

(2019) 10 PAT CK 0044

In the Patna High Court

Case No : Letters Patent Appeal No. 1467 Of 2018 In Civil Writ Jurisdiction Case No. 19517 Of 2013

Vijayanand Puri

APPELLANT

Vs

Deorani Devi And Ors

RESPONDENT

Date of Decision : 18-10-2019

Acts Referred:

Code Of Civil Procedure, 1973 — Section 115, 151, Order 17 Rule 17, Order 18 Rule 17, Order 17 Rule 18
Constitution Of India, 1950 — Article 19(1)(a), 19(1)(g), 32, 32(2), 136, 226, 227

Citation : (2019) 10 PAT CK 0044

Hon'ble Judges : Amreshwar Pratap Sahi, CJ; Ashutosh Kumar, J

Bench : Division Bench

Advocate : Vijayanand Puri, Rajendra Narain, Ashok Nandan Prasad, Ajay Kumar Sinha, Sumeet Kumar Singh, Gaurav Prakash

Final Decision : Partly Allowed

Judgement

The appellant-respondent-defendant (Sri Vijayanand Puri) has put up a challenge to the order dated 16.03.2018 passed in C.W.J.C. No. 19517 of 2013 passed by a learned Single Judge of this Court whereby the order passed by the Trial court viz. Sub-Judge VI, Patna in Title Suit No. 19 of 1996 dated 13.08.2013, recalling the order dated 12.02.2013 whereby by the evidence of defendant no. 1 in the suit was closed and allowing the appellant to prove the documents filed on his behalf, has been set aside.

It appears that the respondents, by way of Title Suit No. 19 of 1996, had sought declaration of their title over the suit land and sought a further declaration that the sale deed executed by one Nago Devi in favour of the appellant with respect to disputed land is fraudulent and therefore not binding on the respondents.

It further appears from the order impugned that the suit was tried and was fixed for judgment on 20.05.2013. The case was adjourned on that date and another date of 03.06.2013 was fixed for judgment. On that day, case laws were cited by

the respondents-plaintiffs and the appellant-defendant took time for filing judgments in reply. As a result, the case was adjourned to 05.06.2013 for hearing and judgment. The matter was again posted on 12.06.2013 for judgment. On that date, the appellant sought an adjournment for further arguments on the question of law, which prayer was allowed and the case was fixed for arguments on 01.07.2013 at the instance of the appellant.

It further appears that the appellant had filed certain documents along with the petition under Order XVII Rule 17 read with 151 of the CPC for recalling the order dated 12.02.2013 whereby the evidence of defendant no. 1 in the suit was closed. The aforesaid prayer of the appellant was allowed and an opportunity was given to him to prove the documents by adducing evidence.

The learned Single Judge, on finding that the documents brought on record or referred to in the written statement had no concern with the issues involved in the suit, held that there was no explanation available with the appellant-defendant for not producing such documents on earlier occasion. The other documents which were brought on record by the appellant-defendant were the certified copy of the judgment of Title Suit No. 4 of 1986 which was a probate case preferred by one Faguni Devi against the appellant for grant of probate/letter of administration with respect to property bequeathed by Nago Devi by virtue of a registered deed of will dated 30.11.1977. In the aforesaid probate case, which on objection was converted into a title suit, the registered deed of will and the registered deed of cancellation of will filed by the appellant-defendant was in issue. The learned Single Judge also found that the appellant had contested the aforesaid probate case which was dismissed.

Thus finding that there was no need of those documents for adjudication of issues involved in the present title suit and that even though such documents were available with the appellant-defendant from before, and even then it was not brought on record, the learned Single Judge held that the trial court had committed an error of law in allowing such a prayer of the appellant-defendant.

The order of the trial court therefore was set aside.

Hence the present appeal.

The writ petition by the respondent-plaintiff was initially filed under Article 226 of the Constitution of India but it was converted into one under Article 227. Any order passed under Article 227 would normally not be amenable to Letters Patent Appellate Jurisdiction. However while hearing the learned counsel for the parties, this Court was of the view that the nature and tenor of the order passed by the learned Single Judge was that of a grant of certiorari under Article 226 and not under Article 227 which is a supervisory jurisdiction. The prima facie reason for us to come to the aforesaid view is the manner in which the order has been passed by the learned Single Judge wherein there is no reference of the exercise of power under Article 227. Rather, the manner in which the order of the Trial court has been annulled without any further direction, reflects that such order

was passed by way of a writ of certiorari. If that be so, then the present appeal would be maintainable.

It would be apposite to extract the order of this Court passed on 24.09.2019 on the issue of maintainability of the present appeal.

Having heard the appellant in person and Shri Rajendra Narain, learned Senior Counsel for the contesting respondent, we find an issue of seminal importance having been raised in this case pertaining to the nature of the proceedings instituted before the learned Single Judge and the extent of power exercised by the learned Single Judge while disposing of the matter, namely, as to whether the writ petition even though initially labelled as an Article 226 Writ Petition and later on corrected as a petition under Article 227 in essence was an application in the real sense of the term as used under Article 227 or not? and as to whether the learned Single Judge while disposing of the matter had exercised a power which was co-extensive with the powers under Article 226 of the Constitution of India or was an exclusive power of the judicial superintendence as understood in legal parlance under Article 227 of the Constitution of India?

Learned counsel for the parties at the bar have advanced their submissions and it is the contention of Shri Rajendra Narain that the application even though captioned as a writ was in essence a Civil Miscellaneous application which was factually and actually an application seeking relief from this Court under Article 227 of the Constitution of India before the learned Single Judge.

As a natural sequel to said argument, Shri Narain also urged that once the jurisdiction exercised by the learned Single Judge is one that of Article 227 of the Constitution of India, then in that event, a Letters Patent Appeal under Clause 10 of the Letters Patent Constituting the High Court of Judicature at Patna contained in Appendix E of the Rules of the High Court at Patna, 1916 could not be maintainable and, therefore, the appeal is liable to be dismissed.

While defending the judgement of the learned Single Judge, Shri Narain has invited the attention of the Court to the ratio of the Apex Court in paragraph 15 of the decision in the case of Bagai Construction through its Proprietor Lalit Bagai Versus Gupta Building Material Store, reported in (2013) 14 SCC 1, to urge that even otherwise, on an appraisal of the facts of the present case which has been recorded by the learned Single Judge and is also available in the order sheet of the Court below, any opportunity of leading evidence after the entire arguments was over would be in breach of the ratio of the aforesaid judgement. He, therefore, submits that the learned Single Judge, therefore, in consonance of the said law laid down by the Hon'ble Apex Court had only defined the bounds of the Court below while proceeding to set aside the order passed by the Civil Court. He, therefore, submits that this was not an exercise of writ of certiorari but it was only an exercise of power of judicial superintendence under Article 227 of the Constitution of India. With the aid of the other judgements cited at the bar, he has urged that if Articles 226 and 227 of the Constitution of India read

together are supplementary and complimentary to each other, then the extent of judicial superintendence under Article 227 of the Constitution of India would extend even in respect of the administrative superintendence of the High Court as envisaged in the provisions aforesaid and, therefore, while exercising such powers, the High Court can set right such orders which it finds to be travelling beyond the bounds of law. The contention, therefore, is that the impugned judgement of the learned Single Judge is in the exercise of Article 227 of the Constitution of India and not an exercise of writ of certiorari so as to create a bar in the light of the judgement in the case of Radhey Shayam and Anr. Versus Chhabi Nath and others, reported in (2015) 5 SCC 423.

We have also traversed the said judgement along with the aid of the other judgements referred to therein and apart from the same, we have also come across the Division Bench judgement in the case of Moti Lal Versus State through Shrimati Sagarwati, reported in Indian Law Reports 1952 Allahabad Series 558.

Shri Narain has also invited the attention of the Court to the Division Bench judgement of a recent origin of this Court in the case of Heera Chand Swarnkar @ Heera Chandra Swarnkar Versus Sri Radhe Shyam Jee Maharaj Virajman, through Pradeep Kumar & Anr. reported in 2016 (1) PLJR 489. With the aid of the said judgement, he contends that the present appeal which essentially arises out of an application under Article 227 of the Constitution of India should not be entertained. He has further substantiated his submissions by contending that labelling of a petition would not alter the nature of the relief prayed for and the jurisdiction invoked and, therefore, once the petitioner had filed an application under Article 227 of the Constitution of India, then the same should be construed as such and the learned Single Judge should also be presumed to have exercised the said jurisdiction under Article 227 of the Constitution of India.

On the other hand, the appellant has urged that the learned Single Judge has virtually exercised a writ of certiorari and a power of judicial review so as to substitute the findings of the Civil Court which traversed beyond the scope of Article 227 of the Constitution of India. It is his contention that the manner in which the power has been exercised and the tenor of the order is one of the exercise of certiorari for setting aside and quashing an order of Civil Court which is clearly bar in view of the law laid down by the Hon'ble Apex Court in the case of Radhey Shayam and Anr. Versus Chhabi Nath and others (supra).

Having heard learned counsel for the parties, judgement reserved.

The questions which according to us is required to be decided are:

(a) Whether the order impugned is an order under the exercise of jurisdiction under Articles 226 or 227 of the Constitution of India?

(b) Whether it has to be presumed in the event of the caption of the writ petition that such an order has been passed under Article 227?

(c) What would be the method of identifying as to whether an order is amenable

to judicial superintendence under Article 227 or such order is amenable to a writ of certiorari under Article 226?

(d) If the order impugned is an order under Article 226, then was it justified for the learned Single Judge to pass such an order in view of law laid down in *Radhey Shyam and Anr. vs. Chhabi Nath and Ors.* (2015) 5 SCC 423. If the order is under Article 227, whether this appeal would be maintainable?

(e) Lastly, whether the jurisdiction under Articles 226 and 227 of the Constitution of India are complementary and supplementary to each other or operate in two distinct fields on different footing?

To answer the aforesaid questions, we deem it appropriate to make some detour in the past for identifying as to how the law with respect to issuance of writ of certiorari has developed.

There is no dispute that under the Constitution of India, the High Courts have wide powers under Article 226 to issue prerogative writs including the writ of certiorari. The nature and extent of such jurisdiction conferred on the High Courts under Article 226 was first considered by Supreme Court in *T.C. Basappa v. T. Nagappa*, AIR 1954 SC 440. In the aforesaid case, Justice Mukherjea, who spoke for the court clearly cautioned that there is no need for looking back and delving into the history of such prerogative writs as the powers of the High Courts are clear and broad under Article 226 of the Constitution of India but so long as such power is exercised within the broad and fundamental parameters which regulate the exercise of such jurisdiction. While dealing with the features of writ of certiorari, Justice Mukherjea listed the area of restraints. It was clearly stipulated that while granting writ of certiorari, the superior court does not exercise the powers of an appellate tribunal, nor does it review or reweigh the evidence upon which the determination of an inferior tribunal is based. With a writ of certiorari, an order without jurisdiction or a palpably erroneous order is demolished but while doing so, the superior court cannot superimpose its own opinion.

The scope and jurisdiction of the power of issuance such writs was again examined by a special Bench of Supreme Court in *Smt. Ujjam Bai vs. State of U.P.* AIR 1962 SC 1621. The majority opinion in the aforesaid case was that where a quasi judicial authority makes an order in exercise of its jurisdiction under a provision of law which is *intra vires*, an error of law or fact committed by that authority cannot be impeached otherwise than on appeal. However if such wrong decision of the authority is because of lack of jurisdiction, it could be corrected by a writ of certiorari.

Prior to the aforesaid decisions, the Allahabad High Court in *Moti Lal vs. State* through *Smt. Sagarwati*, The Indian Law Reports 1952 Page 558 had the occasion to deal with the aforesaid issue. The matter arose out of a very small incident. The complainant had alleged that Moti Lal (applicant) had stolen a cow from her house after having sold the same to her. In the Panchayati Adalat, Moti

Lal was convicted and fined Rs. 45/- for having stolen the cow. While convicting and sentencing the applicant, the evidence of one of the Panches was also taken into account. Moti Lal preferred a revision against that order on the sole ground that evidence of a Panch could not be taken into account and that such witness could not have sat on the Bench which decided the case. The revision petition was dismissed by factually holding that the concerned Panch was not a member of the Bench which decided the case. Thereafter a petition was filed by Moti Lal under Article 227 of the Constitution, intimating the court that by mistake of the counsel, name of another Panch was taken but the fact remained that one of the witnesses/Panch sat on the Bench. The moot question therefore was whether a witness could be a Judge in a Panchayati Adalat. However while deciding that question, an issue cropped up whether under Article 227 of the Constitution of India, an order of the Subordinate Tribunal could have been interfered with; as by that time the law had not developed in the manner as it stands today and Article 227 of the Constitution was thought to be a forum for exercise of administrative power of superintendence of the High Court.

Justice Agrawala, one of the Judges on the Bench, after going through the provisions contained in Article 227 found that the power of superintendence was not confined to specific powers given under Clause 2 of Article 227 but it was for judicial superintendence as well. The same could be done by issuing writs of certiorari or prohibition. This power of superintendence, traditionally and historically speaking, was never exercised in England to correct mere errors of law or errors of fact which did not involve errors of jurisdiction or any error apparent on the face of the record. Agrawala, J. referred to the case of *Tej Ram vs. Harsukh*, 1870 (78) ILR 1 All, 101 in which it was held that the writs of certiorari and prohibition could not be issued for setting right the orders of a subordinate court if it were based on error of law or fact. Later, on experiencing practical difficulty in not interfering with the judicial proceedings of a subordinate court, the issue was again revisited by a Full Court of five Judges in *Md. Suleman Khan vs. Fatima* 1887 ILR 9, All, 104.

In the aforesaid case, it was held that the power of superintendence included powers of judicial or quasi judicial character and the revisional powers of the court could be accepted as an indicator of the extent to which the court could have ordinarily interfered with the findings of the subordinate tribunals.

Justice Saprú, in *Motilal* (supra) however, was of the view that the provisions contained in Article 227 provide the power of superintendence which could not be limited to the administrative side but it also extended to limited judicial character as well.

In *Naresh Shridhar Mirajkar vs. State of Maharashtra and Anr.*, AIR 1967 SC 1, a nine Judges Bench of the Supreme Court had the occasion to look at the scope of the powers under Article 227 of the Constitution of India.

In the aforesaid case, Mr. Mirajkar, a reporter with an English Weekly, Blitz, was

directed by Hon'ble Judge (Justice Tarkunde) while trying a suit of defamation, not to report the deposition of one of the witnesses. This direction was oral but when a protest was made and the Bench was asked to pass a written order, the same was declined. The aforesaid decision of the Hon'ble Judge trying the suit was under challenge before the Bombay High Court under Article 226 of the Constitution which was dismissed on the ground that the order challenged was a judicial order of the High Court which was not amenable to a writ under Article 226 of the Constitution of India. The matter travelled to the Supreme Court under Article 32 of the Constitution of India for enforcement of the fundamental right of Mr. Mirajkar under Article 19(1)(a) and (g) of the Constitution. The main issue before the Supreme Court was whether there could be any interdict against an open trial but additionally, an issue also cropped up relating to the nature and extent of the Supreme Court's jurisdiction to issue writs of certiorari under Article 32 (2) of the Constitution of India.

While dealing with the aforesaid issue, the Supreme Court in *Mirajkar* (supra) clarified that the power of the Supreme Court under Article 32(2) and the powers of the High Court to issue similar writs under Article 226 were very wide. Justice Gajendra Gadkar, speaking for himself and for Wanchu, Mudholkar, Sikri and Ramaswami JJ., held that judicial orders passed by the High Courts in or in relation to proceedings pending before them are not amenable to be corrected by exercise of writ of certiorari. It would be unreasonable to attempt to rationalize the assumption of jurisdiction by the Supreme Court under Article 32 to correct such judicial orders on the "fanciful" hypothesis that High Courts may pass erroneous orders in or in relation to matters pending before them and that remedy by way of a writ of certiorari should, therefore, be sought for and be deemed to be included within the scope of Article 32 of the Constitution of India. It was categorically held by the majority of the Judges that the words used in Article 32 are no doubt wide but having regard to the relevant considerations, exercise of writ of certiorari under Article 32 to correct an order passed by a High Court would be repugnant to the well recognized limitations within which the jurisdiction to issue writs of certiorari could be exercised and would be inconsistent with the uniform trend of the Supreme Court's decision in relation to the said point.

The same principle applied *mutatis mutandis* to the powers vested in the High Court under Article 226 of the Constitution of India to correct orders of inferior courts under its jurisdiction.

Again in *Rupa Ashok Hurrah vs. Ashok Hurra and Anr.* (2002) 4 SCC 388 where a constitutional question of considerable significance had arisen viz. whether an aggrieved person is entitled to any relief against a final judgment/order of the Supreme Court after dismissal of review petition, either under Article 32 of the Constitution or otherwise, the Supreme Court had the occasion to deal with the powers of the Supreme Court and the High Courts in issuance of prerogative writs including the writ of certiorari. In this case also, the views expressed in

Mirajkar (supra) was reiterated.

However in Surya Dev Rai vs. Ram Chander Rai and Others (2003) 6 SCC 675, a two Judges Bench of the Supreme Court concluded as follows :

"38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being 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.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) 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

conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

(emphasis provided)

39. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by

the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

The aforesaid observation of the two Judges Bench in *Surya Dev Rai* (supra) was not accepted by another Bench of two Hon'ble Judges of the Supreme Court in *Radhey Shyam and Anr. vs. Chhabi Nath and Ors.* (2009) 5 SCC 616 and the issue therefore was referred to a three Judges Bench to consider the correctness of the law laid down in *Surya Dev Rai* (supra) that an order of the Civil Court was amenable to writ jurisdiction under Article 226 of the Constitution. The reference in the aforesaid case, viz. *Radhey Shyam and Another vs. Chhabi Nath and Others. With Jagdish Prasad vs. Iqbal Kaur and Others.* which has been reported in 2015 (5) SCC 423, has been answered as follows:

"29. Accordingly, we answer the question referred as follows:

29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2 Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3 Contrary view in *Surya Dev Rai* is overruled."

Now to the question of difference between the powers conferred on the High Courts under Articles 226 and 227 of the Constitution of India.

The Supreme Court in *Shalini Shyam Shetty and Anr. vs. Rajendra Shankar Patil* (2010) 8 SCC 329, after having referred to various decisions, concluded as follows:

"46. Articles 226 and 227 stand on substantially different footing. As noted above, prior to the Constitution, the Chartered High Courts as also the judicial Committee of the Privy Council could issue prerogative writs in exercise of their original jurisdiction. (See *Umaji Keshao Meshram v. Radhikabai*, SCC at p. 469.) However, after the Constitution every High Court has been conferred with the power to issue writs under Article 226 and these are original proceeding. (*State of U.P. v. Dr. Vijay Anand Maharaj*, AIR p. 951.)

47. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields. Another distinction between these two jurisdictions is that under Article 226, the High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. (See *Surya Dev Rai*, SCC p. 690, para 25 and also the decision of the Constitution Bench of this Court in *Hari Vishnu Kamath v. Ahmad Ishaque*, AIR p. 243, para 20.)

48. The jurisdiction under Article 226 normally is exercised where a party is

affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. The jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed *ex debito justitiae* or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a letters patent appeal or an intra-court appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all the High Court's rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the 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, at 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 the 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 their 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* and the principles in *Waryam Singh* have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh*, 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 the 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) The 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 *L. Chandra Kumar v. Union of India* and therefore abridgment 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 the 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 counterproductive and will divest this extraordinary power of its strength and vitality."

After having glossed over the decisions referred to above, we are of the considered opinion that by now the law has concretized that there are manifold differences between Articles 226 and 227 of the Constitution of India and one of the parameters to test whether an order has been passed under Articles 226 or 227 is that under Article 226, a High Court can annul or quash an order or proceeding but under Article 227, a High Court can, apart from annulling a proceeding in question, can also lay down the boundaries within which the inferior court is supposed to exercise its jurisdiction in order to rectify any error of law and fact apparent on the face of the record (also refer to *Hari Vishnu Kamath vs. Syed Ahmad Ishaque*, AIR 1955 SC 233).

In *Lokmat Newspapers Pvt. Ltd. vs. Shankar Prasad* (1999) 6 SCC 275, the Supreme Court had the occasion to identify whether a writ petition filed by the respondent was under Articles 226 or 227 and whether an appeal was maintainable against an order passed by the writ court. In the aforesaid case, the respondent who was a Foreman in the Composing Department of the appellant, was terminated from service. A complaint was filed by the respondent before the Labour Court alleging that the appellant had indulged in unfair labour practice. The aforesaid complaint of the respondent was dismissed by the Labour Court and the revision against the aforesaid dismissal of complaint was also dismissed by the Industrial Tribunal, Nagpur. The respondent thereafter preferred a writ petition under Articles 226 and 227, challenging the decisions rendered by both the courts below. The writ petition also was rejected by the Single Judge. Thereafter, LPA was filed before the Division Bench of the High Court of Nagpur which reversed the orders of the courts below by holding that the appellant had engaged in unfair labour practice. This order of the Division Bench in Letters Patent Appeal was challenged under Article 136 of the Constitution of India before the Supreme Court by the management/appellant.

One of the major contentions of the appellant was that the Single Judge of the High Court had passed an order under Article 227 and hence the order was not amenable to an intra Court appeal of Letters Patent. In support of the aforesaid contention, attention was invited to the relevant averments in the writ petition as well as the order of the learned Single Judge. On the issue of maintainability, the Supreme Court referred to the various paragraphs of the writ petition and found that the respondent had invoked the jurisdiction of the High Court both under Articles 226 and 227 and had tried to make out a case for the High Court's interference, seeking issuance of an appropriate writ of certiorari under Article

226. The order of the learned Single Judge nowhere stated that the court was

considering the writ petition under Article 226 and the writ was dismissed by observing that the courts below had appreciated the contentions and rejected the complaint. The Supreme Court did not therefore accept the view that the learned Single Judge had passed an order under Article 227 of the Constitution. Reliance was placed by the Supreme Court on a decision in *Umaji Keshao Meshram vs. Radhikabai* 1986 Supp SCC 401 where the same question was urged and answered as follows:

"107. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of *Hari Vishnu Kamath v. Syed Ahmad Ishaque* before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in *Aidal Singh v. Karan Singh* and by the Punjab High Court in *Raj Kishan Jain v. Tulsi Dass* and *Barham Dutt v. Peoples' Coop. Transport Society Ltd.* and we are in agreement with it."

It was therefore held that once a jurisdiction was invoked under Articles 226 and 227 and the writ petition was dismissed on merits, it could not be said that power was exercised only under Article 227. The consideration on such issue would depend upon the relevant averment made in the writ petition, the nature of jurisdiction invoked by the writ petitioner and the nature of order passed by the learned Single Judge.

A Division Bench of this Court in *Heera Chand Swarnkar @ Heera Chandra Swarnkar vs. Sri Radhe Shyam Jee Maharaj Virajman through Pradeep Kumar & Anr.* 2016 (1) PLJR 489 has held as follows: "24. What nomenclature has been used by a party, while seeking intervention by Court is not so material as the contents of the order, which is challenged, as well as the contents of the order, which has been passed by the High Court. [See *State of M.P. vs. Visan Kumar Shiv Charan Lal*, reported in (2008) 15 SCC 233].

25. If the judgment under appeal falls squarely within four corners of Article 227 of the Constitution of India, it goes without saying that intra-Court appeal from such judgment would not be maintainable. On the other hand, if the petitioner has invoked the jurisdiction of the High Court for issuance of certain writ under

Article 226 of the Constitution of India, although Article 227 of the Constitution of India is also mentioned, and, principally, the judgment appealed against falls under Article 226 of the Constitution of India, appeal would be maintainable.

26. What is important to be ascertained is, therefore, the true nature of the order passed by the Single Judge and not what provision he mentions, while exercising such powers. [See *Ashok K. Jha vs. Garden Silk Mills Ltd.*, reported in (2009) 10 SCC 584].

27. In *Ramesh Chandra Sankla vs. Vikram Cement*, reported in (2008) 14 SCC 58, the Supreme Court has held that a statement, made by a learned Single Judge, that he has exercised power under Article 227 of the Constitution of India, cannot take away right of appeal against such a judgment if power is, otherwise, found to have been exercised under Article 226 of the Constitution of India.

28. Clarified the Supreme Court, in *MMTC vs. CCT*, reported in, (2009) 1 SCC 8, that a High Court shall consider the nature of the controversy, the nature of relief, which is sought for, and the nature of the order, which might have been passed by a Single Judge of the High Court in order to decide if the order has been made under Article 226 or 227 of the Constitution of India."

Now applying the aforesaid principles to the facts of the present case, it appears that even though the writ petition has been filed under Article 227 but the averments made in the writ petition clearly make out that a writ of certiorari was invoked by the respondent-plaintiff. In the entire order of the learned single Judge, there is no reference of any exercise of power under Article 227. The tenor of the order clearly reflects that a writ of certiorari was issued and the order passed by the trial court in allowing the petition under Order XVIII Rule 17 of the appellant was annulled. No further direction was given by the learned single Judge nor the boundaries of the exercise of jurisdiction was laid down. It would also be relevant to note that under Order XVIII Rule 17, a court may, at any stage of suit, recall any witness who has been examined and may put such questions to him as the court thinks fit. The purpose of the rule is to enable the court, while trying a suit to clarify any doubt which it may have with regard to the evidence led by the parties. The said provision is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. The power under Order XVIII Rule 17 is to be sparingly exercised and in appropriate cases and not as a general rule (also refer to *Vadiraj Nagappa Vernekar vs. Sharadchandra Prabhakar Gogate*, 2009 (4) SCC 410).

The learned Single Judge has exercised his discretion and annulled the order of the trial court on the ground that the documents which were allowed to be produced and proved by the appellant-defendant were of no relevance in the suit which was being tried and that it was attempted to be produced at a much belated stage, when the case was fixed for delivery of judgment. The jurisdiction of the trial court trying the suit to entertain such application by the appellant-defendant was under doubt. Courts have to consistently endeavour to follow a

time schedule but in the present case, the trial court, for no apparent good reason, acceded to the request of the appellant which primarily appeared to be aimed at delaying the conclusion of the trial of the suit.

Hence, even though the petition was filed under Article 227 of the Constitution of India, the learned Single Judge appears to have exercised the powers under Article 226 of the Constitution.

In that event, we hold that the present appeal is maintainable.

Now the irresistible conclusion which we are driven to is that the learned Single Judge issued a writ of certiorari to correct a judicial order which is not permissible and therefore does not stand the scrutiny of procedural law.

The same is therefore set aside in view of the law declared in *Radhey Shyam and Another vs. Chhabi Nath and Others*. With *Jagdish Prasad vs. Iqbal Kaur and Others* reported in 2015 (5) SCC 423.

The matter is remitted to the learned Single Judge with a request to write out a fresh order in accordance with law as has been noted by us in the preceding paragraphs.

The appeal therefore stands partially allowed.