HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CM(M) No. 68/2023
CM No. 2163/2023

Reserved on: 04.09.2023
Pronounced on: 15.09.2023

Abdul Rehman Nath …Petitioner

Through: Mr. Danish Majid Dar, Advocate.

V.

Umar Mohammad Beigh ...Respondents

Through: Mr. Hilal Noorani, Advocate.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

J U D G E M E N T

1. The petitioner in the instant petition has invoked the power of superintendence of this Court enshrined under Article 227 of the Constitution of India seeking quashment of the order dated 27.01.2020 (for short 'impugned order') passed by the court of 3rd Additional District Judge, Srinagar (for short 'trial court') in the application filed under Section 151 of Code of Civil Procedure (CPC) seeking condonation of delay in filing the written statement to the suit filed by the respondent herein.

2. Even though the power of superintendence envisaged under Article 227 is general in nature yet its ambit and scope has been defined by the Apex Court in a series of judgements including the one titled as ***Shalini Shyam Shetty and another v. Rajendra Shankar Patil***, *reported in* ***(2010) 8 SCC 329***. The Hon'ble Apex Court after analyzing various decisions

rendered by it, laid down the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution.

> " 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 restrain 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."

3. Having regard to the principle of law laid down by the Apex Court in the judgement supra, the ground of challenge urged in the instant petition will be dealt with.

4. Perusal of the record reveals that the plaintiff-respondent herein filed a suit against the defendant-petitioner herein on 10.12.2008, whereupon being summoned by the trial court, the defendant-petitioner herein caused his appearance and sought time to file the written statement to the suit which written statement came to be filed on 16.05.2019. On 17.07.2019 the trial court directed the counsel for the parties to advance arguments on the question as to whether the written statement filed to the suit can be taken on record on account of delay having occasioned in filing the same. The defendant-petitioner herein, however, almost after five months, i.e., on 11.10.2019 filed an application under Section 151 CPC seeking condonation of delay in filing the written statement to the suit with a further prayer for exercising of inherent powers in the matter by the trial court. The plaintiff-respondent herein filed the objections to the application whereupon the trial court passed the impugned order dated 27.01.2020 whereby the application filed by the defendant-petitioner herein for condonation of delay came to be dismissed directing the written statement to be returned back to the defendant-petitioner herein.

5. It is significant to note here that Proviso to Order VIII Rule (1) CPC came to be substituted by the Jammu and Kashmir Civil Procedure

(Amendment) Act, 2018 vide Governor's Act No. XLI of 2018 dated 13.12.2018, providing as follows:

> *"Provided that where the defendant fails to file the wreitte4n statement with the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allowed the written statement to be taken on record."*

Further in Rule (10) of Order VIII a Proviso came to be added that '*no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement'*.

In presence of aforesaid amendments carried out in CPC, it is not felt necessary to advert to the application filed by the defendant-petitioner herein for condonation of delay in filing the written statement to the suit, objections filed thereto by the plaintiff-respondent herein and also the impugned order, in that, seemingly the amendment supra has skipped attention of the trial court though a court has the power to extend the time to file the written statement beyond 30 days, however, such time in no case can be extended beyond 120 days.

In view of the substitution and addition of the Proviso supra to Order VIII CPC, the legislature has taken away the discretion which was earlier vested with the court to extend the time to file the written statement beyond the prescribed period. Thus the only inescapable conclusion emerges from above is that if a defendant fails to file his written statement within the prescribed time provided under Order VIII Rule (1), the right to file the

same shall stand ***forfeited*** and the Court can in no situation allow the same to be taken on record.

6. It is pertinent to mention here that during the course of hearing of the matter, the counsel for the petitioner herein contended that the amendment *supra* has been made by virtue of Section 13 of the Jammu and Kashmir Commercial Courts Act, 1908, and pertains to the suits of commercial nature only as defined in Section 2 (c) of the said Act and not to the regular suits. The contention of the counsel for the petitioner, however, is misconceived. It is true that similar amendment in Code was made by virtue of Section 13 of the Commercial Courts Act, 1908 to the extent of its applicability to the suits of commercial nature, however, the similar amendment has been made as observed and referred in the preceding paragraphs in CPC itself as well. A reference in this regard to the judgment of the Apex Court as passed in a case titled as ***Desh Raj v. Balkishan (D)*** reported in ***2020 (2) SCC 708*** would be relevant.

7. For the foregoing reasons exercise of power of superintendence is declined. Resultantly, the instant petition fails and shall stand **dismissed** along with connected CM.

8. Photocopy of the scanned record be retained.

9. Registry to send down a copy of this order.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
15.09.2023
Tasaduq:
Sab:

Whether approved for reporting? Yes