



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. : 168 of 2016

Reserved on : 04.10.2018

Date of Decision : November 5, 2018

Sarwan Singh & others ...Petitioners.

Versus

Mohar Singh ...Respondent.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting? Yes.

For the Petitioners : Mr.Dinesh Kumar Sharma and
Mr.Y. Paul, Advocates, for the
petitioners.

For the Respondents : Mr.N.S. Chandel, Advocate, for
the respondent.

Sanjay Karol, Judge

As to whether an order against which no appeal lies, by virtue of Section 102 of the Code of Civil Procedure (hereinafter referred to as the Code), can be assailed in a petition filed under Section 115 of the Code or Article 227 of the Constitution of India or not, is the issue which this Court is called upon to answer.

2. While passing judgment dated 24th November, 2016 in Civil Revision No. 168 of 2016, titled as *Sarwan*

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Singh and others Vs. Mohar Singh, the learned Single Judge has referred the matter to a larger Bench on the question of maintainability of a petition under Article 227 of the Constitution of India in cases where second appeal against the judgment and decree is specifically barred under Section 102 of the Code and the necessity being conflicting views taken by the two learned Single Judges of this Court in passing judgments in Civil Revision No. 58 of 2009, titled as *Managing Director, H.P. State Cooperative Marketing & Consumer Federation Ltd. (Him Fed), District Shimla Vs. Sh. Rajinder Singh*; Civil Revision No. 59 of 2009, titled as *Managing Director, H.P. State Cooperative Marketing & Consumer Federation Ltd. (Him Fed), District Shimla Vs. Sh. Sita Ram*, decided on 30.03.2016; and CMPMO No. 439 of 2010, titled as *Subhadra Devi Vs. Kishori Lal*, decided on 14.12.2010.

3. In CMPMO No. 439 of 2010, titled as *Subhadra Devi Vs. Kishori Lal*, decided on 14.12.2010, learned Single Judge held that provisions of Sections 100 and 102 of the Code cannot be circumvented by filing a petition under Article 227 of the Constitution of India. Para-3 thereof reads as under:

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“3. Under Section 100, CPC, a second appeal lies to the High Court only on a substantial question of law. Section 102, Code of Civil Procedure specifically provides that no second appeal is maintainable in a suit, value whereof is less than Rs.25,000/-. The provisions of Section 100 and 102, Code of Civil Procedure cannot be circumvented by filing a petition under Article 227 of the Constitution of India. An appeal is the creation of a statute and the legislature in its wisdom has decided that a second appeal will not lie in a suit valuation of which is less than 25,000/- There is no occasion to entertain a CMPMO unless it is shown that there is some illegality involved or there is some perversity in the finding of the learned Trial Court. In the present case, I have gone through the judgments of both the Courts below. I find that both the judgments are based on appreciation of evidence and, therefore do not call for any interference in this petition.”

(Emphasis supplied)

4. The very same learned Judge restricted the parties in CMPMO NO. 235 of 2006, titled as *Mohan Lal Vs. Bahader Singh*, decided on 16.12.2010, in the following terms:

“2. Under Section 100, CPC, a second appeal lies to the High Court only on a substantial question of law. Section 102, Code of Civil Procedure specifically provides that no second appeal is maintainable in a suit, valuation of which is Rs.25,000/- or less. This Court has repeatedly held that the provisions of Article 227 of the Constitution of India cannot be used as a means to circumvent the bar to filing of an appeal. An appeal is only a creation of the statute and if the statute prohibits the filing of an appeal, the provisions of Article 227 of the Constitution of India cannot be invoked in normal course.

3. Having held so, this Court would be failing in its duty if it does not exercise its supervisory jurisdiction under Article 227 of the Constitution of

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India, where the judgment or order challenged is totally illegal or perverse.”

5. When similar issue came up for consideration before another learned Judge in Civil Revision No. 58 of 2009 and Civil Revision No. 59 of 2009 [Him Fed (supra)], the Court held that this Court in exercise of its revisional jurisdiction can look into the correctness, legality or propriety of any decision or order impugned, relevant portion of the judgment is quoted hereinbelow:

“16. In the exercise of revisional jurisdiction, this Court can look into the question as to the correctness, legality or propriety of any decision or order impugned.”

6. It is in this background that now while deciding Civil Revision No. 168 of 2016, the third learned Single Judge has referred the matter for consideration before a Larger Bench, in the following terms:

33. Accordingly, with all humility at my command, I regret my inability to concur with the view expressed by a Co-ordinate Bench of this Court in *Managing Director's case (supra)*. In view of this difference, it is necessary for me to refer the matter to a larger Bench. Even otherwise, the issue is of great importance and the views expressed by the different High Courts on the question are otherwise not consistent and it is desirable that an authoritative pronouncement be made by a larger Bench.

34. At this stage, I may observe that though I have concurred with the exposition of law as propounded by a Co-ordinate Bench of this Court in *Subhadra Devi, Mohan Lal's cases (supra)*, however, since the matter is being referred to a

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larger Bench, it may also consider the desirability of going into the question of maintainability of the petition under Article 227 of the Constitution in cases where the second appeal against the judgment and decree is specifically barred under Section 102 of the Code.”

7. We have heard the learned counsel for the parties and have also perused the records of the cases decided by the learned Single Judge, i.e., *Subhadra Devi (supra)*, *Mohan Lal (supra)*, as also *Rajinder Singh (supra)* and *Sita Ram (supra)*.

8. Relevant provisions of law are reproduced as under:

Sections 100, 102, 115 of the Code of Civil Procedure

“100. **Second appeal**— (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.”

“102. No second appeal in certain cases.-No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.”

“115. Revision — (1) The High Court may call for the record of an case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceedings before the Court except where such suit or other proceedings is stayed by the High Court.”

Article 227 of the Constitution of India:

“227. Power of superintendence over all courts by the High Court :- 196[(1) Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.] (2) Without prejudice to the generality of the foregoing provision, the High Court may- (a) call for returns from such Courts; (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts; and (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts. (3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such Courts and to attorneys, advocates and pleaders practising therein : Provided that any rules made, forms prescribed or tables settled under Cl. (2) or Cl. (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor. (4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any Court or Tribunal constituted by or under any law relating to the Armed Forces. 197 [* * * * *] Clause (1) has been successively subs. by the Constitution (Forty-second Amendment) Act 1976, Sec. 40 (w.e.f. 1st February, 1977) and the Constitution (Forty-fourth Amendment Act, 1978, Sec. 31 to read as above (w.e.f. 20th June, 1979). Clause (5) was ins. by the Constitution (Forty-second Amendment) Act, 1976, Sec. 40 (w.e.f 1st February, 1977) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978 Sec. 31 (w.e.f. 20th June, 1979).”

9. In our considered view, provisions of Section 102 of the Code are unambiguously clear. No second

appeal shall lie from a decree when the subject matter of the original suit for recovery of money is not exceeding rupees twenty five thousand.

10. The issue stands settled, with the Apex court delivering its judgment in *Nagar Palika Thakurdwara v. Khalil Ahmed & others*, (2016) 9 SCC 397 (2-Judges), holding that the purpose behind the enactment of the said Section is to reduce the quantum of litigation, so that the Courts are not to waste their time, where the stakes are meager and are not of much significance.

11. It is a settled principle of law that right to appeal is a statutory right and second appeal, by virtue of Section 100 of the Code, lies to the High Court against the judgment and decree, passed in an appeal by the Subordinate Court, involving a substantial question of law. However, such right is restricted by virtue of Section 102 of the Code, which provides that no second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty five thousand rupees.

12. In the absence of any statutory right of appeal, what needs to be examined is as to whether the order, which cannot be assailed by virtue of appeal, can

be assailed by virtue of Section 115 of the Code or Article 227 of the Constitution.

13. Let us examine the scope of Section 115 of the Code.

14. The Apex Court in *Keshardeo Chamria v. Radha Kissen Chamria and others*, AIR 1953 SC 23, observed as under:

"17. It seems to us that in this matter really the High Court entertained an appeal in the guise of a revision. The revisional jurisdiction of the High Court is set out in s. 115 Civil P. C. in these terms:

"The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears –

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit."

A large number of cases have been collected in Edn. 4 of Chitale and Rao's Code of Civil procedure (vol. I), which only serve to show that the High Courts have not always appreciated the limits of the jurisdiction conferred by this section. In *Mohunt Bhagwan Ramanuj Das v. Khetter Moni Dassi*, 1 Cal. W. N. 617, the High Court of Calcutta expressed the opinion that sub-cl. (c) of s. 115, Civil P. C., was intended to authorise the High Courts to interfere and correct gross and palpable errors of subordinate Courts,

so as to prevent grave injustice in non, appealable cases. This decision was, however, dissented from by the same High Court in *Enat Mondul v. Baloram Dey*, 3 Cal. W. N. 581, but was cited with approval by Lord-Williams J. in *Gulabchand Bangur v. Kabiruddin Ahmed*, 58 Cal. -111. In these circumstances, it is worth-while recalling again to mind the decisions of the Privy Council on this subject and the limits stated therein for the exercise of jurisdiction conferred by this section on the High Courts."

18. As long ago as 1894, in *Rajah Amir Hassan Khan v. Sheo Baksh Singh*, 11 Ind. App. 237, the Privy Council made the following observations on s. 622 of the former Code of Civil Procedure, which was replaced by s.115 of the Code of 1908:

"The question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the case, and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."

In 1917 again in *Balakrishna Udayar v. Vasudeva Aiyar*, 44 Ind. App. 261, the Board observed:

"It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved."

In 1949, in *Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras*, 76 Ind. App. 67, the Privy Council again examined the scope of s. 115 and observed that they could see no justification for the view that the section was intended to authorise the High Court to interfere and correct gross and palpable errors of subordinate Courts so as to prevent grave injustice in non-appealable cases and that it would be difficult to formulate any standard by which the degree of error of subordinate Courts could be measured. It was said:

"Section 115 applies only to cases in which no appeal lies, and, where the Legislature has provided no right of appeal, the manifest intention is that the order of the trial Court, right or wrong, shall be final. The section empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate Court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied on those three matters, it has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate Court on questions of fact or law."

"20. Reference may also be made to the observations of Bose J. in his order of reference in *Narayan Sonaji v. Sheshrao Vithoba*, A. I. R. 1948 Nag. 258 wherein it was said that the words "illegally" and "material irregularity" do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with."

(Emphasis supplied)

The view stands reiterated by the Apex Court in *Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee & others*, AIR 1964 SC 1336 (3-Judges).

15. Subsequently, a Constitution Bench of the Apex Court in *Pandurang Dhondi Chougule & others v.*

Maruti Hari Jadhav & others, AIR 1966 SC 153 (5-Judges),

observed:

“11. The history of recent legislation in India shows that when Legislatures pass Acts dealing with socio-economic matters, or make provisions for the levy of sales-tax, it is realized that the operative provisions of such legislation present difficult problems of construction; and so, sometimes, the Act in question provides for a revisional application to the High Court in respect of such matters or authorises a reference to be made to it. In such cases, the High Court will undoubtedly deal with the problems raised by the construction of the relevant provisions in accordance with the extent of the jurisdiction conferred on it by the material provisions contained in the statute itself. Sometimes however, no such specific provision is made, and the questions raised in regard to the construction of the provisions of such a statute reach the High Court under its general revisional jurisdiction under S. 115 of the Code. In this class of cases the revisional jurisdiction of the High Court has to be exercised in accordance with the limits prescribed by the said section. It is true that in order to afford guidance to subordinate Courts and to avoid confusion in the administration of the specific law in question, important questions relating to the construction of the operative provisions contained in such an Act must be finally determined by the High Court but in doing so the High Court must enquire whether a complaint made against the decision of the subordinate Court on the ground that it has misconstrued the relevant provisions of the statute, attracts the provisions of S. 115. Does the alleged misconstruction of the statutory provision have relation to the erroneous assumption of jurisdiction, or the erroneous failure to exercise jurisdiction, or the exercise of jurisdiction illegally or with material irregularity by the subordinate Court? These are the tests laid down by S. 115 of the Code and they have to be borne in mind before the High Court decides to exercise its revisional jurisdiction under it.

12. The question has been recently considered by this Court in *Manindra Land and Building*

Corporation Ltd. Bhutnath Banerjee, AIR 1964 SC 1336 and *Abbasbai Alimahomed v. Gulamnabi*, AIR 1964 SC 1341. The effect of these two decisions clearly is that a distinction must be drawn between the errors committed by subordinate Courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said Court, and errors of law which have no such relation or connection. It is, we think, undesirable and inexpedient to lay down any general rule in regard to this position. An attempt to define this position with precision or to deal with it exhaustively may create unnecessary difficulties. It is clear that in actual practice, it would not be difficult to distinguish between cases where errors of law affect, or have relation to, the jurisdiction of the Court concerned, and where they do not have such a relation.

13. Considering the point raised by Mr. Sinha in the light of this position, it seems to us that the High Court was in error in assuming jurisdiction to correct what it thought to be the misconstruction of the decree passed in civil suit No. 102 of 1932-33. As we have already seen, in the present debt adjustment proceedings, one of the points which arose for decision was whether the mortgage debt was subsisting at the time when the respondents made their application, and the District Court had found that the respondents' equity of redemption had been extinguished. This finding was based on the construction of the said decree. It is difficult to see how the High Court was justified in reversing this finding under S. 115 of the Code. The construction of a decree like the construction of a document of title is no doubt a point of law. Even so, it cannot be held to justify the exercise of the High Court's revisional jurisdiction under S. 115 of the Code because it has no relation to the jurisdiction of the Court. Like other matters which are relevant and material in determining the question of the adjustment of debts, the question about the existence of the debt has been left to the determination of the Courts which are authorised to administer the provisions of the Act; and even if in dealing with such questions, the trial Court or the District Court commits an error of law, it cannot be said that such an error of law

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would necessarily involve the question of the said Courts' jurisdiction within the meaning of S. 115 of the Code. We are, therefore, satisfied that on the facts of this case, the High Court exceeded its jurisdiction in interfering with the conclusion of the District Court that the decree in question had extinguished the respondents' equity of redemption." ◇

16. Recently, in *Rishabh Chand Jain & another v. Ginesh Chandra Jain*, (2016) 6 SCC 675 (2-Judges), the Apex Court observed as under:

"14. The impugned order dismissing the suit on the ground of *Res Judicata* does not cease to be a decree on account of a procedural irregularity of non-framing an issue. The court ought to treat the decree as if the same has been passed after framing the issue and on adjudication thereof, in such circumstances. What is to be seen is the effect and not the process. Even if there is a procedural irregularity in the process of passing such order, if the order passed is a decree under law, no revision lies under Section 115 of the Code in view of the specific bar under sub-Section (2) thereof. It is only appealable under Section 96 read with Order XLI of the Code."

17. In *M.L. Sethi v. R.P. Kapur*, (1972) 2 SCC 427, the Apex Court observed:

"12. The word "jurisdiction" is a verbal cast of many colours. Jurisdiction originally seems to have had the meaning which Lord Baid ascribed to it in *Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147, namely, the entitlement "to enter upon the enquiry in question". If there was an entitlement to enter upon an inquiry into the question, then any subsequent error could only be regarded as an error within the jurisdiction. The best known formulation of this theory is that made by Lord Denman in *R. v. Bolton* (1841) 1 QB 66. He said that the question of jurisdiction is determinable at the commencement, not at the conclusion of the

enquiry. In *Anisminde Ltd.*, (1969) 2 AC 147 Lord Reid said:

"But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive".

In the same case, Lord Pearce said:

"Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an enquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage while engaged on a proper enquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which the Parliament did direct. Any of these things would cause its purported decision to be a nullity."

The dicta of the majority of the House of Lords, in the above case would show the extent to which 'lack' and 'excess' of jurisdiction have been assimilated or, in other words, the extent to which we have moved away from the traditional concept of "jurisdiction". The effect of the dicta in that case is to reduce the difference between jurisdictional error and error of law within jurisdiction almost to vanishing point. The practical effect of the decision is that any error of law can be reckoned as jurisdictional. They comes perilously close to saying that there is a jurisdiction if the decision is right in law but none if it is wrong. Almost any misconstruction of a statute can be represented as "basing their decision on a matter with which they have no right to deal", "imposing an unwarranted condition" or "addressing themselves to a wrong question". The majority opinion in the case leaves a Court or Tribunal with virtually no margin of legal error. Whether there is excess of jurisdiction or merely error within jurisdiction can be determined only construing the empowering statute which will give little guidance. It is really a question of how much latitude the Court is prepared to allow in the end it can only be a value judgment (See H.W.R. Wade, "Constitutional and Administrative Aspects of the Anisemic case", Law Quarterly Review, Vol. 85, 1969, P.198). Why is it that a wrong decision on a question of limitation or res judicata was treated as a jurisdictional error an liable to be interfered with in revision? It is a bit difficult to understand how an erroneous decision on a question of limitation or res judicata would oust the jurisdiction of the Court in the primitive sense of the term and render the decision or a decree embodying the decision a nullity liable to collateral attack. The reason can only be that the error of law was considered as vital by the Court. And there is no yardstick to determine the magnitude of the error other than the opinion of the Court."

18. The Reference Court, on the issue, has observed as under:

"27. A Second Appeal is maintainable only on a substantial question of law as provided under

Section 100 of the Code of Civil Procedure. A Revision under Section 115 of the Code of Civil Procedure lies where the subordinate court appears to have exercised jurisdiction not vested in it by law; or to have failed to exercise jurisdiction so vested; or to have acted in the exercise of its jurisdiction illegally or with material irregularity. The question is whether the High Court would be entitled to entertain a Civil Revision Petition, in a case where a Second Appeal is barred under section 102 of the Code of Civil Procedure, on any ground which is less rigorous than that provided in Section 100 of the Code of Civil Procedure.

28. Even in matters where the valuation exceed ₹25,000/-, a second appeal could be entertained only on a substantial question of law. When Section 102 provides that no second appeal would lie in respect of a suit where the subject matter is for recovery of money not exceeding ₹25,000/-, it cannot be assumed the Parliament thought it fit to take such category of cases out of the rigour of Section 100 and to provide a less rigorous remedy in such cases. If so, it is to be taken that a revision under Section 115 cannot be entertained on a ground which is less rigorous than that provided in Section 100 of the Code of Civil Procedure.

29. The purpose of substituting Section 102 C.P.C. was to restrict entertaining Second Appeals in cases where the subject matter of the suit is for recovery of money not exceeding ₹25,000/-. The purpose sought to be achieved cannot be defeated by entertaining a revision under section 115 of the Code of Civil Procedure on a less rigorous test than that provided in Section 100 C.P.C.”

“31. In addition to the aforesaid, it would be noticed that Section 115 of the Code does not refer to a decree and further provides that revision can be invoked where no appeal lies against the impugned order/judgment. There is a marked difference as regards an order or judgment against which no appeal lies and the judgment or order against which an appeal is prohibited or restricted by the Code.

32. Under Section 115 CPC, the legality and propriety as well as perversity can be seen, so also, while exercising jurisdiction of second appeal, appeal can be admitted only on substantial questions of law. The scope of both these provisions is quite similar and, therefore, the petitioners cannot invoke jurisdiction of this Court under Section 115 CPC because such invocation of revisional jurisdiction will render the specific provision of Section 102 of the Code to be otiose which is not permissible.”

19. Keeping in view the principles enunciated by the Hon'ble Supreme Court of India, noticed supra, on the ambit, scope and power and exercise of revisional jurisdiction by the High Court, we are in agreement with the aforesaid observations.

20. We may also add that so far as assailing such an order under Section 115 of the Code is concerned, in our considered view, the intent behind incorporation of Section 102 in the Code is that finality has to be put to such like litigation, wherein in an original suit for recovery, the subject matter does not exceed ₹25,000/-. That being so, this finality cannot be permitted to be taken away by allowing a party to agitate the judgment passed by the first Appellate Authority under Section 115 of the Code. Section 102 of the Code precedes Section 115 thereof and in our considered view, something which is prohibited under Section 102 of the Code, cannot be

permitted to be done by filing an application under Section 115 of the Code.

21. In view of a categorical statutory bar envisaged in the Code, prohibiting second appeal against a decree when the subject matter of the original suit is for recovery of money not exceeding rupees twenty five thousand, in our considered view, this statutory provision cannot be permitted to be circumvented in the guise of invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India, except under exceptional circumstances.

22. By virtue of Article 227 of the Constitution of India, this Court exercises supervisory jurisdiction over the Courts within its jurisdiction. The scope and ambit of the exercise of supervisory jurisdiction under the said Article clearly stands spelled out in various judicial pronouncements rendered by Hon'ble the Supreme Court of India.

23. It is settled law that power of superintendence conferred upon the High Court under Article 227 of the Constitution of India has to be exercised most sparingly and with circumspection, that too, in appropriate cases in order to keep the Subordinate Courts within the bounds

of their authority. In other words, such power of superintendence is not conferred for correcting mere errors.

24. In *Waryam Singh and another Vs. Amarnath and another*, AIR 1954 SC 215, a Constitution Bench of the Hon'ble Supreme Court, after examining the scope of Article 227 of the Constitution, observed as under:-

"This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. V. Sukumar Mukherjee*, 1951 AIR (Cal) 193 to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

25. In *Hari Vishnu Kamath v. Ahmad Ishaque & others*, AIR 1955 SC 233, the Apex Court, in the context of the scope, power and jurisdiction exercised by the High Court, under Articles 226 & 227 of the Constitution of India, observed as under:

"20. We are also of opinion that the Election Tribunals are subject to the superintendence of the High Courts under Article 227 of the Constitution, and that that superintendence is both judicial and administrative. That was held by this Court in '*Waryam Singh v. Amarnath*', AIR 1954 SC 215 (K), where it was observed that in this respect Article 227 went further than section 224 of the Government of India Act, 1935, under which the superintendence was purely administrative, and that it restored the position under section 107 of the Government of India Act, 1915. It may also be noted that while in a 'certiorari' under Article 226 the High Court can only annul the decision of the Tribunal, it can,

under Article 227, do that, and also issue further directions in the matter. We must accordingly hold that the application of the appellant for a writ of 'certiorari' and for other reliefs was maintainable under Articles 226 and 227 of the Constitution.

21. Then the question is whether there are proper grounds for the issue of 'certiorari' in the present case. There was considerable argument before us as to the character and scope of the writ of 'certiorari' and the conditions under which it could be issued. The question has been considered by this Court in 'Parry and Co. v. Commercial Employees' Association, Madras', AIR 1952 SC 179 (L); - 'Veerappa Pillai v. Raman and Raman Ltd.'. AIR 1952 SC 192 (M); - 'Ebrahim Aboobaker v. Custodian General of Evacuee Property New Delhi', AIR 1952 SC 319 (N), and quite recently in AIR 1954 SC 440(C). On these authorities, the following propositions may be taken as established: (1) 'Certiorari' will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) 'Certiorari' will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of 'certiorari' acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings or fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior Court were to re-hear the case on the evidence, and substitute its own findings in 'certiorari.'" These propositions are well settled and are not in dispute."

26. The Apex Court in *Madras Bar Association v. Union of India & another*, (2014) 10 SCC 1, while dealing with the constitutional validity of the National Tax

Tribunal Act, 2005, held Judicial Review, under Articles 226 & 227 of the Constitution of India, to be part of the Basic Structure of the Constitution. Even earlier, in *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569, the Court had observed as such.

27. After elaborately discussing its earlier decisions on the scope of power under Articles 226 & 227 of the Constitution of India, the Apex Court in *Shalini Shyam Shetty & another v. Rajendra Shankar Patil*, (2010) 8 SCC 329, culled out the following principles:

“(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 restraint 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, 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.”

(Emphasis supplied)

The aforesaid principles stand reiterated by the Apex Court in *Ram Kishan Fauji v. State of Haryana & others*, (2017) 5 SCC 533.

28. Earlier in *Radhey Shyam and another Vs. Chhabi Nath and others*, (2015) 5 SCC 423 while holding that orders of Civil Courts are not amenable to writ jurisdiction under Article 226 of the Constitution of India, it further held that jurisdiction under Article 227 of the Constitution of India was distinct from the jurisdiction under Article 226 of the Constitution of India. To this extent, it also overruled its contrary view in *Surya Dev Rai Vs. Ram Chander Rai*, (2003) 6 SCC 675. In para 28 of the judgment in *Radhey Shyam's* case, Hon'ble Supreme Court observed that:

"28. We may also deal with the submission made on behalf of the respondent that the view in *Surya Dev Rai* stands approved by larger Benches in *Shail*, *Mahendra Saree Emporium* and *Salem Advocate Bar Assn* and on that ground correctness of the said view cannot be gone into by this Bench. In *Shail*, though reference has been made to *Surya Dev Rai*, the same is only for the purpose of scope of power under Article 227 as is clear from para 3 of the said judgment. There is no discussion on the issue of maintainability of a petition under Article 226. In *Mahendra Saree Emporium*, reference to *Surya Dev Rai* is made in para 9 of the judgment only for the proposition that no subordinate legislation can whittle down the jurisdiction conferred by the Constitution. Similarly, in *Salem Bar Assn.* in para 40, reference to *Surya Dev Rai* is for the same purpose. We are, thus, unable to accept the submission of learned counsel for the respondent."

29. In *Mohd. Yunus Vs. Mohd. Mustaquim and others*, (1983) 4 SCC 566, Hon'ble Supreme Court held that High Court has very limited scope under Article 227 of the Constitution and even errors of law cannot be corrected in exercise of power of judicial review while exercising such power. The powers can be used sparingly only when High Court comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. It further held that the High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of

flagrant abuse of fundamental principles of law or where order of Tribunal etc. has resulted in grave injustice.

30. In *Chandrasekhar Singh and others Vs. Siya Ram Singh and others*, (1979) 3 SCC 118, Hon'ble Supreme Court observed that:

"11. The only other question that remains to be considered is whether an order under Section 146 (1B) can be interfered with by the High Court in the exercise of its powers under Article 227 of the Constitution. It is admitted that the powers conferred on the High Court under Art. 227 of the Constitution cannot in any way be curtailed by the provisions of the Criminal Procedure Code. Therefore, the powers of the High Court under Art. 227 of the Constitution can be invoked in spite of the restrictions placed under Section 146(1D) of the Criminal Procedure Code. But the scope of interference by the High Court under Art. 227 is restricted. This Court has repeatedly held that "the power of superintendence conferred by Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors vide 1954 S.C.R. 565 (Waryam Singh v. Amar Nath). In a later decision, (Nagendra Nath Bora and another v. The Commissioner of Hills Division, and Appeals, Assam and Others(1), the view was reiterated and it was held that the power of judicial interference under Article 227 of the Constitution are not greater than the power under Article 226 of the Constitution, and that under Art. 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority. In a recent decision, (Babhutmal Raichand Oswal v. Laxmibai R. Tarts(2) this Court reiterated the view stated in the earlier decisions referred to and held that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as the Court of

High

appeal and that the High Court cannot in exercise of its jurisdiction under Art. 227 convert itself into a court of appeal."

(Emphasis supplied)

31. In *Rena Drego Vs. Lalchand Soni and others*, (1998) 3 SCC 341, the Hon'ble Supreme Court has categorically held that the power under Article 227 of the Constitution is of the judicial superintendence which cannot be used to up-set the conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could have ever reached them.

32. In *Baby v Travancore Devaswom Board and others*, (1998) 8 SCC 310, the Hon'ble Supreme Court has held that even if revisional jurisdiction was not available to the High Court, it still have powers under Article 227 of the Constitution of India to set aside the orders so passed by the Tribunal if the finding of fact arrived at was perverse.

33. In *Ajaib Singh Vs. Sirhind Co-operative Marketing cum Processing Service Society Ltd.*, (1999) 6 SCC 82, the Hon'ble Supreme Court held that High Court is not to substitute its view for the opinion of Authorities/

Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

34. Thus, it can conveniently be held that the supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the Subordinate Courts within the bound of the jurisdiction, when such Court has assumed jurisdiction which it does not has or has failed to exercise jurisdiction which it does has or jurisdiction though available is exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby the High Court may step-in to exercise its supervisory jurisdiction. The supervisory jurisdiction is not available to correct mere errors of fact or law unless the following requirement is satisfied:-

(i) The error is manifest and apparent on the face of the proceedings such as when it is based on ignorance or utter disregard to the provisions of law, and to grave injustice or gross failure of justice has occasioned thereby.

(ii) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscious of the High Court dictates which too act lest gross failure of justice or grave injustice has occasioned.

35. Having set out the legal parameters for exercise of jurisdiction, it would be necessary to advert to the facts of the case.

36. As we have already held above, in view of the specific provisions so contained in Section 102 of the Code of Civil Procedure, the order passed by the first Appellate Authority cannot be ordinarily permitted to be assailed by invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. This we say so for the reason that in our considered view, what cannot be done directly cannot be permitted to be done indirectly.

37. Coming to the scope of interference under Article 227 of the Constitution of India, in our considered view, taking into consideration the specific bar created under Section 102 of the Code, in routine, judgment passed by the learned first Appellate Court cannot be assailed under Article 227 of the Constitution of India on merit. We are not oblivious to the fact that whereas the right to file appeal, revision etc. is a statutory right, the right of supervision conferred upon this Court under Article 227 of the Constitution of India is constitutional right. However, in the guise of exercise of its right of

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supervision, this Court cannot be called upon to re-appreciate the evidence on record in matters in which second appeal is prohibited under Section 102 of the Code of Civil Procedure.

38. The limited scope of interference under Article 227 of the Constitution of India, in such like matters would be where there is perversity on the face of the impugned judgment, for which there is no need to re-appreciate the evidence on record and permitting which perversity to remain on record would result in travesty of justice.

We decide the Reference accordingly.

(Sanjay Karol)
Judge

(Ajay Mohan Goel)
Judge

November 5, 2018^(sd)