

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY ,THE TWENTY FOURTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO**

CIVIL REVISION PETITION NO: 3302 OF 2024

Petition filed under Article 227 of the Constitution of India, aggrieved by the Order dated 05.09.2024 passed in I.A.No. 297 of 2024 in C.O.S.No. 11 of 2024 on the file of the Court of the Special Judge for Trial and Disposal of Commercial Disputes, Ranga Reddy District.

Between:

Jitta Surender Reddy, S/o. Anji Reddy Jitta, Aged about 60 years, Occ. Business, R/o. 16-2-751/A/31C/112 and 113, Tirumala Hills, Asmanbagh, Amberpet, Malakpet Colony, Hyderabad

...Petitioner/Defendant No.2

AND

1. Ram Kishan Bung, S/o. Srinivasji Bung, Aged about 65 years, Occ. Business, R/o. 20-2-54, Old Kabuta Khana, Hyderabad. **...Respondent 1/Plaintiff**
2. M/s. Keshav Petrofil, A Partnership Firm, Rep. by its Partner, J. Surender Reddy, Having its operations at Sy. No. 178, Opp. KPHB Colony, Kukatpally, Ranga Reddy District.
3. M/s. Bharath Petroleum Corporation Ltd., Rep. by its Territory Manager, Office at Mahalakshmi Nagar, At Cherlapally, Ranga Reddy District.

(R3 is not necessary party)

...Respondents/Defendant No.3

IA NO: 1 OF 2024

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant interim orders staying all further proceedings in C.O.S. No. 11 of 2024, on the file of the Special Judge for Trial and Disposal of Commercial Disputes, Ranga Reddy District, pending disposal of the present civil revision petition.

Counsel for the Petitioner : Sri R. Sushanth Reddy

Counsel for Respondents : None appeared

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

CIVIL REVISION PETITION No.3302 of 2024

ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. R.Sushanth Reddy, learned counsel for the petitioner.

2. Heard on the question of admission.

3. In this petition under Article 227 of the Constitution of India, the petitioner has assailed the validity of the order dated 05.09.2024 passed by the Court of the Special Judge for Trial and Disposal of Commercial Disputes, Ranga Reddy District (hereinafter referred to as, "the Commercial Court"), in C.O.S.No.11 of 2024 by which the interlocutory application filed by the petitioner, namely I.A.No.297 of 2024, under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), seeking rejection of the plaint has been dismissed.

4. Facts giving rise to filing of this petition briefly stated are that the respondent No.1 filed a suit seeking dissolution of the partnership firm which was constituted on 01.06.2023 as well as sought rendition of the accounts. In addition, the respondent No.1 also sought the relief to appoint a receiver to operate and run the business of the partnership firm. Along with the plaint, the respondent No.1 filed an interlocutory application, namely I.A.No.192 of 2024, seeking urgent interim relief to restrain the petitioner from operating the petrol filling station on the ground that the petitioner has been siphoning the funds from the account of the partnership firm.

5. The petitioner, on receipt of the notice, filed an application under Order VII Rule 11 of CPC seeking rejection of the plaint, *inter alia*, on the ground that the plaint be rejected as the respondent No.1 has failed to comply with the pre-institution mediation as contemplated under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as, "the Act"). The Commercial Court, by an order dated 05.09.2024, rejected the

application preferred by the petitioner. Hence, this petition.

6. Learned counsel for the petitioner submitted that the Commercial Court ought to have appreciated that no urgent interim relief was sought in the petition. It is pointed out that the cause of action for filing the suit accrued on 19.12.2023, whereas the suit was filed on 30.03.2024. It is further submitted that the Commercial Court has rejected the prayer for interim relief which was sought for by the respondent No.1. It is further submitted that the respondent No.1 cannot be permitted to wriggle out and to get over the mandatory requirement under Section 12A of the Act. In support of the aforesaid submission reliance has been placed on the decision of the Supreme Court in **Yamini Manohar v. T.K.D. Keerthi**¹.

7. We have considered the submissions made by the learned counsel for the petitioner and have perused the record.

¹ (2024) 5 SCC 815 : 2023 SCC OnLine SC 1382

8. The issue whether or not urgent interim relief has been sought for is a question which has to be adverted by the Commercial Court in the facts and circumstances of the case.
9. The respondent No.1 had filed the suit seeking the relief of dissolution of the partnership firm as well as rendition of accounts and for appointment of receiver. Along with the plaint, the respondent No.1 had filed an interlocutory application seeking urgent interim relief to restrain the petitioner from operating the petrol filling station on the ground that the petitioner has been siphoning the funds.
10. Merely because the prayer for interim relief has been rejected, no inference can be drawn that no urgent interim relief has been sought for in the suit. The question whether or not the procedure prescribed under Section 12A of the Act has been complied with is a question which has to be decided in the facts of each case.

11. The Commercial Court, by an order dated 05.09.2024 on the basis of the pleadings of the parties and the prayer made in I.A.No.297 of 2024, has held that the plaint is not liable to be rejected on account of non-compliance with the mandate contained in Section 12A of the Act. The aforesaid finding of fact cannot be termed to be based on no evidence or perverse.

12. The scope of jurisdiction under Article 227 of the Constitution of India is well delineated and the Supreme Court in **Garment Craft v. Prakash Chand Goel**² has held that the High Court cannot act as a Court of appeal and reappreciate and reweigh the evidence and should not substitute its opinion. Paragraph 15 of the aforesaid decision is extracted below for the facility of reference:

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel v. Garment Craft*, 2019 SCC OnLine Del 11943] 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

² (2022) 4 SCC 181

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. [*Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar*, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69] 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 all 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.”

13. The order passed by the Commercial Court neither suffers from any jurisdictional infirmity nor any error apparent on the face of the record warranting interference of this Court in exercise of powers under Article 227 of the Constitution of India.

14. In the result, the civil revision petition fails and is hereby dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

Sd/- T. TIRUMALA DEVI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Special Judge for Trial and Disposal of Commercial Disputes, Ranga Reddy District.
2. One CC to Sri R. Sushanth Reddy, Advocate [OPUC]
3. Two CD Copies

Njb/kam

[Signature]

HIGH COURT

DATED:24/10/2024

ORDER

CRP.No.3302 of 2024



**DISMISSING THE CRP
WITHOUT COSTS**

5 copies
for
28/11/24