
(2022) 05 GUJ CK 0005

Gujarat High Court

Case No: R/Special Civil Application No. 19421 Of 2021

Shiv Garment Through
Sole Prop.
Rameshchandra Gigaji
Maurya

APPELLANT

Vs

Suryaben Kantilal
Mehta

RESPONDENT

Date of Decision: May 2, 2022

Acts Referred:

Constitution Of India, 1950 " Article 14, 226, 227#Civil Procedure Code (Amendment) Act,
1999 " Section 115

Citation: (2022) 05 GUJ CK 0005

Hon'ble Judges: Dr Ashokkumar C. Joshi, J

Bench: Single Bench

Advocate: NS Sheth, RC Jani

Final Decision: Dismissed

Judgement

Dr. Ashokkumar C. Joshi, J

1. The Petitioner / Original Plaintiff has preferred the present Petition under Articles 14 and 227 of the Constitution of India, challenging the order

passed by the learned Chamber Judge, Court No.22, City Civil Court, Ahmedabad (hereinafter referred to as "the learned Judge" below

Application Exh. 48 in Civil Suit No. 1224 of 2015, whereby the learned Judge has rejected the Application Exh.48 of the Petitioner / Original Plaintiff,

whereby the Petitioner / Original Plaintiff has prayed for necessary repairs in the suit property.

2. The facts leading rise to the present Petition in nutshell are that the petitioner is the Original Plaintiff and the Respondents are the Original

Defendants in Civil Suit No. 1224 of 2015, which is filed for permitting repairs in the property situated at Godown No.58, Balaji Estate, Narol, Isanpur,

Ahmedabad of which the owners are the Respondents / Original Defendants. The said property was taken on rent in the year 2003. The Petitioner is

doing the business of selling readymade garments from the suit property. That the portion of suit premises is broken and would likely to cause injuries.

The Petitioner is the tenant of the disputed property and is paying regularly rent to the Respondents. As far as the ceiling portion of the rented

premises is concerned, there is some damage to the same for which they have produced some photographs and have stated that in the go-down, the

workers are doing the work and there are all chances that the said portion of the ceiling can fell down and so the portion is required to be repaired and

though its was let known to the Respondents, the Respondents are not getting it repaired and so the relief for repairing the same was made before the

Trial Court which came to be rejected. Being aggrieved by the same, the Petitioner has preferred this Petition.

3. Heard learned Advocate Mr. N.S.Sheth for the Petitioner and learned Advocate Mr. R.C.Jani for R.C.Jani & Associate for the Respondents.

4. Learned Advocate Mr. Sheth for the Petitioner has heavily contended that in the present case the impugned order passed by the learned Judge is

ex-facie bad in law, erroneous and without jurisdiction and hence the same deserves to be quashed. He has further submitted that the petitioner has

submitted that the impugned order is passed in most cryptic and mechanical, without appreciating the facts and circumstances of the case, and hence

the impugned order is without application of mind and perverse and hence same deserves to be quashed and set aside.

4.1 Learned Advocate for the Petitioner has submitted that the impugned order is against the principles of equity as enshrined in the Transfer of

Property Act and that the repairs ought to have been permitted for the purpose of making the premises habitable for labour work since the suit

premises consist of a go-down and therefore the learned Judge has gravely erred in not allowing the Application and gravely erred in holding that the

Petitioner is trying to linger the matter.

4.2 Learned Advocate for the Petitioner has further submitted in the memo of Petition that the Application for injunction came to be dismissed for

default, and thereafter, second application for injunction was also came to be rejected against which the Petitioner has filed Appeal from Order

No.189 of 2017 with Civil Application No. 7840 of 2017 with Civil Application No. 10437 of 2017 before this Hon'ble Court, which came to be

rejected by this Hon'ble Court vide order dated 30.9.2017, against which the Petitioner has preferred Special Leave Petition (C) No. 50228 of

2017 before the Hon'ble Apex Court and the same was dismissed for non-prosecution on 2.1.2019. That during the proceeding of the Suit, the

Respondents filed cross objection in Civil Suit No. 1224 of 2015 wherein the Respondents have filed Application Exh.25 for the purpose of obtaining

appropriate interim relief pertaining to peaceful and vacant possession of the suit property as well as pertaining to deposit of rent. The said Application

was partially allowed by the Trial Court against which the Appeal from order No. 214 of 2019 is filed before this Hon'ble Court which is pending

for final disposal and the interim orders pertaining to deposit of rent with arrears have been passed by this Hon'ble Court on 27.9.2021. The

learned Advocate for the Petitioner has further submitted the Advocate before the Trial Court has never informed the Petitioner about the rejection of

his Application below Exh.48 on 15.9.2018. It pertains to permissible repairs of the suit property. The Petitioner states that he had no knowledge about

the rejection of the Application Exh.48. After having perusal of the documents in the paper book the Advocate for the Petitioner informed about the

rejection of Exh.48 on 15.9.2018 by the Trial Court. The Petitioner was in great financial difficulty. Even otherwise, after the onset of the corona

pandemic the Petitioner was in dire financial straits because the business was not going on. Moreover the Respondents never permitted the Petitioner

to carry out the repair work in the suit property. Learned Advocate for the Petitioner has therefore submitted that the impugned order deserves to be

quashed and set aside.

4.3 It is also submitted that the learned Trial Court failed to take into consideration the factual aspects involved in the case, and the legal proposition

governing the issue, and passed the impugned order, which cannot be sustained in the eye of law and hence, the same deserves to be quashed and set

aside. It is therefore submitted that this Court may exercise the powers under Article 227 of the Constitution of India and the impugned order is

required to be quashed and set aside.

5. Per contra, learned Advocate Mr. R.C.Jani for R.C.Jani & Associate for the Respondents supported the impugned order passed by the Trial Court

and argued that the order passed by the Trial Court is just and proper and the Trial Court has not committed any error. He has therefore urged that

present Petition may be dismissed as no interference is called for from this Hon'ble Court under Article 227 of the Constitution of India.

6. At the outset, the Court finds it apt to mention here that this writ petition is filed under Article 227 of the Constitution of India. In the case of Shalini

Shyam Shetty and Another Vs. Rajendra Shankar Patil, (2010) 8 SCC 329, the Apex Court has considered in detail the scope of interference by this

Court to hold and observe that, Article 227 can be invoked by the High Court Suo motu as a custodian of justice. An improper and a frequent exercise

of this power would be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be

exercised very sparingly on equitable principle. The observations of the Apex Court read as under:

“57. Articles 226 and 227 stand on substantially different footing. As noted above, prior to the Constitution, the Chartered High Courts as also the

Judicial Committee of the Privy Council could issue prerogative writs in exercise of their original jurisdiction. [See 1986 (suppl.) SCC 401 at page 469)].

58. However, after the Constitution every High Court has been conferred with the power to issue writs under Article 226 and these are original proceeding. [State of U.P . and others vs. Dr. Vijay Anand Mahara j - AIR 1963 SC 946, page 951].

59. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields.

60. Another distinction between these two jurisdictions is that under Article 226, High Court normally annuls or quashes an order or proceeding but in

exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order

which the inferior tribunal should have made. {See Surya Dev Rai (supra), para 25 page 690 and also the decision of the Constitution Bench of this

Court in Hari Vishnu Kamath vs. Ahmad Ishaque and others - [AIR 1955 SC 233, para 20 page 243]}.

61. Jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo

motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental

rights or other statutory rights. Jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial

authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed

ex-debito justitia or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely

discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a Letters Patent Appeal or an

intra Court Appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power

under Article 227. In almost all High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears

to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of

High Court.

62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the

Constitution may be formulated:

(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.Ã¢â€

7. In yet another judgment in the case of Puri Investments v. Young Friends and Co. and Ors. - MANU/SC0290/2022 the HonÃ¢â€ble Apex Court

has observed as under:

Ã¢â€“There was no perversity in the order of the Appellant Tribunal on the basis of which the High Court could have interfered. In our view, the High

Court tested the legality of the order of the Tribunal through the lens of an appellate body and not as a supervisory Court in adjudicating the application

Under Article 227 of the Constitution of India. This is impermissible. The finding of the High Court that the appellate forumÃ¢â€s decision was

perverse and the manner in which such finding was arrived at was itself
perverse.Ã¢â¬â¸

8. Thus, exercise of powers under Article 227 of the Constitution of India should be with a
view to keep the Tribunals / Courts within the bounds of

their authority, to ensure that law is followed by the Tribunals / Courts by exercising
jurisdiction which is vested in them and/ or 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. 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.

9. Having heard the arguments advanced by the learned Advocates for the parties and
the discussions made herein above, this Court finds that there

is no error committed by the learned Chamber Judge, Court No.22, City Civil Court,
Ahmedabad in the order passed below Application Exh. 48 in

Civil Suit No. 1224 of 2015. The Petition is therefore devoid of merit and deserves to be
dismissed and accordingly stands dismissed. No order as to

costs.