

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Case No. :CM(M) No. 117/2024
CM No. 3139/2024**

Sheetal Devi, Age 27 years, D/o
Bansi Lal, W/o Sunil Kumar, R/o
Kundrorian, Tehsil Katra, District
Reasi, A/p Umala, Tehsil & District
Udhampur.

.....Petitioner(s)

Through: Mr. Ajay Kumar, Advocate.

Vs

Sunil Kumar S/o Bihari Lal,
R/o Kundrorian, Tehsil Kata,
District Reasi.

..... Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

**JUDGMENT
31.05.2024**

1. Through the medium of instant petition filed under Article 227 of the Constitution of India, the petitioner is seeking quashment of the judgment and decree dated 05.03.2024 passed by the learned Principal District Judge, Reasi (*hereinafter referred to as the "Court below"*) in File No. 93/Divorce Petition titled, "*Sunil Kumar Vs. Sheetal Devi.*"

BRIEF FACTS OF THE CASE

2. The facts giving rise to the filing of the instant petition are that the respondent filed a petition under Section 9 of the Hindu Marriage Act, 1980 (*hereinafter referred to as the "Act of 1980"*) by arraying the petitioner as respondent No. 1, her father as respondent No. 2 and her mother as respondent No. 3 before the Court below.

3. The further case of the petitioner is that although the Act of 1980 stood repealed and the Hindu Marriage Act, 1955 had come into operation, yet

the Court below took cognizance of the matter and proceeded further in the case by summoning the petitioner and her parents in the petition under Section 9 of the Act of 1980. The petitioner had filed her response to the petition under Section 9 of the Act of 1980 by denying the allegations leveled against the petitioner.

4. The further case of the petitioner is that the petitioner had engaged a counsel to represent her at Reasi and on 15.03.2023, the petitioner could not cause her appearance, as she had to appear in another case at Katra, on which date, the petitioner was set ex-parte by the learned Munsiff, Katra.

5. The further fact of the matter is that the petitioner through her counsel had moved an application for setting aside the ex-parte proceedings initiated against her, but the application of the petitioner came to be dismissed vide order dated 09.01.2024 and since then, she was proceeded ex-parte all along.

6. The short submission advanced by the learned counsel for the petitioner is that the judgment and decree impugned are ex-parte, as the petitioner has not been allowed an opportunity to explain her stand either through herself or through her evidence.

7. Learned counsel for the petitioner further submits that the judgment and decree impugned has caused substantial prejudice to the petitioner and is legally not sustainable in light of the fact that the petition under Section 9 of the Hindu Marriage Act has been filed under the provisions of the Act of 1980, which is non-existent and non-operational, as according to the learned counsel for the petitioner, on the date of filing of the petition under Section 9 of the Act

of 1980, only Hindu Marriage Act, 1955 was in operation and in existence and this aspect of the matter has been ignored by the Court below.

8. The further case of the petitioner is that the petitioner has filed a petition under Section 12 of the Domestic Violence Act (*hereinafter referred to as the "Act"*) against the respondent and her in-laws and at present, the case is pending before the Court of Sub-Judge/Special Mobile Magistrate, Udhampur, wherein the respondents have been directed to pay Rs. 3,000/- per month to the petitioner.

9. Learned counsel for the petitioner further submits that in order to defeat the order dated 31.10.2022 passed under the Act, the respondent has obtained the aforesaid judgment and decree, which is impugned in the present petition and likely to cause grave prejudice to the petitioner.

LEGAL ANALYSIS

10. Heard learned counsel for the petitioner and perused the judgment dated 05.03.2024 passed by the learned Court below, which is impugned in the present writ petition.

11. The law has been settled as naught by the Apex Court in authoritative pronouncements that the power under Article 227 of the Constitution of India is to be exercised sparingly in appropriate cases like, when, there is no evidence at all to justify the finding or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the Court or the Tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure that there is no miscarriage of justice.

12. I have gone through the petition filed by the petitioner, the record annexed with the petition minutely and the grounds urged in the instant petition. Accordingly, this Court is of the view that it is not a case, where the powers within the scope and ambit of the exercise of power and jurisdiction vested in this Court under Article 227 of the Constitution of India has to be exercised.

13. The Apex Court in catena of judgments has already held that the High Court has to exercise such wide powers under Article 227 with great care and circumspection and the same cannot be exercised to correct all errors of a judgment of Court and Tribunal acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases, where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. Even the power to re-appreciate the evidence would only be justified in rare and exceptional situations, where the grave injustice would be done, unless the Court interferes and the exercise of such discretionary power would depend upon the peculiar facts of each case with the sole objective of ensuring that there is no miscarriage of justice. The Apex Court in the case of *Jai Singh Vs. Municipal Corporation of Delhi; (2010) 9 SCC 385* has held as under:-

15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and

jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. The High Court cannot lightly or liberally act as an appellate court and reappreciate the evidence. Generally, it cannot substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial tribunals. The power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice."

14. Further, the Apex Court in *M/S Garment Craft Vs. Praksh Chand Goel*; (2022) 4 SCC 181 has held as under:-

*"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order 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. 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 ail 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 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.* has observed: "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."

15. The record reveals that on presentation of the petition by the private respondent (petitioner therein), the respondent (petitioner herein) was summoned to appear before the Court on 24.09.2021. On the said date, Mr. Ajay Salaria, Advocate filed objections on behalf of the respondents on 25.07.2022. The record further reveals that after filing of the objections, the respondent opted not to appear in the case before the Court and despite providing number of opportunities, neither the respondent nor her counsel caused appearance before the Court and ultimately, vide order dated 15.03.2023, ex-parte proceedings were initiated against the respondent and the petitioner was directed to lead ex-parte evidence.

16. The record further reveals that on 19.08.2023, learned counsel for the respondent filed an application for setting aside the proceedings initiated against her, which was ultimately dismissed vide order dated 09.01.2024, being devoid of any merit. Thus, from a bare perusal of the impugned judgment and decree passed by the learned Court below, it is come to fore that the petitioner, by her own conduct and volition, was set ex-parte on 15.03.2023 and even the said application for seeking ex-parte was dismissed on 09.01.2024, which was gladly and voluntarily accepted by the petitioner and no grievance was raised

thereafter. It is also relevant to highlight the conduct of the petitioners in the proceedings before the Court below. It appears from the record that the petitioner chooses not to challenge the earlier order dated 09.01.2024, whereby the application for setting aside ex-parte proceedings filed by the petitioner (respondent therein) was dismissed. Thereafter, the petitioner allowed the proceedings to culminate. Subsequently, by virtue of ex-parte decree dated 05.03.2024, the Court below settled the matter. A challenge, if at all, should have been thrown to the earlier order at the relevant stage. This Court in light of the conduct alongwith the limited powers of judicial interference under Article 227 of the Constitution of India, does not deem appropriate to grant the relief, as prayed for. In any event, the Court does not find any grave illegality or flagrant violation of fundamental principle of law so as to warrant judicial interference by this Court under the limited scope of power under Article 227 of the Constitution of India.

17. Thus, in light of what has been discussed hereinabove coupled with the said legal position, the instant petition which is devoid of any merit deserves dismissal and is, accordingly, *dismissed in limine* alongwith connected application, as the challenge thrown by the petitioner to the judgment and decree dated 05.03.2024 passed by the learned Principal District Judge, Reasi is ill-founded and without any basis.

(Wasim Sadiq Nargal)
Judge

JAMMU
31.05.2024
Ram Krishan

Whether the order is speaking?
Whether the order is reportable?

Yes/No
Yes/No