

(2012) 10 AHC CK 0265

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14851 of 1997

Abdul Rahman (deceased by LRs.)

APPELLANT

Vs

District Judge, Hamirpur (Mahoba) and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 45, 73

Citation : (2013) 1 ALJ 543

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Jai Narain, K.M. Mishra, Sandeep Kumar, Sudeep Kumar and Poonam Srivastava, for the Appellant; B.N. Asthana, M.M. Chaurasia, Mandan Mohan, P.K. Asthana and Rajesh Gupta, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Sudeep Kumar Singh, Advocate, for petitioner and Sri Madan Mohan, Advocate, for respondents. This Writ petition is directed against the judgment and order dated 28.1.1997 passed by District Judge, Hamirpur allowing S.C.C. Revision No. 1 of 1996 of respondent No. 3; while setting aside Trial Court's order dated 23.5.1996 which has decreed the suit. It had directed for eviction of petitioner-tenant from the premises in question.

2. Learned counsel for petitioner submitted that rent was paid by tenant regularly and every month and all the receipts were produced before the Court below but Revisional Court has discarded all these receipts as forged and fictitious without considering the evidence of petitioner and, therefore, has erred in law while exercising revisional power. He submitted that on factual aspects, Revisional Court has no jurisdiction to interfere and, therefore, impugned revisional order is clearly illegal and liable to be set aside.

3. Learned counsel for petitioner further submitted that Handwriting Experts' opinions was submitted by both the sides and the same were rejected by

Revisional Court but in that circumstance either he himself should have examined the documents and recorded its own findings or should have remanded the matter but instead he has decided the issue without recording any finding and, therefore, the revisional order is illegal and liable to be set aside. He placed reliance on Apex Court's decision in *Srichand K. Khetwani Vs. State of Maharashtra*, *Fakhruddin Vs. The State of Madhya Pradesh*, *The State (Delhi Administration) Vs. Pali Ram*, 1980 CriLJ 396 (SC), *Lalit Popli Vs. Canara Bank and Others*, and this Court's decision in *Kashful Huda Vs. Additional District Judge (Court No. 2) and Others*, *Laxmi Shanker and Others Vs. Shyam Lal*, *Mohd. Ibrahim alias Munna Vs. Mohd. Ahmed*, and *Ramji Pandey v. Rameshwar Mali* and another 2008 (1) ARC 720.

4. Having given my anxious thoughts to the submissions advanced and authorities cited above, I find no substance therein.

5. It is evident from the record that several receipts were relied and placed by petitioner to prove that rent was paid month by month regularly but the same were not admitted by landlord and he claimed that receipts are forged. Since landlord had denied to have issued receipts relied by petitioner, the burden lies upon petitioner to prove genuity and correctness of those receipts. It appears that to prove signatures of respondent-landlord, petitioner relied on Handwriting Experts' report but an otherwise report of another Handwriting Expert was submitted by landlord also.

6. The Revisional Court had referred to the Handwriting Expert, Sri V.C. Mishra, D.W. 4's report relied by petitioner-tenant and has observed that the said Expert himself found differences in the writing and signatures on the receipts produced by petitioner-tenant before the Court below and the writing and signature supplied by landlord for comparison but despite pointing out those differences, he (the Expert) ultimately concluded in favour of tenant i.e. the party who has required him (the Expert) to submit the report and for that purpose the Revisional Court has observed that this conduct of Handwriting Expert appears to be influenced for the remuneration he must have received from tenant. The relevant findings are as under:--

The handwriting expert D.W. 4 Sri V.C. Misra though observed differences in the admitted writing and signatures and disputed writing and signatures but gave report and evidence in favour of defendant perhaps because he was paid for it.

7. On behalf of landlord-respondent, Sri Rajendra Prasad, D.W. 1 was Handwriting Expert who also noticed some similarity in writing and signatures but gave report in favour of landlord. The Court below, therefore, discarded both opinions being unreliable. It is not uncommon where Experts' opinion used to get influenced by their closeness or otherwise relationship developed with the persons who receive their service. However, and in any case evidence of an expert is only an opinion.

8. In *Lalta Prasad v. Emperor* (1910) 5 IC 355, the Judicial Commissioner, Oudh

observed:

Expert testimony derived from comparison of handwriting is no doubt very valuable as evidence corroborating the direct evidence if any upon the point, but it is only in rare cases that it can take its place.

9. A Single Judge of this Court also expressed the same opinion in *Saqlain Ahmad Vs. Emperor*, observing:

The value of the expert evidence depends largely on the cogency of the reasons on which it is based. In general, it cannot be the basis of conviction unless it is corroborated by other evidence.

10. Hon"ble Subba Rao (C.J.) (as His Lordship then was) in *Guntaka Hussenaiah Vs. Buseti Yerraiah*, said:

The expert's evidence is only a piece of evidence. A Judge of fact will have to consider that evidence along with the other pieces of evidence. Which is the main evidence and which is the corroborative one depends upon the facts of each case.

11. In *Magan Bihari Lal Vs. The State of Punjab*, , the Court held that it is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a Handwriting Expert, This type of evidence, being opinion evidence, is by its very nature, weak and infirm.

12. The caution, the Court must exercise while considering opinion rendered by an expert is expressed in *Murarilal v. State of M.P.*, AIR 1980 SC 531, where the Court held:

But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses- the quality of credibility 6t incredibility being one which an expert shares with all other witnesses, but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of fingerprints has attained near perfection, and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. An expert deposes and not decides. His duty is to furnish the judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the judge to form his own independent judgment by the application of these criteria to the facts proved in evidence. (Para 4)

Reasons for the opinion must be carefully probed and examined....In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting

expert may be accepted.... (Para 11)

13. In *State v. Kanhu Charan Bank*, 1983 Cr LJ 133, a Division Bench of Orissa High Court held:

Evidence of experts after all is opinion evidence. The opinion is to be supported by reasons. The Court has to evaluate the same like any other evidence. The reasons in support of the opinion, if convincing, make the opinion acceptable. There is no place for ipse dixit of the expert. It is for the Court to judge whether the opinion has been correctly reached on the data available and for the reasons stated.

14. In *The Forest Range Officer and others Vs. P. Mohammed Ali and others*, , it was observed:

The expert opinion is only an opinion evidence on either side and does not aid us in interpretation.

15. It would be prudent to quote the following passage from Taylor's Law of Evidence, page 1344, para 1877 about the admissibility of evidence of experts:

Still as experts usually come with a bias on their minds to support the cause, in which they are embarked, little weight will in general be attached to the evidence which they give, unless it be obviously based on sensible reasoning.

16. In *Mt. Titli Vs. Alfred Robert Jones* , it was observed:

The opinion of an expert by itself may be relevant but would carry little weight with a Court unless it is supported by a clear statement of what he noticed and on what he based his opinion. The expert should, if he expects his opinion to be accepted, put before the Court all the materials which induced him to come to his conclusion, so that the Court, although not expert, may form its own judgment on those materials.... The mere mention that certain kind of tests known as Binet and Simon tests were applied and certain results were obtained, might be relevant as piece of evidence but would not be conclusive.

17. In *Palaniswamy Vaiyapuri Vs. State*, , a Division Bench of Bombay High Court in para 11 of the judgment said:

The opinion of an expert must be supported by reasons and it is the reasons and not ipse dixit which is of importance in assessing the merit of the opinion.

18. In *Sita Nath Basak Vs. Mohini Mohan Singh and Others*, , a Division Bench of Calcutta High Court observed that in the matter of infringement of copyright, the Court should be reluctant to sit as an expert to decide the question of infringement of copyright and the proper course, in ordinary circumstances, is to get the opinion of experts. This was explained in *Govt. of West Bengal Vs. Nitya Gopal Basak and Others*, by a learned single Judge of Calcutta High Court that the above view was expressed primarily on the ground that the Court would have to take great pains and would have to waste its valuable time to ascertain how

far the piracy extended and it was desirable therefore to seek opinion of expert to compare the works and to ascertain the details to avoid excessive expenditure of time and labour. It was also pointed out that such a course was also necessary as the Court might not be conversant with the alphabets of the book.

19. In the context of opinion of Handwriting Expert, in *Fakhruddin Vs. The State of Madhya Pradesh*, the Court held that the opinion of Handwriting Expert though is relevant in view of Section 45 of the Evidence Act, but that too is not conclusive. Reliance was placed on earlier decisions in *Ram Chandra and Another Vs. State of Uttar Pradesh*, and *Ishwari Prasad Mishra Vs. Mohammad Isa*, where it was observed that expert evidence as to handwriting is an opinion evidence and it can rarely, if ever, take the place of substantive evidence. It cannot be conclusive because it is after all opinion evidence. In para 11 of the judgment in *Fakhruddin (supra)*, the Apex Court further observed, where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.

20. In *Re: Basrur Venkata Row*, a quotation from Dr. Lawson's work on the "Law of Expert and Opinion Evidence" was quoted, which reads as under:--

The evidence of the genuineness of the signature based upon the comparison of handwriting and of the opinion of experts is entitled to proper consideration and weight. It must be confessed however that it is of the lowest order of evidence or of the most unsatisfactory character. We believe that in this opinion experienced laymen unite with the members of the legal profession. Of all kinds of evidence admitted in a Court, this is the most unsatisfactory. It is so weak and decrepit as scarcely to deserve a place in our system of jurisprudence.

21. This was followed in *Indar Datt v. Emperor*, AIR 1931 Lahore 408. A Similar observation was made by Division Bench of this Court in *Srikant v. King Emperor* (1905) 2 ALJ 444 and *Kali Charan Mukherji v. Emperor* (1909) 9 Cr LJ 498.

22. In *Sudhindra Nath Dutt Vs. The King*, it was observed:

We are now left with the evidence of identification by the hand-writing Expert. With regard to this class of evidence, it is a rule of law that it is extremely unsafe to base a conviction upon the opinion of hand-writing experts. Without substantial corroboration; because it is well known that a comparison of hand-writing as a mode of proof is always hazardous & inconclusive, unless it is corroborated by other evidence.

23. In the context of a post-mortem report, in *State of Haryana Vs. Ram Singh*, the Court said that the post-mortem report though by itself is not a substantive piece of evidence, but can by no means be ascribed to be insignificant provided it

is corroborated by other evidence.

24. In *Perumal Mudaliar Vs. The South Indian Railway Company, Limited*, the manner of recording opinion of expert was considered and a single Judge (Hon^{ble} Beasley, C.J.) said:

The evidence of experts must be given in the ordinary way. Subject to certain exceptions—those exceptions being amongst others, the certificates of the Imperial Serologist touching the matter of bloodstains and of the Chemical Examiner, which are made admissible in evidence by themselves, it is quite obvious that the opinion of an expert must be given orally and that a report merely or certificate by him cannot be possible evidence. Unless he goes into the witness box and gives oral evidence, there can be no cross-examination of the expert at all.

25. Similarly, another single Judge in *Coral Indira Gonsalves, falsely called Iswariah Vs. Joseph Prabhakar Iswariah*, said:

Certificates, like these, do not prove themselves. They must be "strictly proved" by the doctor who issues them. He has to state what tests he carried out to arrive at his conclusion and must stand cross-examination and convince the Court that his conclusion about the potency is correct.

26. In reference to an Excise Inspector as to whether he may be considered as expert within the meaning of Section 45 of the Evidence Act, the Apex Court in *Sri Chand Batra Vs. State of U.P.*, said:

Another question before us is whether the Excise Inspector, whose evidence was under consideration, had sufficient knowledge to be deemed to be an expert within the meaning of Section 45 of the Evidence Act so that the tests adopted by him, together with all the attendant circumstances, could establish beyond doubt that the appellant was in possession of illicit liquor. We think that these are also essentially questions of fact.

We find that the Excise Inspector who had deposed, at the very outset of his evidence, that he had put in 21 years service as Excise Inspector and had tested lacs of samples of liquor and illicit liquor. As already pointed out, the competence of C.D. Misra to test the composition and strength of the liquid under consideration was not questioned at all. We, therefore, think that this particular Excise Inspector could be treated as an expert within the meaning of Section 45 of the Evidence Act.

27. In *Haji Mohammad Ekramul Haq Vs. The State of West Bengal*, the Court held that an opinion of expert unsupported by any reason is not to be relied on.

28. In *The Forest Range Officer and others Vs. P. Mohammed Ali and others*, the Court said:

The expert opinion is only an opinion evidence on either side and does not aid us in interpretation. (para 8)

29. Who an expert witness would be, has been considered in State of Himachal Pradesh Vs. Jai Lal and Others, and it says:

An expert witness, is one who has made the subject upon which he speaks a matter of particular study, practice; or observations; and the must have a special knowledge of the subject. (para 13)

Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject. (para 17)

18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions."

19. The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in Court and has to face cross-examination.

30. Considering all these aspects of the matter in respect to evidence of Experts, a Special Bench of this Court in Sunni Central Board of Waqfs v. Sri Gopal Singh Visharad and others, 2010 ADJ 1 (SFB) (LB) (in my judgment) in paras 3586 to 3596 said as under:--

3586, Expert evidence thus is only a piece of evidence and external evidence. It has to be considered along with other pieces of evidence. Which would be the main evidence and which is the corroborative one depends upon the facts of each case. An expert's opinion is admissible to furnish the Court a scientific opinion which is likely to be outside the experience and knowledge of a Judge. This kind of testimony, however, has been considered to be of very weak nature and expert is usually required to speak, not to facts, but to opinions. It is quite often surprising to see with what facility, and to what extent, their views would be made to correspond with the wishes and interests of the parties who call them. They do not, indeed, wilfully misrepresent what they think, but their judgment becomes so warped by regarding the subject in one point of view, that, when conscientiously deposed, they are incapable of expressing a candid opinion.

3587. In Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. and Others, Apex Court considered the issue pertaining to expert opinion in a bit detail. In para 11, the Court has said:

The law of evidence is designed to ensure that the Court considers only that

evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person.... The scientific question involved is assumed to be not within the Court's knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of expert cannot be disputed. The other requirements for the admissibility of expert evidence are:

- i. that the expert must be within a recognized field of expertise,
- ii. that the evidence must be based on reliable principles, and
- iii. that the expert must be qualified in that discipline.

3588. The Court has also said that in order to bring the evidence of a witness as that of an expert, it has to be shown that he has made a special study, on the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge on the subject. Referring to this Court's decision in *Mt. Titli Vs. Alfred Robert Jones*, the Court said that it is not the province of the expert to act as Judge or Jury. The real function of the expert is to put before the Court all the materials, together with reasons which induce to come to the conclusion, so that the Court, although not an expert, may form its own judgment by its own observation of those materials. Again in para 15 of the judgment in *Ramesh Chandra Agrawal (supra)*, the Court said:

An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See *Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and Others*,).

3589. It also referred to an earlier decision in *The State (Delhi Administration) Vs. Pali Ram*, where the Court said "No expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials as put before him and the nature of question put to him" and further in para 17 of the judgment in *Ramesh Chandra Agrawal (supra)* the Apex Court said:

In the Article "Relevancy of Expert's Opinion" it has been opined that the value of expert opinion rests on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of expert depends on the facts upon which it is based and also the validity of the process by which

the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be cross checked. Therefore, the emphasis has been on the data on basis of which opinion is formed. The same is clear from following inference: Mere assertion without mentioning the data or basis is not evidence, even if it comes from expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct Value.

3590. Musheer Khan @ Badshah Khan and Another Vs. State of Madhya Pradesh, is a very recent judgment where the Apex Court has said "under the Evidence Act the word "admissibility" has very rarely been used. The emphasis is on relevant facts. In a way relevancy and admissibility have been virtually equated under the Indian Evidence Act." Further referring to the opinion of finger print expert in that matter, it says that it is well known that the evidence of finger print expert falls under the category of expert evidence u/s 45 but it is also clear that this evidence of finger print expert is not substantive evidence. Such evidence can only be used to corroborate some items of substantive evidence which are otherwise on record.

3591. Lord Campbell in Tracy Peerage Case (1843) 10 CI & F 154 said that, being zealous partisans, their belief becomes synonymous with faith as defined by the Apostle, and it too often is but "the substance of things hoped for, the evidence of things not seen". He also said that, skilled witnesses come with such a bias on their minds to support the cause in which they are embarked, that hardly any weight may be given to their evidence.

3592. Miller J. in Middlings P. Co. v. Christian, 4 Dillon 448 said, "By own experienced both in the local Courts and in the Supreme Court of the United States is, that whenever the matter in contest involves an immense sum in value, and when the question turns mainly upon opinions of experts, there is no difficulty in introducing any amount of them on either side."

3593. This is what we have found here also. Both sides have produced well qualified and highly trained Historians and others giving diametrically opposite opinion. It would be useful to quote from Sarkar's Law of Evidence, 16th Edition, 2007 Vol. 1, page 1052:

The infirmity of expert evidence consists in this that it is mostly matters of opinion and is based on facts detailed by others or assumed facts or opinion against opinion and experts are selected by parties by ascertaining previously that they will give an opinion favourable to the party calling them. Expert evidence is however, of value in cases where the Courts have to deal with matters beyond the range of common knowledge and they could not get along without it, e.g. in matters of scientific knowledge or when the facts have come within the personal observation of experts.

3594. The learned author on page 1053 (supra) also said "An expert is fallible like all other witnesses and the real value of his evidence consists in the logical inferences which he draws from what he has himself observed, not from what he merely surmises or has been told by others. Therefore in cross-examining him, it is advisable to get at the grounds on which he bases his opinion. There is special difficulty in dealing with the evidence of expert witnesses. Such evidence must always be received with caution; they are two often partisans-that is, they are reluctant to speak quite the whole truth, if the whole truth will tell against the party who had paid them to give evidence. At the same time, such witnesses are in a position of advantage; for they have had that special training and experience which the judge and jury are without; and the absence of which renders necessary the presence of such witness. Expert witnesses are far too prone to take upon themselves the duty of deciding the questions in issue in the action, instead of confining themselves to stating fairly and clearly their real opinion on the matter.

3595. In *Gulzar Ali Vs. State of H.P.*, , the Apex Court observed that the observation of the High Court that there is a natural tendency on the part of an expert witness to support the view of the party who called him, could not be downgraded. Many so-called experts have been shown to be remunerated witnesses making themselves available on hire to pledge their oath in favour of the party paying them.

3596. In *Hari Singh v. Lachmi*, (1921) 59 IC 220, the Court observed that the evidence of skilled witness, howsoever eminent, as to what he thinks may, or may not have taken place under a particular combination of circumstances, howsoever confidently he may speak, is ordinarily a matter of mere opinion. Human judgment is fallible. Human knowledge is limited and imperfect. An expert witness howsoever impartial he may wish to be, is likely to be unconsciously prejudiced in favour of the side which calls him. The mere fact of opposition on the part of the other side is apt to create a spirit of partisanship and rivalry, so that an expert witness is unconsciously impelled to support the view taken by his own side. Besides it must be remembered that an expert is often called by one side simply and solely because it has been ascertained that he holds views favourable to its interests.

31. Having said so, the Full Bench in para 3597 further said that the Expert's opinion will have to be weighed to find out the most creditworthy and reliable opinion and has not to be accepted on its face value as it is. In view of the above exposition of law, - the reasons given by the Revisional Court in discarding Expert's opinion cannot be said to be erroneous in any manner. In view of above, I also find that authorities cited at the bar on behalf of petitioner do not help him at all.

32. The decision in *Srichand K. Khetwani Vs. State of Maharashtra*, has no application to the facts of the present case inasmuch on the facts of that case, the Court found that there was no necessity of obtaining Handwriting Expert's

opinion and no adverse inference can be drawn on the ground that Handwriting Experts' opinion was not obtained in view of various other findings of the Court.

33. In 1980 CriLJ 396 (SC) , it was held that the Court itself can compare writings since it is so enabled vide Section 73 of the Evidence Act. The Expert's opinion only act as an aid to the Court and not binding on it. In absence of reliable Expert's opinion or no opinion, the Court can seek guidance from authoritative text books, own experience and knowledge.

34. I find that this is what has been done in the present case and, therefore, in the order of the Revisional Court impugned in this writ petition, there is nothing contrary to the exposition of law laid down by Apex Court in Murari Lal (supra).

35. To the same effect are the observations in Lalit Popli Vs. Canara Bank and Others, and hence also I find the aforesaid authority of no assistance to the petitioner in the facts of the present case.

36. The other decisions cited at the bar on behalf of petitioner i.e. Kashful Huda Vs. Additional District Judge (Court No. 2) and Others, , Laxmi Shanker and Others Vs. Shyam Lal, , Mohd. Ibrahim (supra) and Ramji Pandey (supra) also lends no credence to the petitioner in view of the discussion I have already made above.

37. To disbelieve the receipts relied by petitioner-tenant, the Revisional Court has found that in all the receipts, the date of payment mentioned is 30th of the month. So much so that for February, 1985 the date mentioned in receipt is 30th February, 1985. The aforesaid discrepancy could not be explained by tenant in any manner and this ex facie show that these receipts were manufactured at some much later point of time but at the same time. If the payment was made always at the end of month, i.e. on the last date, then in the months which have 31 days, the receipts must have contained the date of 31st but all the receipts containing the date 30th is a relevant fact justifying inference of fictitious preparation of receipts. No evidence otherwise could be shown by the petitioner-tenant. In these circumstances, rejection of receipts by Revisional Court cannot be faulted, legally or otherwise, in any manner.

38. It cannot be doubted that scope of judicial review by Revisional Court is limited in the sense that the Court will not sit in appeal but if there is a material illegality, perversity etc., Revisional Court has to and must interfere.

39. In the present case, Revisional Court found that the very documents i.e. the alleged receipts relied by the petitioner-tenant, on the face, were unreliable. He therefore found a material illegality on the part of Trial Court resulting in a perverse finding and has rightly interfered with Trial Court's order.

40. In the above facts and circumstances, I do not find any error apparent on the face of record, in the impugned revisional judgment warranting interference.

41. So far as scope of judicial review by this Court in the matters arising out of

judgments of Sub-ordinate Courts is concerned, it is very limited and narrow. It is not to correct the errors in the orders of the Court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority.

42. This power involves a duty on the High Court to keep the inferior Courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

43. In *D.N. Banerji Vs. P.R. Mukherjee and Others*, , the Court said:

Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere.

44. A Constitution Bench of Apex Court examined the scope of Article 227 of the Constitution in *Waryam Singh and Another Vs. Amarnath and Another*, and made following observations at p. 571:

This power of superintendence conferred by article 227 is, as pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee*, , to be exercised most sparingly and only in appropriate cases in order to keep the Sub-ordinate Courts within the bounds of their authority and not for correcting mere errors.

45. In *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, , the Apex Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

46. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and dehors the factual and legal position on record. (See: *Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu*, ; *Rukumanand Bairoliya Vs. The State of Bihar*, ; *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, ; *Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives*, ; *Reliance*

Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others, ; Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, ; and Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others,).

47. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (See: Mrs. Rena Drego Vs. Lalchand Soni, Etc., ; Chandra Bhushan (Deceased) by Lrs. Vs. Beni Prasad and Others, ; Smt. Savitrabai Bhausahab Kevate and Others Vs. Raichand Dhanraj Lunja, ; and M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another,).

48. Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: Union of India and Others Vs. Himmat Singh Chahar,).

49. In Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, , the Hon"ble Apex Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/ Courts below as the same is not permissible in proceedings under Articles 226 /227 of the Constitution.

50. In Mohan Amba Prasad Agnihotri and Others Vs. Bhaskar Balwant Aher (D) Through I.Rs., , the Hon"ble Supreme Court held that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts below unless there is no evidence to support findings or the findings are totally perverse.

51. In Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another, , the Court observed that it is impermissible for the Writ Court to reappreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

52. In Union of India and Others Vs. Rajendra Prabha and Another, , the Hon"ble Apex Court held that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

53. Similar view has been reiterated in *State of Maharashtra Vs. Milind and Others*, ; *M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd.*, ; and *Ouseph Mathai and Others Vs. M. Abdul Khadir*, .

54. In *Surya Dev Rai Vs. Ram Chander Rai and Others*, , it was held that in exercise of supervisory power under Article 227, High Court can correct errors of jurisdiction committed by sub-ordinate Courts. It also held that when sub-ordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step in to exercise its supervisory jurisdiction. However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law unless error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law; or, a grave injustice or gross failure of justice has occasioned thereby.

55. In *Jasbir Singh Vs. State of Punjab*, , the Court said:

...while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the sub-ordinate Courts within the bounds of their authority. The power of superintendence exercised over the sub-ordinate Courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the sub-ordinate Courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior Courts in the discharge of their judicial functions.

56. In *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, , the Court said that power of interference under Article 227 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. The above authority has been cited and followed in *Kokkanda B. Poondacha and Others Vs. K.D. Ganapathi and Another*, and *Bandaru Satyanarayana Vs. Imandi Anasuya and Others*, .

57. In *Abdul Razak (D) through L.Rs. and Others Vs. Mangesh Rajaram Wagle and Others*, , Apex Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

58. In *T.G N. Kumar Vs. State of Kerala and Others*, , the Court said that power of superintendence conferred on the High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the sub-ordinate Courts within the bounds of their authority.

59. In *The Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO and Others Vs. Surinder Kumar*, Apex Court referring to its earlier decision in *Union of India and Others Vs. R.K. Sharma*, observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Article 226 or 227.

60. In view thereof, I find no justification warranting interference with the order impugned in this writ petition. The Writ Petition is dismissed with cost of Rs. 50,000/-.