

* **HIGH COURT OF DELHI : NEW DELHI**

CM (M) No.680/2010 & CM No.9278/2010

% Judgment reserved on: 2nd July, 2010

Judgment delivered on: 5th July, 2010

Smt. Narvada Aggarwal @ Nishu Dalal
W/o. Shri Raj Pal Dalal
R/o. C-4/146, Sector-5,
Rohini,
Delhi.

....Petitioner.

Through: Mr. Sunil Kumar, Adv.

Versus

1. Shri Madan Lal Goel
Son of Late Shri Ram Pratap Goel
2. Shri Sunil Goel
S/o. Shri Madan Lal Gol
Both R/o. BC-36,
Miya Wali Nagar,
Delhi 110087

....Respondents.

Through:

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

V.B.Gupta, J.

Present petition under Article 227 of the Constitution of India has been filed by the petitioner against impugned order dated 18th February, 2010 passed by

Civil Judge, vide which application of the petitioner seeking permission to lead secondary evidence under Section 65 of the Indian Evidence Act, 1872 (for short as 'Act') was dismissed.

2. Respondents herein had filed a suit for possession, recovery of rent, mesne profit and for mandatory injunction against the present petitioner. In the suit, defence of petitioner is that premises in question was let out to her by respondent No.2 on 1st April, 2004. At the time of letting out the premises, a sum of Rs.2.5 lacs in cash was taken by respondent No.2 as pagri and the rent was fixed at Rs. 1,250/- p.m. A receipt of Rs.2.5 lacs as pagri was separately executed by respondent No.2.

3. On 2nd December, 2004, respondent No.2 approached the petitioner and demanded for financial help. The petitioner offered respondent No.2 to purchase the suit property to which respondent No.2 agreed. Petitioner paid Rs.50,000/- to respondent No.2 towards part payment. To the misfortune of the petitioner, on 11th December, 2004 when she parked her car outside her beauty parlor, it was stolen there. The petitioner has kept a bag in her car containing receipt of pagri/security money, receipt of Rs. 50,000/- and some other rent receipts. The police was able to trace out the car but the bag lying in the car was missing. Under these circumstances, the petitioner moved an application under Section 65 of the Act, seeking permission to prove her documents by way of secondary evidence.

4. It is contended by learned counsel for petitioner that since the bag containing relevant documents was stolen, the petitioner has no option but to prove the original documents which were stolen, by way of secondary evidence. In support of its contentions, learned counsel for petitioner cited a decision reported as *Jogu v. Smt. Bhiki AIR 1983 Himachal Pradesh 13*.

5. Article 227 of The Constitution of India reads as under;

“227. Power of superintendence over all courts by the High Court- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any

court or tribunal constituted by or under any law relating to the Armed forces.”

6. In *Mohammed Yusuf Vs. Faij Mohammad and Ors., 2009 (1)SCALE71,*

Supreme Court held;

“The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

7. In *State of West Bengal and Ors. Vs. Samar Kumar Sarkar, JT 2009 (11)*

SC 258 Supreme Court held;

‘10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is an error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.

12. In *Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta (AIR1975SC1297)* this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court’s function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The

Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.’

8. In *Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives, JT1995(7)SC400, Apex Court observed;*

“The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”

9. Keeping in view the principle laid down by the Supreme Court in above cases, it is to be seen as to whether there is merit in the present petition or not and whether impugned order passed by the Learned trial court are illegal and irrational.

10. Before a party can be allowed to lead secondary evidence, the onus is on that party to prove that original documents have either been lost or destroyed.

11. As per the impugned order, respondents in reply to application filed by the petitioner under Section 65 of the Act, have averred that the said documents have already been disallowed to be exhibited while recording the statement on 20th February, 2007 and the same cannot be allowed to be exhibited by way of present application.

12. If exhibition of secondary evidence has already been disallowed on 20th February, 2007 then rightly, the trial court dismissed the application of the petitioner under Section 65 of the Act. Moreover, trial court in the impugned order observed;

“In the present case, mere bald averments as regards original documents being stolen, unsubstantiated by any documentary proof such as FIR etc. in respect of the same, cannot suffice to allow the defendant to lead secondary evidence. Further, the conditions of section 65 are also not fulfilled as even in view of clause C of section 65 the loss or destruction should not be on account of the party’s own default or neglect. Thus no ground of allowing the present application is made out.”

13. There is nothing on record to show that any FIR was lodged with regard to the loss of the original documents.

14. The case law cited by learned counsel for petitioner is not at all applicable to the facts of the present case.

15. Under these circumstances, since there is no illegality or irrationality in the impugned order passed by the trial court, present petition is hereby dismissed.

CM No. 9278/2010

16. Dismissed.

V.B. GUPTA, J.

5th July, 2010
RB/AB