

RAJASTHAN HIGH COURT

Arjun Singh

Vs.

A.D.J. Behror

S.B. Civil Writ Petition No. 5078 of 2003
(Gyan Sudha Misra, J.)

02.09.2003

JUDGMENT

Gyan Sudha Misra, J.

1. The petitioner is the defendant in a suit for specific performance which was filed by the plaintiff-respondent No. 2 Hukum Singh in the year 1997. The defendant-petitioner was granted four months time to lead the evidence of rebuttal in the suit which he failed to avail; yet last opportunity was granted to him thereafter to lead evidence and finally when the matter was listed on 19.7.2003, the defendant-petitioner neither led by evidence nor he made a request to the Court to adjourn the matter and grant further time to lead evidence. Consequently, the trial Court closed the evidence of the defendant-petitioner and the matter was ordered to be listed for arguments on 31.7.2003.

2. The petitioner thereafter had filed this writ petition challenging the aforesaid order on the ground that a revision is not maintainable against the impugned order in view of the amendment introduced in the Civil Procedure Code. It is however, contended that a writ petition under Article 227 of the Constitution is maintainable in view of the pronouncement of the Supreme Court in *Surya Dev Rai v. Ram Chander Rai and Others, reported in ¹* wherein it has been held that the writ petition under Article 227 of the Constitution can be held maintainable if the impugned order does not result into conclusion of the proceeding before the trial Court. However, if the impugned order has the effect of concluding the proceedings in the suit before the trial Court, a revision would be maintainable. The counsel for the petitioner relying on this authority has submitted that the impugned order is interlocutory in nature and hence a writ petition is maintainable since a revision is not maintainable.

3. Having considered the argument of the counsel for the petitioner, it is clear that if the defendant-petitioner's evidence has been closed and the matter is listed for arguments, the same is bound to result into conclusion of the proceedings in absence of evidence of rebuttal and passing of a decree in favor of the plaintiff would be the obvious consequence. Hence a writ petition in this view of the situation cannot be held maintainable. But even if the plea of the petitioner's advocate were to be accepted that a writ petition under Article 227 of the Constitution is maintained since the proceedings before the trial Court might not result into conclusion of the proceeding, the petitioner on merits has not case as he had failed to lead evidence of rebuttal in spite of sufficient opportunity and long length of time which was granted to him.

4. The counsel for the petitioner has missed that the power of the High Court under Article 227 of the Constitution is restricted to interference in cases of grave miscarriage of justice, dereliction of duty or flagrant violation of law by the Subordinate Court and has to be exercised most sparingly as it cannot be used as an appellate or revisional power. It has to be borne in mind that the jurisdiction under Article 227 is limited only for examining whether the Subordinate Court kept itself within the bounds of its authority in reaching to a conclusion or falling, if its conclusion were perverse which has been the consistent view expressed by their Lordships of the Supreme Court in numerous cases including the case of *Babhut Mal Raichand Oswal v. Laxmi Bai R. Tarte and Another*, reported in ² Their lordships of the Supreme Court Hon'ble Mr. Justice R.C. Lahoti and Hon'ble Mr. Justice Ashok Bhan in a land mark judgment delivered in the case of *Surya Dev Rai v. Ram Chander Rai & Ors.* reported in ³ while considering the effect of amendment of Section 115 of the Civil Procedure Code vide the 1999 Amendment Act alongwith with the ambit and scope of maintainability of a writ petition under Articles 226 and 227 of the Constitution of India against an interlocutory order passed by the trial Court while trying a suit, have themselves observed as follows :

"In exercise of *certiorari* or supervisory jurisdiction, the High Court will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. Where a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or the jurisdiction though available is being exercised in a manner not permitted law and failure of justice or grave injustice has resulted, the High Court may step into exercise its supervisory jurisdiction."

5. While examining the present case on the anvil of the law laid down as referred to hereinabove, interference with impugned order is not warranted at all as it does not satisfy the parameters of the scope and ambit of Article 227 of the Constitution in view of the facts related hereinbefore. This writ petition, therefore, is not fit to be entertained and hence the same is dismissed the admission stage itself.

Petition dismissed.

Cases Referred.

1. JT 2003(6) SC 465
2. AIR 1975 SC 1297
3. JT 2003(6) SC 465