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

Date of decision: 31.08.2023

+ CM(M) 1415/2023 & CM APPL. Nos. 45068-69/2023

TAHIR ASLAM QADRI

..... Petitioner

Through: Mr. Vikas Gachli and Mr. T.S. Varun,
Advocates

versus

SHAISTA AJMAL QADRI AND ANR.

..... Respondents

Through: None

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 19.05.2023 passed by the Additional District Judge-11 (Central), Tis Hazari Courts, Delhi ('Trial Court') in CS DJ No. 610733/2016 titled as "**Shaista Ajmal Qadri V. Mohd. Aslam Qadri.**" whereby, the Trial Court dismissed the application filed by the Petitioner herein under Order 47 Rule 1 Code of Civil Procedure ('CPC') on the ground of limitation.

1.1. This petition was mentioned earlier today at 11:30 AM for urgent listing on the same day as it was submitted by the counsel for the Petitioner that there is a grave urgency in this matter as final orders are likely to be pronounced by the Trial Court on 01.09.2023. In view of the submissions



made at bar, the petition was allowed for urgent listing on the same day and has been taken up for hearing at 02:15 PM.

1.2. However, upon a perusal of the paper book it is seen that the order which is impugned in this petition is an order dated 19.05.2023 passed by the Trial Court dismissing a review application filed by the Petitioner for review of the preliminary decree of partition dated 25.08.2022 on the grounds of limitation under Section 5 of the Limitation Act, 1963.

1.3. A perusal of the paper book shows that the present petition impugning the order dated 19.05.2023 was filed with the registry of this Court only on 28.08.2023.

1.4. In short, an order dated 19.05.2023 has been impugned by filing this petition on 28.08.2023, to seek stay of the preliminary decree of partition dated 25.08.2022. The Petitioner is seeking stay of the pronouncement of the final decree of partition, which according to the Petitioner is likely to be passed tomorrow i.e., 01.09.2023.

2. This Court is of the opinion that in the facts of this case, mentioning of this petition this morning for urgent listing on the same date is not justified and is an abuse of process.

3. The learned counsel for the Petitioner states that he is seeking stay of further proceedings before the Trial Court; as the Trial Court is likely to pass the final decree for partition tomorrow i.e., 01.09.2023.

4. The civil suit has been filed by the Respondent against the Petitioners for partition of the estate of late Anjum Ara. This Court finds that the Petitioners and Respondents herein are direct linear descendants of late Anjum Ara.

4.1. The preliminary decree of partition was passed as early as on



25.08.2022. The said decree was passed on the unequivocal admissions made by the Petitioners herein in the written statement dated 28.01.2021.

4.2. The Petitioners have admittedly not assailed the said preliminary decree of partition by filing an appeal and therefore, the said judgment has become final.

5. The review application was filed before the Trial Court only on 19.05.2023; nine (9) months after the preliminary decree had been passed and it was dismissed by the Trial Court on the same date on the grounds of limitation.

5.1. The Petitioners at that stage as well elected not to file any appeal against the preliminary decree dated 25.08.2022 and participated in the proceedings before the Trial Court.

6. This Court has perused the impugned order dated 19.05.2023 dismissing the application for review on the ground that no sufficient cause has been made out under Section 5 of the Limitation Act, 1963 for condoning the delay.

6.1. Pertinently, the Petitioner has not placed before this Court with this petition, neither the application filed by him under Order 47 Rule 1 CPC before the Trial Court seeking review of the judgment nor the application under Section 5 of the Limitation Act, 1963. Therefore, on the facts recorded in the impugned order this Court is satisfied that there is no infirmity in the said order.

7. The tenor of the grounds raised in the present petition are akin to grounds of challenge in appeal and fall within the jurisdiction of the Appeal Court. However, the Petitioner has elected not to file an appeal against the judgment dated 25.08.2022.



8. It is trite law that this Court in exercise of its supervisory power under Article 227 of the Constitution, cannot sit in appeal over the order passed by the Trial Court. In fact, any exercise of appellate power would be beyond the supervisory jurisdiction of this Court.

9. The Supreme Court in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai And Ors. v. Tuticorin Educational Society And Ors.* (2019) 9 SCC 538 has categorically held that no petition under Article 227 of the Constitution should be entertained where specific remedy of appeal is provided under the CPC itself. The relevant portion of the judgment read as under:

“1. **V. Ramasubramanian, J.**— Leave granted. Aggrieved by an order [Tuticorin Educational Society v. Virudhunagar Hindu Nadargal, CRP (MD) No. 1084 of 2018, order dated 21-8-2018 (Mad)] of the High Court passed under Article 227 of the Constitution, vacating an interim order of injunction granted by the trial court, the plaintiffs have come up with this appeal.

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11. Secondly, the High Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, Respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In *A. Venkatasubbiah Naidu v. S. Chellappan* [*A. Venkatasubbiah Naidu v. S. Chellappan*, (2000) 7 SCC 695], this Court held that “though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy”.

12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is



a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in Surya Dev Rai v. Ram Chander Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675], pointed out in Radhey Shyam v. Chhabhi Nath [Radhey Shyam v. Chhabhi Nath, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] that “orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts”.

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.

(Emphasis supplied)

10. This Court therefore, finds no merit in this petition, as this petition is merely a strategy to interject the proceedings before the Trial Court.

11. The learned counsel for the Petitioner states that his client was overseas and returned to India in July, 2023 and thereafter, the petition has been filed challenging the order dated 19.05.2023.

11.1. The said explanation also does not justify the filing of the petition only on 28.08.2023, mentioning it for urgent listing on 31.08.2023 and merely arguing for stay of further proceedings before the Trial Court. No case on merits is made out for staying the proceedings before the Trial Court.

12. In the facts noted above, it is evident to this Court that this petition has been filed on 28.08.2023 one (1) year after the preliminary decree of partition was passed in order to obstruct the proceedings before the Trial Court and prevent final decree of partition.

13. The petition is accordingly dismissed with costs of Rs. 10,000/- payable by the Petitioner to the Respondent. Pending applications are dismissed.



14. It is directed that in case, the Petitioner does not pay the said costs of Rs. 10,000/- the Respondent will be entitled to recover the same in the execution of its final judgment.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

AUGUST 31, 2023/hp/asb

