$~64 (Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CM(M) 1004/2022 & CM APPL. 41644/2022

RAJESH GIRI ..... Petitioner
Through: Mr. Abhishek Kumar, Adv.

versus

SUBHASH MITTAL & ORS. ..... Respondents
Through: Mr. Kunal Kumar, Adv. for R-4

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (ORAL)

% 21.09.2022

1. This petition under Article 227 of the Constitution of India assails the order dated 9th May 2022 passed by the learned Additional District Judge ("the learned ADJ") in Suit 79/2016 (***Rajesh Giri v. Shubhash Mittal***), whereby the learned ADJ rejected the application filed by the petitioner, as the plaintiff in the suit, for a decree on admissions under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC).

Suit

2. The petitioner claims to be a worshipper of an idol of Shri Radha Krishna Ji Maharaj ("the Idol", hereinafter) which was enshrined in property bearing No. 674, Gali Ghanteshwar Katra Neel, Chandni Chowk, Delhi-110006 ("the suit property").

3. The plaint filed by the petitioner asserted that the suit property had been bequeathed by one Nikko Bibi, the holder of the titular rights in respect thereof, *vide* registered Will dated 19th November 1930, in the name of God. It was also averred, in the plaint, that Nikko Bibi had earlier executed a Will dated 3rd April 1916 in favour of one Shri Shambhu Nath which stood cancelled with the execution of the Will dated 19th November 1930.

4. The cancelled Will dated 3rd April 1916 bequeathed the suit property to two trustees, namely, Shambhu Nath and Shankar Nath. Shambhu Nath, on the basis of the said bequest, mortgaged the suit property to one Anaro Devi on 28th July 1954 and 1st June 1955. The said mortgages were challenged by the other trustee Shankar Nath, by way of a civil suit, seeking a declaration that the mortgage of the property was bad as it was barred by the Will dated 19th November 1930.

5. The said litigation travelled to this Court which, *vide* judgment dated 7th November 1972 passed in RSA No. 165/D/1963 (***Anaro Devi v. Shankar Nath***) upheld the Will dated 19th November 1930 and held that, though the trustees were, in terms of the Will, entitled to reside in the suit property, they were prohibited from alienating it.

6. On the basis of the title derived from the Will dated 3rd April 1916, the plaint alleged that the respondents had, in collusion with each other, executed relinquishment deed dated 17th February 2004 and MoU dated 26th August 2004, on the basis of which, *vide* Sale

Deed dated 28th March 2005, the suit property was transferred to Respondents 3 and 5. Respondents 1 and 2 are stated to have purchased the property from Respondents 3 and 5 and converted the temple into a commercial complex.

7. Alleging that all these transactions were in the teeth of the covenants of the Will dated 19th November 1930, to which this Court had *vide* its judgment dated 7th November 1972, accorded its imprimatur, the application sought a declaration that the Sale Deed dated 28th March 2005, whereunder the suit property was transferred to Respondents 3 and 5 and the sale deed dated 12th May 2010 whereby Respondents 3 and 5 further transferred the suit property to Respondents 1 and 2, were null and void.

8. Additionally, the plaint also sought, by way of mandatory injunction, a direction to the respondents to restore the Idol of Radha Krishna Ji Maharaj and re-convert the suit property into a temple.

9. Written statements, in response to the suit were filed by all the respondents. The respondents, in their written statements, denied the execution of the Will dated 19th November 1930 and also claimed to be ignorant of the judgment dated 7th November 1972 passed by the Division Bench of this Court in RSA 165/D/1963.

10. The petitioner, thereafter, moved an application before the learned ADJ under Order XII Rule 6 of the CPC, seeking a decree on admissions.

11. On the aspect of the admission made by the respondents, on which the application was predicated, paras 7 to 12 of the application read thus:

> "7. That on being served with the summons, the defendants have filed their written statements. The defendant No. I being the purchaser is although not aware about the Will dated 19.11.1930, but tried to take all the false and frivolous objections in order to defeat the suit of the plaintiff. The defendant No.2 had not disputed any of the fact of the plaint and restricted his written statement to bring on record the fact that he had already released his right, title and interest in the said property in favour of the defendant No.1.
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> The defendants No.3 to 5 have filed their joint written statement and admitted that the property had been sold to the defendant No.1 & 2 on the basis of Will dated 03.04.1916. The defendant No.3 to 5 have tried to avoid the Will dated 19.11.1930 by stating that they are not aware about any such Will without appreciating that the defendant No.4 (Kamal Nath) was himself a party to the earlier litigation in respect of property in question between Shankar Nath and Anaro Devi.
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> 8. That the crux of the written statements filed by the defendants is that the property in question has been sold/alienated in favour of defendant No. I & 2 on the basis of Will dated 03.04.1916 and they are not aware about the subsequent Will dated 19.11.1930.
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> 9. That it is humbly submitted that *there is sufficient admission on the part of the defendants for passing a decree U/o 12 Rule 6 CPC as the said defendants have in fact admitted the entire case of the plaintiff except the fact of the existence of Will dated 19.11.1930.*
>
> It is well settled law that for the purpose of passing a decree U/o 12 Rule 6 CPC, not only the pleadings of the parties and admission of the defendants made in the written statement is to be considered, but the Court can also look into the documents filed by the parties in order to ascertain the admitted position of facts.

It is submitted that the Will dated 19.11.1930 is a registered document, having been registered as document No. 74, Book No.3, Vol. No.43 from pages 143 to 148 with Sub Registrar, Delhi on 20.11.1930. Thus, the existence of the said Will dated 20.11.1930 is not suspicious. It is further submitted that a bare perusal of the earlier litigation in respect of the property in question between the trustee Shankar Nath and Anaro Devi is sufficient to reveal that the Will dated 03.04.1916 was duly cancelled by Late Smt. Nikko Bibi while executing her subsequent and last Will dated 19.l 1.1930. All the issues with regard to the challenge of the said Will were duly decided in the said litigation. The· said litigation was set at rest with the pronouncement of a landmark judgment of Hon'ble High Court of Delhi, in RSA No.D-165/1963, titled as "Anaro Devi Vs. Shankar Nath & Ors"., whereby the appeal filed by Smt. Anaro Devi, was dismissed by upholding that Smt. Nikko Bibi had bequeathed the said property to be used as temple and trustees were having a limited right in the same as specifically granted to them by virtue of Will dated 19.11.1930. It was further specifically held that the trustees were not entitled to alienate the property in any manner.

10. *That in view of the above, the controversy with regard to the Will dated 19.11.1930 executed by Late smt. Nikko Bibi as well as with regard to establishment of a temple of Shri Radha Krishan Ji Maharaj in property in question and the powers of the trustees to alienate the property were duly decided in the said litigation.*

11. That thus, it is crystal clear that the documents executed by the defendants inter-se on the basis of cancelled Will dated 03.04.1916 are in sharp contradiction to the subsequent will dated 19.11.1930 and to the dictum of the judgment passed by the Hon'ble High Court of Delhi in RSA No.165-D/1963 in respect of the property in question and thus, the documents are liable to be declared as null and void and non binding upon the trust property.

Similarly, the trustees and more particularly the defendants No.3 to 5 are liable to be directed to restore the temple of Shri Radha Krishan Ji Maharaj to its previous condition. The defendants are further liable to be restrained from using the property for any other purpose other than for

> which the Religious Endowment was created by Late Smt. Nikko Bibi vide Will dated 19.11.1930. Accordingly, the Defendant no.6 i.e. MCD is also liable to be directed to correct its mutation record in respect of property in question.
>
> 12 That in view of above facts and circumstances and admitted position of facts as discernable from the record of this case and admitted documents, a decree U/o 12 Rule 6 CPC is liable to be passed in the present case, thereby decreeing the suit of the plaintiff as prayed for."

12. The learned ADJ has, *vide* impugned order dated 9th May 2022, rejected the aforesaid application.

13. On merits, the learned ADJ has, in the impugned orders held that (i) Respondent 1 had admitted that the relinquishment deed dated 17th February 2004 was executed on the basis of the Will dated 3rd April 1916, (ii) Respondent 4, a legal heir of Shambhu Nath, who was a minor at the time of rendition of the judgment dated 7th November 1972 had been made a respondent before this Court, through his next friend, (iii) Respondents 3 to 5 had, in their written statements, admitted that they were the legal heirs of Shambhu Nath, (iv) in its judgment dated 7th November 1972 in RSA 165/D/1963, this Court had categorically endorsed the Will dated 19th November 1930, and had held the Will dated 3rd April 1916 to have been cancelled thereby, (v) in view of the above, and keeping in mind the fact that Respondents 3 to 6 had admitted the fact that the Sale Deeds dated 28th March 2005 and 12th May 2010 were predicated on the Will dated 3rd April 1916, the respondents were estopped from asserting any rights on the basis of the Will dated 3rd April 1916, applying the principle of "issue estoppel".

14. The learned ADJ has, in the impugned order, therefore held against Respondents 1 and 5, insofar as their rights in respect of suit property are concerned. The learned ADJ has held that, as the judgment dated 7th November 1972, passed by this Court in RSA 165/D/1963 approved and endorsed the Will dated 19th November 1930, the respondents were estopped, by application of the principle of "issue estoppel", from asserting rights on the basis of the relinquishment deeds dated 17th February 2004 and 11th February 2004 and Sale Deeds dated 28th March 2005 and 12th May 2010.

15. Even so, the learned ADJ has rejected the petitioner's application under Order XII Rule 6 on the ground that the respondents had raised a triable issue regarding the *locus standi* of the petitioner to maintain the suit.

16. In that regard, one may reproduce paras 16 and 17 of the impugned order dated 9th May 2022, passed by the leaned ADJ, thus:

> "16. Thus from the admissions of the defendants that the subject sale deeds have been executed on the basis of Will dated 03/04/1916 by Nikko Bibi and the defendant no.3 to 5 are the legal heirs of late Shamhhu Nath, I am of the considered opinion that the principle of 'issue estoppel' precludes defendants from raising the issue, which has already been decided vide judgment passed by the Hon'ble High Court in RSA No. 165/D/1963 reported as AIR 1974 Delhi 17.
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> 17. Though no reply has been filed by the defendants to the present application under consideration, the defendant no.3 to 5 in their WS has taken preliminary objections that even if it assumed that the Will dated 19/11/1930 was executed, the

> endowment vide said will was private and the temple of Shri Radha Krishan ji Maharaj was a private temple as the same was never open to public for worship. Thus it is urged on behalf of the defendant no. 3 to 5, that the plaintiff has no locus standi to file the present suit. It is also contended by the defendants no. 3 to 5 that even if it is assumed that the trust created vide will dated 19/11/1930 was a public trust, the suit filed by the plaintiff is liable to be dismissed as no leave has been sought by the plaintiff in terms of section 92 of code of civil procedure. The defendants has also denied that the that the plaintiff is a worshiper of Shri Radha Krishan ji Maharaj and thus he has no locus to file the present case. Defendants have contended in the written statement that the present suit has been filed by the plaintiff to blackmail the defendants. I am of the considered view that though the defendants are bound by the principle of issue estoppel, from the perusal of their Written statement, it appears that the defendants have raised triable issues qua the locus of the plaintiff."

17. I have heard Mr. Abhishek Kumar, learned Counsel for the petitioner and Mr. Kunal Kumar, learned Counsel for Respondent 4 at length.

18. To a query from the court as to the correctness of the finding of the learned ADJ on the aspect of issue estoppel, Mr. Abhishek Kumar, learned Counsel for the petitioner, even while acknowledging that, of the respondents in the present petition, the only respondent who was a party in RSA 165/D/1963 was Respondent 4, submits that Respondents 3 and 5 are the son and daughter-in-law of Shambhu Nath.

19. Respondents 2 to 6 in RSA 165/D/1963 were, he submits, legal representatives of Shambhu Nath, out of whom Respondent 4 has been impleaded as a respondent in the present proceedings and as a

Defendant 4 in Suit 79/2016.

20. The position of the respondents in the present proceedings *vis-a-vis* the parties in RSA 165/D/1963 is, therefore, as under:

(i) Respondents 1 and 2 were not parties in RSA 165/D/1963,

(ii) Respondent 4 was a party in RSA 165/D/1963.

(iii) Respondents 3 and 5, though not parties in RSA 165/D/1963, are the son and daughter-in-law of Respondent 4, and

(iv) Respondent 6 is the Assessor and Collector in the Municipal Corporation of Delhi.

21. The only respondent in the present petition, and the only defendant in Suit 79/2016, who was a party in RSA 165/D/1963, is, therefore, Respondent 4.

22. Even at a plain glance, Respondents 1 and 2 cannot be bound by the judgment dated 7th November 1972, whether applying the principle of issue estoppel or otherwise. Respondents 3 and 5, too, were not parties to the said decision when it was rendered and can also not, therefore, be bound by the said decision by applying the principle of issue estoppel.

23. The rule of issue of estoppel is a rule of evidence. It governs admissibility of evidence of a certain character. It is the manifestation of the principle of autrefois acquit. Of the rule of issue of estoppel, the Supreme Court has, in ***Sangeetaben Mahendrabhai Patel v State***

Of Gujarat*[1]*, held thus, in the context of a criminal trial:

> "23. This Court has time and again explained the principle of issue estoppel in a criminal trial observing that where an issue of fact has been tried by a competent court on an earlier occasion and a finding has been recorded in favour of the accused, such a finding would constitute an estoppel or res judicata against the prosecution, *not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the acceptance/reception of evidence to disturb the finding of fact when the accused is tried subsequently for a different offence.* This rule is distinct from the doctrine of double jeopardy as it does not prevent the trial of any offence but only precludes the evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding has been recorded at an earlier criminal trial. Thus, *the rule relates only to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court in a previous trial on a factual issue*."

24. To similar effect, the Supreme Court held, in ***Ravinder Singh v. Sukhbir Singh***[2], thus:

> "**25.** The principle of issue-estoppel is also known as 'cause of action estoppel' and the same is different from the principle of double jeopardy or; autrefois acquit, as embodied in Section 300 Cr.P.C. This principle applies where an issue of fact has been tried by a competent court on a former occasion, and a finding has been reached in favour of an accused. Such a finding would then constitute an estoppel, or res judicata against the prosecution but would not operate as a bar to the trial and conviction of the accused, for a different or distinct offence. It would only preclude the reception of evidence that will disturb that finding of fact already recorded when the accused is tried subsequently, even for a different offence, which might be permitted by

[1] **(2012) 7 SCC 621**
[2] **(2013) 9 SCC 245**

> Section 300(2) Cr.P.C. Thus, the rule of issue estoppel prevents re-litigation of an issue which has been determined in a criminal trial between the parties. If with respect to an offence, arising out of a transaction, a trial has taken place and the accused has been acquitted, another trial with respect to the offence alleged to arise out of the transaction, which requires the court to arrive at a conclusion inconsistent with the conclusion reached at the earlier trial, is prohibited by the rule of issue estoppel. In order to invoke the rule of issue estoppel, not only the parties in the two trials should be the same but also, the fact in issue, proved or not, as present in the earlier trial, must be identical to what is sought to be re-agitated in the subsequent trial. If the cause of action was determined to exist, i.e., judgment was given on it, the same is said to be merged in the judgment. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per *rem judicatam*."

25. Thus, the principle of issue of estoppel is merely a rule of evidence. It deals with the admissibility of evidence to disprove a fact which stands conclusively established between the same parties in an earlier litigation. By its very nature, it can have no application to the issue of whether there is any admission, as would justify a decree under Order XII Rule 6 of the CPC.

26. In my considered opinion, the learned ADJ was completely unjustified in returning any finding on the issue of whether the respondents were bound by the judgment dated 7th November 1972, as the learned ADJ was dealing with an application under Order XII Rule 6 of the CPC. The respondents have, in their written statement, categorically denied knowledge of the judgment dated 7th November 1972.

27. As already noted, of all the respondents, Respondent 4 alone was a party to the said decision. Respondent 4, too, at that time, was a minor. There being no admission, anywhere in the pleadings, by any of the respondents, that they were bound by the judgment dated 7th November 1972, or that they were even aware of the said decision, the learned ADJ could not hold, while adjudicating an application under Order XII Rule 6 of the CPC, filed by the petitioner, that the respondents were bound by the said decision applying the principle of issue estoppel.

28. The law regarding Order XII Rule 6 is well settled. One may refer to the following passages, from the judgment of the Supreme Court in ***Himani Alloys Ltd. v. Tata Steel Ltd.***[3]***, Payal Vision Ltd. v. Radhika Choudhary***[4] and ***S.M.Asif v. Virender Kumar Bajaj***[5], in this regard:

Himani Alloys Ltd[1]

> "10. It is true that a judgment can be given on an admission contained in the minutes of a meeting. *But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it*. Order 12 Rule 6 being an enabling provision, *it is neither mandatory nor peremptory but discretionary*. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, *keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court*

[3] **(2011) 15 SCC 273**
[4] **(2012) 11 SCC 405**
[5] **(2015) 9 SCC 287**

should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear admission which can be acted upon. (See also *Uttam Singh Duggal & Co. Ltd. vs. United Bank of India*[6], *Karam Kapahi vs. Lal Chand Public Charitable Trust*[7] and *Jeevan Diesels and Electricals Ltd. vs. Jasbir Singh Chadha*[8]. There is no such admission in this case."

(Emphasis Supplied)

***Payal Vision Ltd*[2]**

"8. The above sufficiently empowers the Court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. *Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation.* That precisely is the view taken by this Court in *Jeevan Diesels & Electricals Ltd*[9]. relied upon by the High Court where this Court has observed:

> "10…..Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in *Karam Kapahi*[10] may be unexceptionable they cannot be

[6] **2000 (7) SCC 120**
[7] **2010 (4) SCC 753**
[8] **2010 (6) SCC 601**
[9] **(2010) 6 SCC 601**
[10] **(2010) 4 SCC 753**

applied in the instant case in view of totally different fact situation."

(Emphasis Supplied)

S.M.Asif[3]

"8. *The words in Order XII Rule 6 CPC "may" and "make such order…" show that the power under Order XII Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the Court*. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order XII Rule 6 CPC. The said rule is an enabling provision which confers discretion on the Court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim.

9. In the suit for eviction filed by the respondent-landlord, appellant-tenant has admitted the relationship of tenancy and the period of lease agreement; but resisted respondent-plaintiff's claim by setting up a defence plea of agreement to sale and that he paid an advance of Rs.82.50 lakhs, which of course is stoutly denied by the respondent-landlord. The appellant- defendant also filed the Suit for Specific Performance, which of course is contested by the respondent-landlord. *When such issues arising between the parties ought to be decided, mere admission of relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order XII Rule 6 CPC*."

(Emphasis Supplied)

29. Thus, the admission, on the basis of which a decree on admission could be passed, must be clear, categorical and unequivocal. Also, Order XII Rule 6 confers discretionary power on a court, and does not empower a party, as matter of right, to a decree on admissions.

30. In the present case, there is no admission of any of the respondents to the effect that the Will dated 3rd April 1916 was not valid or that the Will dated 19th November 1930 was the only valid Will. Equally, there is no admission on the part of any respondent abandoning all rights emerging on the basis of the relinquishment deeds dated 17th February 2004 or 11th February 2004 or the Sale Deeds dated 28th March 2005 and 12th May 2010. In fact, the respondents have gone to the extent of asserting their rights on the basis of the said documents and denying all knowledge of the Will dated 3rd April 1916 or of the judgment dated 7th November 1972 in RSA 165/D/1963.

31. Even on this ground, no decree on admission, under Order XII Rule 6, could have been issued in favour of the petitioner.

32. There is also substance in the findings of the learned ADJ that the issue of *locus standi* of the petitioner was in dispute. The respondents contended that the suit property was a private temple, and that, therefore, a worshipper in the suit property maintain a suit asserting titular rights in respect thereof with respect to the title of the suit property. The issue of whether a temple is a private temple or a temple open to the public can only be decided in trial.

33. Mr. Abhishek Kumar, learned Counsel for the petitioner sought to rely on the averments contained in the application filed by Respondent 1 before the learned ADJ under Order VII Rule 11 of the CPC, which stated, *inter alia*, that, on certain festive occasions, the

temple was open to the public. The said passage reads thus:

> "6. That the mandir situated in one room on the ground floor property is a private, mandir, and is open for general public only on the festival of Lord "Krishna" and Godess "Radh". It is pertinent to mention that the private mandir is being taken care of and is being regularly maintained by a Pujari appointed by the occupants of the suit property namely Sh. Shanker Sharma S/o Sh. Madan Lal. (Sh. Madan Lal was the previous Pojari). It is also relevant to mention that the said pujan stays at the first floor of the suit property. It is submitted that only minor repairs were carried out the renovation of the temple due to the festive season of Janamashtami and no constriction work has been carried out in the said mandir or the suit property. The "private mandir" is still operational and is open for general public only on the festival of "Lord Krishna" and Godess "Radha" However, the Pujari has been instructed not to stop any body from darshan or performing puja on any day."

34. A reading of the aforesaid passage does not disclose any admission to the effect that the temple was a public temple. Mr. Kunal Kumar, learned Counsel for Respondent 4 submits, correctly, that a private temple may also be open to the public on certain festive occasions. That would not convert the temple into a public temple so as to empower a worshipper of a temple to maintain a suit with respect to titular rights in respect of the temple.

35. In any event, these are all issues which can only be decided consequent on trial.

36. There is, therefore, no admission on the part of the respondents either with respect to the *locus standi* of the petitioner to maintain the suit or with respect to the Will dated 19th November 1930 and Will dated 3rd April 1916, as contended in the plaint.

37. Applying the law laid down by the Supreme Court in the aforesaid decisions, therefore, no case exists for passing of a decree on admissions in favour of the petitioner.

38. I, therefore, find no reason to interfere with the impugned order passed by the learned ADJ. Moreover, as has been held by the Supreme Court in ***Karan Kapoor v. Madhuri Kumar***[11] a decree on admissions is not a matter of right. The use of the expression "may" in Order XII Rule 6 has been held by the Supreme Court to confer discretion on the court, in the matter of passing a decree on admission.

39. A discretionary order cannot, classically, constitute the basis for a challenge under Article 227 of the Constitution of India.

40. The jurisdiction of this Court under Article 227 is circumscribed by the enunciation of the law contained in a veritable plethora of judgments of the Supreme Court.

41. Proceeding through the said decisions chronologically, in ***Estralla Rubber v. Dass Estate (P) Ltd.***[12], the Supreme Court held thus:

> "7. This Court in ***Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand***[13] in para 12 has stated that *the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the*

[11] **2022 SCC OnLine SC 791**
[12] **(2001) 8 SCC 97**
[13] **AIR 1972 SC 1598**

bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case ***Waryam Singh v. Amarnath***[14]. This Court in ***Bathutmal Raichand Oswal v. Laxmibai R. Tarte***[15] has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that *the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal*."

(Emphasis supplied)

42. In ***Garment Craft v. Prakash Chand Goel***[16], the Supreme Court held:

"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [***Prakash Chand Goel* v. *Garment Craft***[17]] 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*. [***Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar***[18]] *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*

[14] **AIR 1954 SC 215**
[15] **AIR 1975 SC 1297**
[16] **2022 SCC Online SC 29**
[17] **2019 SCC OnLine Del 11943**
[18] **(2010) 1 SCC 217**

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***[10] has observed: (SCC pp. 101-102, para 6)

> "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."
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> (Emphasis supplied)

43. To the same effect is the following enunciation of the law, to be found in ***Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.***[19]**,** in which the Supreme Court has again reiterated the limited parameters of Article

[19] **2022 SCC Online SC 620**

227 jurisdiction in para 28 of the report, thus:

> "28. The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of ***Estralla Rubber v. Dass Estate (P) Ltd***[10]**,** which has been consistently followed by this Court (see the recent decision of this Court in the case of ***Garment Craft v. Prakash Chand Goel***[14]**.** Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India."

44. To the same effect are the following words in paras 14 to 16 of the report in ***Puri Investments v. Young Friends and Co.***[20], the Supreme Court held thus:

> "14. In the case before us, occupation of a portion of the subject-premises by the three doctors stands admitted. What has been argued by the learned counsel for the appellant is that once the Tribunal had arrived at a finding on fact based on the principles of law, which have been enunciated by this Court, and reflected in the aforesaid passages quoted from the three authorities, the interference by the High Court under Article 227 of the Constitution of India was unwarranted. To persuade us to sustain the High Court's order, learned counsel appearing for the respondents has emphasized that full control over the premises was never ceded to the medical practitioners and the entry and exit to the premises in question remained under exclusive control of the respondent(s)-tenant. This is the main defence of the tenant. We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of

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the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. *The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are: —*

> *(i) Erroneous on account of non-consideration of material evidence, or*
>
> *(ii) Being conclusions which are contrary to the evidence, or*
>
> *(iii) Based on inferences that are impermissible in law.*

15. *We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum.* But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.

16. In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum. ……"

(Emphasis supplied)

45. One may, in this context, also advert to the following passage from ***Sadhana Lodh v. National Insurance Co. Ltd*** [21], which succinctly states the point:

> "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."
>
> (Emphasis supplied)

46. This Court, therefore, is not expected, while exercising Article 227 jurisdiction, to sit in appeal over the orders of the Courts below under challenge, especially where the orders are discretionary in nature. The scope of interference is heavily circumscribed.

47. Additionally, as the impugned order is discretionary in nature, and Order XII Rule 6 is not a matter of right, the present petition under Article 227 cannot sustain even on that score.

48. For all the aforesaid reasons, the petition stands dismissed in *limine*, with no order as to costs.

C. HARI SHANKAR, J.

SEPTEMBER 21, 2022/*dsn*

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