd.* has observed:-

“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 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.”

08. Viewed thus, in the context of what has been observed, analyzed and considered in the preceding paragraphs, the impugned order does not call for any interference. Resultantly, the petition fails and is, accordingly, *dismissed*.

(JAVED IQBAL WANI)  
JUDGE

SRINAGAR

11.05.2023

*Muneesh*

Whether the order is reportable:	Yes
Whether the order is speaking :	Yes