

(2005) 01 GAU CK 0005
In the Gauhati High Court
Case No : WP (C) No. 8087 of 2004

Lakhanlalji Murty and Another	Vs	APPELLANT
Chakreswar Das (Rai) and Others		RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2005) 2 GLR 252 : (2005) GLT 770 Supp

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : K. Agarwal, R.J. Barua and A. Goswami, for the Appellant; G.N. Sahewalla, A.K. Goswami and P. Bora, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J

1. An order dated 27.8.2004 passed by the learned Civil Judge (Sr. Division), Tinsukia, rejecting the prayer for further adjournment as made by the plaintiff in the suit and on that basis closing the evidence of the plaintiff and fixing the case for evidence of the defendants, is the subject matter of challenge in the present proceeding instituted under Article 227 of the Constitution.

2. I have heard Mr. K. Agarwal, learned counsel appearing for the petitioner-plaintiff and Shri G.N. Sahewalla, learned Sr. counsel appearing for the respondents-defendants.

3. The arguments advanced by the learned counsel for the respective parties have centered around the extent of the power that would be available to this court while exercising jurisdiction under Article 227 of the Constitution and as to whether in the given facts of the present case, interference with the impugned order dated 27.8.2004 would be justified.

Mr. Agarwal, learned counsel appearing for the plaintiff-petitioner by referring to

the several orders passed by the learned Trial Court, on various dates, has argued that the said orders go to show that the plaintiff-petitioner was unable to ensure the presence of the PW 4 for the purposes of completion of the cross examination of the said witness on account of good and sufficient reason. It is further argued that though adjournments were granted earlier for the purposes of ensuring the presence of the PW 4 in Court, as on the date fixed, i.e., on 27.8.2004, the said witness again could not be present in the Court for reasons beyond control, the refusal to adjourn the case and the closure of the evidence of the plaintiffs side discloses an error apparent on the face of the record and occasions a failure of justice. Learned counsel has further argued that the evidence of PW 4 has been placed in the form of an affidavit and cross-examination, in part, of the said witness has been made by the defendants. In such a situation, if the cross-examination of the said witness is to remain inconclusive, it is natural that entire of the evidence tendered by the said witness will be obliterated from the record of the proceedings, in which case the plaintiff-petitioner will suffer prejudice and injustice is likely to be caused. Therefore, it is argued, the power of this Court under Article 227 may be appropriately exercised by this Court in the peculiar facts of the present case.

4. To controvert the arguments advanced on behalf of the petitioner-plaintiff, Shri G.N. Sahewalla, learned Sr. counsel appearing for the respondents has placed before the Court a complete list of the dates on which the case was considered by the learned Trial Court including the order passed on each of such dates. On the basis of the orders passed by the learned Trial Court, from time to time, the learned Sr. counsel has argued that the petitioner-plaintiff had been afforded more than a reasonable opportunity to ensure the presence of the PW 4 for cross examination. Specifically referring to the orders passed by the learned Trial Court, Shri Sahewalla has contended that the case was posted for cross-examination of PW 4 as far back as on 22.1.2003 and thereafter, on 3.4.2003, 9.4.2003 and 4.6.2003 the case was adjourned at the instance of the plaintiff. Thereafter on 26.8.2003, the learned Trial Court, on the prayer of the petitioner-plaintiff, had deferred the cross examination of the PW 4 and in the meantime proceeded with the examination of other witnesses of the petitioner-plaintiff. In this manner, over a year had elapsed and finally the case was fixed on 6.8.2004 for cross-examination of PW 4. On 6.8.2004, the defendants prayed for adjournment of the case and on the next date, i.e., on 27.8.2004, the PW 4 was again absent. Shri Sahewalla, on the basis of the aforesaid enumeration of facts, has contended that sufficient and adequate opportunity was granted to the plaintiff and the suit being an old one, the learned Trial Court thought it proper not to adjourn the case any further. Accordingly, the order dated 27.8.2004 was passed. Shri Sahewalla has contended that the totality of the facts in which the aforesaid order was passed does not disclose any room for interference under Article 227 of the Constitution.

5. The power under Article 227 is a broad, supervisory power, which has been conferred primarily to ensure that the Courts and Tribunals subordinate to the

High Court function within the limits of their jurisdiction. The power conferred under Article 227 is fundamentally different from the appellate power and it is not the function of this Court while exercising jurisdiction under Article 227 to scrutinize the merits of an order passed unless the same has been passed in fundamental breach of the basic principles of law and procedure resulting in grave miscarriage of justice. The following passage from the Judgment of the Apex Court in the case of M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., would appropriately sum up the extent of power available to this Court while exercising its jurisdiction under Article 227 :

"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 duly 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 the 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."

6. An elaborate enumeration of the contours and the extent of the jurisdiction under Article 227 has been made by the Apex Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, For the purposes of the present case, the following conclusion recorded by the Apex Court may be extracted hereinbelow :

"38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell even at the risk of repetition and state the same as hereunder :

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(7) The power to issue a writ or certiorari and the supervisory jurisdiction are to

be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act least a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in a appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing interference or correct errors of mere formal or technical character."

7. Applying the above parameters of the power available under Article 227, to the facts of the present case, what this Court finds is that the impugned order dated 27.8.2004, cannot in any manner, be said to be vitiated by any patent lack of jurisdiction. The manner in which the jurisdiction has been exercised also does not suffer from any fundamental infirmity, which could have the effect of shocking the conscience of this Court. As already noted, after the case was fixed for cross examination of PW 4, three adjournments were granted to the petitioner-plaintiff as on each of the aforesaid dates fixed PW 4 was reported to be ill. Thereafter, a Commission was appointed for completion of the cross examination of PW 4. For one reason or other, the report of the Commissioner appointed by the Court was not submitted. Thereafter, at the request of the petitioner-plaintiff, the learned Trial court had deferred the cross-examination of PW 4 for nearly a year during which period the other witnesses of the petitioner-plaintiff were examined. There was nothing that prohibited the petitioner-plaintiff from making available PW 4 for completion of his cross-examination by the defendants during the aforesaid period. The order dated 27.8.2004 further reveals that after the other witnesses of the petitioner-plaintiff were examined, the case was fixed on 6.8.2004 for cross examination of PW 4. On the said date though the PW 4 was present in the Court, the case was adjourned at the instance of the defendants, whereafter it was fixed on 27.8.2004, or which date, once again, PW 4 was not available on the ground of illness. In such a situation, having regard to the age of the litigation; the duration for which the case had remained pending for cross examination of PW 4 and the adjournments earlier granted to the petitioner-plaintiff, the learned Trial Court thought it proper to hold that further postponement of the case, at the instance of the petitioner-plaintiff, should not be allowed and that the case should be fixed for evidence of the defendants. The facts and circumstances in which the impugned order dated

27.8.2004 has been passed does not disclose any such fundamental breach of procedure or judicial conduct of proceedings which would justify interference under Article 227 of the Constitution. It may be possible that on the facts noted above, a different conclusion could have been reached by another Court including this Court. But merely because another view can be taken will not be a sufficient justification for interference under Article 227 unless the view taken is grossly wrong thereby offending the conscience of the Court.

8. For the foregoing reasons, I find no merit in this petition. Accordingly, the same shall stand dismissed. However, having regard to the facts and circumstances of the case, there shall be no order as to costs: