

(2022) 11 DEL CK 0026

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 1151 Of 2022, Civil Miscellaneous Application No. 46581, 46582 Of 2022

Management Alumni Co-Op. Group Housing Society Ltd.
Through Its Secretary

APPELLANT

Vs

Anirudh Thareja

RESPONDENT

Date of Decision : 01-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Section 151

Citation : (2022) 11 DEL CK 0026

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Surjeet Singh Malhotra, M.S. Bammi, Sachin Verma, Himanshu Sharma

Final Decision : Dismissed

Judgement

C. Hari Shankar, J

1. This petition, under Article 227 of the Constitution of India, assails order dated 20th October 2022, passed by the learned Additional Senior Civil Judge (the learned ASCJ) in CS SCJ 1308/2022 (Anirudh Thareja v. Management Alumini Cooperative Group Housing Society Ltd.) on an application filed by the respondent, as the plaintiff in the said suit, under Section 151 of the CPC.

2. CS SCJ 1308/2022 was instituted by the respondent against the petitioner, seeking decrees of mandatory and permanent injunction.

3. The respondent contended that he was a tenant in respect of premises at Flat no. 408-B, Management Apartment, Plot No. 17, Sector 5, Dwarka, New Delhi-110075 (hereinafter "the suit property"), and that his landlord, in respect of the said premises, was Mr. Sanjay Kumar Gupta, since deceased.

4. The plaint further averred that, rent was paid, periodically, by the respondent,

to Mr. Sanjay Kumar Gupta, during his lifetime and, after his demise, to his legal heirs.

5. The respondent/plaintiff claimed to be aggrieved by the communication dated 28th August 2022, received from the petitioner-defendant, alleging that an amount of ? 3,03,938/- was outstanding, to be paid to the petitioner by the respondent. The letter adverted to a tripartite lease agreement dated 1st May 2022. The respondent-plaintiff, in the plaint, categorically denied having ever been a party to any such agreement. It was specifically stated that the said agreement did not bear the signature of the respondent-plaintiff. In view thereof, the plaint disclaimed any liability, on the part of the respondent-plaintiff, to pay any maintenance charges to the petitioner.

6. The plaint alleged that, on the respondent failing to meet the purportedly illegal demand of the petitioner, the petitioner started resorting to coercive measures against the respondent, inter alia by disconnecting power backup and water supply to the respondent's premises. Repeated efforts, on the part of the respondent, to approach the BSES, it is alleged, failed to ensure restoration of the electricity and water supply. The plaint alleged that maintenance charges, if at all, were required to be paid only by the original allottee i.e., Sanjay Kumar Gupta or his legal heirs and no liability could be fastened on the respondent in that regard.

7. In the circumstances, the respondent issued a legal notice dated 3rd October 2022 to the petitioner, consequent to receipt of which the petitioner disconnected the water supply of the washroom and the Balcony of the respondent's flat, stopped delivery of the gas cylinder, courier and supply of drinking water to the respondent and also restricted ingress and egress of the respondent to the suit property.

8. On the basis of these allegations, the suit sought (i) a decree of mandatory injunction in favour of the respondent and against the petitioner, directing the petitioner to restore, to the respondent, power backup and the water supply in the suit property, as well as other basic amenities which, allegedly, the petitioner had discontinued or obstructed, and (ii) a decree of permanent injunction in favour of the respondent and against the petitioner, restricting the petitioner from interfering with the peaceful possession, by the respondent, of the suit property.

9. Summons were issued in the suit. Written statement is yet to be filed by the petitioner.

10. The respondent moved an application under Section 151 of the CPC which has come to be decided by the impugned order dated 20th October 2022. In the application, it was complained that, despite the court having directed the petitioner not to interfere with the peaceful possession, by the respondent, of the suit property, the petitioner had disconnected the last remaining water connection to the premises in the occupation of the respondent.

11. In the circumstances, the application sought a direction to the petitioner to restore the water connection of the respondent as well as other basic facilities to which the respondent was entitled.

12. The said application stands adjudicated by the learned ASCJ vide the impugned order dated 20th October 2022 which reads as under:

“ CS SCJ 1308/22

Anirudh Thareja vs. Management Alumini Co-op. Group Housing Society Ltd.

20.10.2022

File taken up in pursuance to an application u/s 151 CPC filed by plaintiff.

Present: Sh. Himanshu Sharma, Ld. Counsel for plaintiff/applicant with applicant.

Sh. Surjeet Singh Malhotra, Ld. Counsel for defendant.

Arguments advanced at length by both the parties. It is submitted by Ld. Counsel for plaintiff that the basic amenities like water for the plaintiff has been stopped by the defendant. The plaintiff is ready to pay the current maintenance charges to the defendant and prays for restoration of essential amenities. Ld. counsel for defendant objects to restoration of water supply with the submissions that there is due of more than ₹ 3 lacs pending against the plaintiff which the plaintiff has not paid till date since the occupation of his residential premises in the society. It is further clarified that the plaintiff is liable to pay the maintenance charges of society @ ₹ 3,300/- p.m. Ld. counsel for plaintiff submits that plaintiff is ready to pay the maintenance charges from October 2022 and has brought the cheque for payment of maintenance charges for October 2020.

Keeping in view the submission from both sides and the basic need of the plaintiff, the plaintiff is directed to pay the cheque of ₹ 13,200/- which includes the maintenance charges for the month of October 2022 and the remaining amount shall be adjusted to preceding three months i.e. July, August and September 2022.

It is clarified that the defendant is at liberty to raise its due charges in accordance with law against the present plaintiff. Any observation made herein do not tantamount to final opinion on the merits of the case.

At this stage, it is submitted by Ld. counsel for defendant that he want to place on record certain documents and judgments along with list of documents.

Ld. counsel for plaintiff is ready to submit the cheque in consonance to above orders. Matter is passed over for 2:00 p.m.

Sd/-

(Ajay Kumar Malik)

ASCJ cum JSCC cum Guardian Judge

Dwarka Courts: New Delhi

20.10.2022

At 02:15 p.m.

Present: Sh. Himanshu Sharma, Ld. Counsel for plaintiff/applicant with applicant.

Sh. Surjeet Singh Malhotra, Ld. Counsel for defendant.

Ld. Counsel for defendant submits that defendant disputes the contents of the application. Ld. counsel filed certain documents as per list of documents. Copy supplied to plaintiff.

Plaintiff placed on record a cheque bearing No. 046512, dated 20.10.2022, drawn at Union Bank of India, branch Sector-11, Dwarka, amounting to ? 13,200/-. Defendant refused to receive the cheque. Cheque be retained at Court file. Defendant is at liberty to receive the cheque against proper receiving. Application disposed of accordingly. Matter be re-listed on date already fixed i.e. 17.11.2022.

Copy of order be given dasti to both the sides.

(Ajay Kumar Malik)

ASCJ cum JSCC cum Guardian Judge

Dwarka Courts: New Delhi

20.10.2022"

13. The petitioner has approached this Court invoking its jurisdiction under Article 227 of the Constitution of India, assailing the afore-extracted order dated 20th October 2022 of the learned ASCJ on the respondents' application.

14. The petition alleges that, as per the rent agreement dated 22nd April 2017, executed between Mr. Sanjay Kumar Gupta and the respondent, the liability to pay maintenance charges, electricity charges, water and gas charges was of the respondent. The respondent was, however, it was alleged, continuing to enjoy the said facilities without paying the said charges. The submission, in the plaint, that the charges were being paid by the respondent to Sanjay Kumar Gupta was denied. Reliance has also been placed, in the petition, on proceedings in a suit for possession and recovery of rent/damages/mesne profits instituted by Sanjay Kumar Gupta before the learned Trial Court at Dwarka against the respondent, and Mr. Malhotra, learned Counsel for the petitioner has invited my attention to the orders passed in the said suit. The orders passed in the said suit, it is submitted by Mr. Malhotra, belie the contention of the respondent that payment of electricity and water charges etc. was being made by the respondent to Sanjay Kumar Gupta.

15. These proceedings, it is submitted, were studiously suppressed by the respondent in the plaint instituted by him against the petitioner.

16. Insofar as the disconnection of power backup, water supply and other facilities of the respondent is concerned, the petitioner seeks to support the said disconnection on the ground that the respondent was in arrears of outstanding maintenance charges, despite notices to that effect having been issued by the petitioner.

17. The impugned order dated 20th October 2022, passed by the learned ASCJ, is challenged as has having been passed without taking into account all the facts of the case. Even otherwise, the petitioner questions the right of the respondent to any kind of interlocutory relief on the ground that the respondent is guilty of not having approached the Court with clean hands.

18. Before me, Mr. Malhotra submits that he would have no objection to the restoration of facilities of the electricity and water connection and other facilities to the respondent, as directed by the learned ASCJ subject, however, to the respondent being asked to disgorge the entire arrears of electricity and water charges due to the petitioner.

19. Mr. Bammi, learned Counsel for the respondent, submits that the respondent has been paying electricity charges directly to the department and that his liability qua the remaining charges, if at all, is only to Sanjay Kumar Gupta and not to the petitioner.

20. To my mind, the present case does not invite this Court to enter into the specifics of the dispute between the parties or the rival stands canvassed before me. Admittedly, the impugned order has been passed even before the written statement has been filed by the petitioner, as the defendant in the suit. The learned ASCJ had, therefore, before him, only the averments in the plaint and the averments in the application filed by the respondent.

21. The impugned order is clearly passed in exercise of discretion vested in the learned ASCJ and as an interlocutory ad interim measure. It does not amount to any kind of expression of opinion, even tentative, regarding the merits of the stand of the respondent or the rival stances of the parties. The learned ASCJ has merely noted the contention of the respondent that his essential amenities including water and power backup have been discontinued by the petitioner on the ground that there were arrears due from the respondent to the petitioner. He has noted the contention of the respondent that he was willing to pay the current maintenance charges so as to ensure restoration of the said amenities. He has also noted the contention of the petitioner that the respondent was in arrears of over ? 3 lakhs.

22. After noting these rival submissions, the learned ASCJ has, by way of an interlocutory arrangement, directed the respondent to pay, to the petitioner, ? 13,200/- which includes the maintenance charges for the month of October 2022

and has directed adjustment of the balance over the maintenance charges payable for the preceding three months. He has retained the right, with the petitioner, to raise due charges in accordance with law against the respondent and has preserved the right of the petitioner by observing that the order does not amount to any expression of opinion on the merits of the case.

23. The application of the respondent has been disposed of in these terms.

24. Such interlocutory orders, to my mind, are practically immune from challenge under Article 227 of the Constitution of India. Article 227 confers, on the High Court, supervisory jurisdiction. The Supreme Court, in the following passage from *Sadhana Lodh v. National Insurance Co. Ltd.* (2004) 3 SSC 524 has gone to the extent of clarifying that, under Article 227 of the Constitution of India, the High Court is not even expected to enter into the correctness or otherwise of the order under challenge:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

25. Where the order is discretionary and ad interim in nature, the scope of interference is still further circumscribed. Even otherwise, I am of the firm opinion that, it would be completely inadvisable for High Courts, in exercise of any jurisdiction, to interfere with interlocutory discretionary orders passed by the learned Trial Courts. Such interference would result in erosion of the confidence of the learned Trial Courts with respect to their jurisdiction and authority, and would seriously impede them in fair, fearless and dispassionate discharge of their judicial functions.

26. With respect to the scope of interference, even in appellate jurisdiction, with discretionary orders passed by courts lower in the judicial hierarchy, one may refer to the following passages from *Wander Ltd. v. Antox India P. Ltd.* 1990 Supp SCC 727:

“13. On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox’s alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* AIR 1960 SC 1156:

"... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton* 1942 AC 130, '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle."

27. Still less, in the opinion of this Court, would Article 227 justify interference with discretionary orders passed by court below.

28. It is only where the exercise of discretion is manifestly perverse, or results in serious and irreparable prejudice to one side or other, that a court should interfere with a discretionary order passed by the hierarchically lower court. In a case such as the present, the claim of the petitioner, at the highest, is in the nature of a money claim against the respondent. In case the petitioner is entitled to recover any amount from the respondent, the impugned order does not stand in the way of such recovery. It merely puts in place an interlocutory arrangement by which the respondent is provided basic amenities necessary for peaceful occupation of the suit premises and the petitioner is also compensated in that regard.

29. The prayer of Mr. Malhotra, to the effect that the respondent should be directed to pay up the entire arrears of maintenance charges which, according to the petitioner, are due from the respondent, cannot be granted in a petition under Article 227. That would amount to this Court substituting the interim arrangement put in place by the learned ASCJ by another interim arrangement, substituting its subjective satisfaction for the subjective satisfaction of the learned ASCJ.

30. Article 227 of the Constitution of India does not permit any such exercise.

31. As the petitioner's interests have been adequately safeguarded by the impugned order, and the impugned order is *ex facie* interlocutory and discretionary in nature, I am of the opinion that no case can be said to exist, for this Court to interfere with the impugned order under Article 227 of the Constitution of India.

32. The petition is accordingly dismissed in limine.

33. Needless to say, the observations in this order are to be treated as having been returned only for the purposes of examining whether a case for interference with the impugned order under Article 227 does, or does not, exist. They shall not influence, in any manner, the exercise of jurisdiction by the court below while adjudicating and deciding the suit between the parties.