Case Citation: (2026) ibclaw.in 6121 HC

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANDEEP N. BHATT

ON THE 1st OF OCTOBER, 2026

MISC. PETITION No. 5773 of 2026

CNR No.: MPHC020371902026

PREETIBALA

Versus

KANTABAI AND OTHERS

Appearance:

Shri Makbool Ahmad Mansoori - Advocate for the petitioner.

ORDER

The present petition under Article 227 of the Constitution of India has been filed praying for the following reliefs:

"7. RELIEF PRAYED FOR:

It is therefore most humbly prayed that this Hon'ble Court may kindly be pleased to:

7.1 Allow this petition and set-aside the impugned common order dated 31/08/2026 Annexure P/1 passed by the Court of 1st District Judge, District - Mandsaur in MCA No.84/2025 and MCA No. 86/2025;

7.2 Allow the appeal (MCA No.86/2025) preferred by the petitioner (plaintiff) and set aside the finding recorded by the learned Trial Court in its order dated 12/08/2025 (Annexure P/2) to the extent whereby the plaintiff has been held to be not in possession of the suit property;

7.3 Dismiss the appeal (MCA No.84/2025) preferred by respondent No. 5 (defendant No. 5) and consequently restore the order dated 12/08/2025 Annexure P/2 passed by the Court of learned 1st Civil Judge, Junior Division, Mandsuar in RCS-A/21/2024.

7.4 Any other relief, which this Hon'ble Court deem fit under the peculiar facts and circumstances of the case, may kindly be granted in favour of the petitioner."

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2. The petitioner(plaintiff) is challenging a common order dated 31.08.2026 (AnnexureP-1) passed by the learned lower Appellate Court arising out of order dated 12.08.2025, by which the lower appellate Court has reversed the findings given by the trial Court.

3. It is submitted by the counsel for petitioner that two appeals were filed; one is filed by the respondent no.5 challenging the grant of injunction order in favour of the petitioner whereas the petitioner preferred appeal challenging the findings recorded by the trial Court the extent that petitioner was not in possession of the suit property. Both the appeals were heard together and decided by a common order and, therefore, the present petition is filed.

4. Learned counsel for the petitioner contended that the deceased brother of petitioner has executed mortgage in favour of respondent no.5/bank and the petitioner is having 1/3 right property, which was mortgaged in the bank . He has submitted that the bank has initiated proceedings u/S 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act[for short, referred to as 'SARFAESI Act' hereinafter]. It is also submitted by the counsel that since there is serious grievance of the petitioner that deceased Sunil Kumar could not mortgage the property in which the petitioner is having 1/3rd share. He has filed the suit as he was also not the consenting party in the mortgage. He has raised the contention that Sunil Kumar has claimed that he has received the property in question by way of gift deed from his mother and, therefore Sunil Kumar could not have mortgage the property in the bank. The

petitioner has contended that since the mother is also having 1/3rd share, therefore, she could not execute gift deed for the entire property. He has further contended that the trial Court has granted interim injunction as *prima-facie* case is made out with a view to protect his right, the petitioner is also granted further injunction regarding the alienation. It is further submitted that though the lower Appellate Court has accepted the contention that the petitioner can file a suit for such prayers, but has not reversed the findings given by the trial Court mainly by considering that in view of Section 34 of SARFAESI Act where the respondent no.5 has initiated proceeding, injunction is not required to be granted. He has submitted that Section 34 of SARFAESI Act cannot be applicable in the facts o the case where petitioner has admittedly having 1/3rd right in the property in question and, therefore it is submitted that if further alienation is permitted then the petitioner will face great difficulty. All the factors are in favour of the petitioner and, therefore, the order passed by the learned lower Appellate Court is passed by giving findings which are not only perverse, but erroneous and, therefore, the order impugned is required to be interfered by this Court.

5. I have considered the submission made by the counsel for petitioner at the Bar and also the contentions raised by the petitioner and have perused the memo of petition and the impugned order passed by the learned lower Appellate Court and has framed points of determination.

6. It transpires that the learned lower Appellate Court has also considered the issue regarding *prima-facie* case by referring to the judgment passed in the case of ***Shankarlal Rathore Vs. State of M.P.*** reported in *1978*

JLJ 51.

7. Relevant para 14 of the judgment of appellate Court is as under:

> "14. प्रथम दृष्टया मामला क्या है इस संबंध में माननीय उच्च न्यायालय मध्यप्रदेश ने न्याय दृष्टांत शंकर लाल राठौर बनाम म.प्र. राज्य 1978 जे.एल.जे. 51 में अभिनिर्धारित किया है कि-
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> "Although it is often said that a plaintiff must show a prima facie case in support of the right claimed by him in the suit before he can be granted temporary injunction, the real thing to be seen only is that plaintiff's claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. It is not the function of the Court at this stage to resolve disputed questions of fact or difficult questions of law which should be left to be decided at conclusion of the trial These principles are to be generally observed in the grant of temporary injunction, but there may be special factors of a particular case which mapy require a different approach. For example in case where the plaintiff and defendant both claim to be in possession of the suit property, temporary injunction should not be granted restraining the defendant from interfering with the plaintiff's possession unless the Court finds a very strong probability that the plaintiff is in possession."

8. It is also observed by the learned lower Appellate Court in para 16-19 about the contentions raised regarding 1/3 share of the property. Attempt was made by the appellant in that appeal to produce evidence by way of additional evidence by filing application under Order 41 Rule 27 of CPC which was not accepted by the learned lower Appellate Court. It is further transpired that learned lower appellate Court has considered these factual aspects of the matter. and also considered Section 34 of the SARFAESI Act.

9. It further transpired that the learned lower Appellate Court has considered law laid down in the case of ***Central Bank of India Vs. Prabha Jain*** reported in ***(2025) 4 SCC 38.*** The said judgment is based on almost identical facts where the issue of overriding effect of SARFAESI Act and RDBFI Act, 1993 has been discussed. The learned lower appellate Court has

further referred to the case of ***Babeeta Goyal Vs. Ratana Bai and Others reported in 2026 SCC Online MP 12522.*** In this regard para 22 to 25 of the impugned order is worthy of reference wherein both the cases have been discussed:

> "*22. अपीलार्थी/ प्रतिवादी कमांक 5 के विद्वान अधिवक्ता के तर्कों के आलोक में वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम 2002 की धारा 34 जिसका शीर्षक सिविल न्यायालय की अधिकारिता न होना है, पर विचार किया जाए तो उक्त धारा के अनुसार किसी भी सिविल न्यायालय को ऐसे मामले के संबंध में जिसमें ऋण वसूली अधिकरण या अपीलं अधिकरण को इस अधिनियम द्वारा या इसके अधीन अवधारण के लिये सशक्त किया गया है कोई वाद या कार्यवाही ग्रहण करने की अधिकारिता नहीं होगी और इस अधिनियम द्वारा या इसके अधीन बैंकों या वित्तीय संस्थाओं को शोध्य ऋण वसूली अधिनियम 1993 (1993 का 51) के अधीन प्रदत्त किसी शक्ति के अनुसरण में की गई या की जाने वाली किसी कार्यवाही की बावत् किसी न्यायालय या किसी अन्य प्राधिकारी द्वारा कोई व्यादेश अनुदत्त नहीं किया जाएगा।*
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> *23. माननीय उच्च न्यायालय म.प्र. द्वारा न्यायदृष्टांत Central Bank of India v. Prabha Jain, (2025) 4 SCC 38 को विचार में लेते हुए न्यायदृष्टांत Babeeta Goyal Versus Ratana Bai and Others 2026 SCC OnLine MP 12522 की कंडिका क्रमांक 22 से 24 में निम्नानुसार अवधारित किया गया है- 22. In view of the aforesaid pronouncement of law, it is evident that the suit filed by plaintiff is very much maintainable before the learned trial court inasmuch as a declaration that the property is coparcenary and the plaintiff has right/interest therein since birth; that the will executed by Chameli Bai in favour of Defendant 1 be declared null & void; that the family settlements be declared null & void; that the interest created in suit property in favour of Defendant 9 to 11, by way of mortgage, is illegal, cannot be adjudicated by DRT and can only be adjudicated by civil court. The learned trial court is justified in holding the suit to be maintainable.*
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> *23. The issue do not conclude here. Section 34 firstly debars suit before civil court in relation to matters which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under the Act, to determine. However, section further debars any other court or other authority from issuing any injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Thus, where the first part of section bars jurisdiction of civil court only, the second part of section is wider enough which debars any court or authority from issuing any injunction.*
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> *24. If it is held that the suit is not maintainable, the question of issuance of temporary injunction by civil court does arise. Further, if it is*
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> *old that the suit is maintainable before civil court, there was no occasion for the legislature to have prescribed second part of Section 34, if it intended to enable the civil court to issue injunction. Apparently, the legislature intended that no injunction should be issued by any court or authority in respect of any*

action taken or to be taken in pursuance of any power conferred by or under the SRFAESI Act or under the RDBFI Act, 1993. Therefore, it is to held that, even where the suit is maintainable, the civil court is not competent to issue any injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under SRFAESI Act or under the RDBFI Act, 1993.

24. माननीय उच्च न्यायालय म.प्र. द्वारा रिट पिटीशन कमांक 226/2025 नीरज कुमार जैन एवं अन्य विरूद्ध निश्चल जैन एवं अन्य में यह अभिनिर्धारित किया गया है कि Therefore, once there is a lien of the financial institution on the property by way of mortgage or otherwise for repayment of loan taken by the defendant Nos. 182 then the device of filing a suit will not prevent the defendant Nos.182 from fulfilling their obligation of repayment or the rights of the financial institution to recover their dues and if any order would have been passed granting injunction in favour of the plaintiffs then that would have prejudiced the interest of the financial institution and that being not the spirit of the provisions as contained in the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

25. उक्त निष्कर्षों के आलोक में हस्तगत प्रकरण की परिस्थितियों को देखा जाए तो अपीलार्थी/वादी का वाद यद्यपि की पोषणीय है, किंतु बैंक द्वारा वादग्रस्त भवन को नीलाम कर विक्रय के लिये की जा रही कार्यवाही या की जाने वाली कार्यवाही को निषेधित किये जाने हेतु किसी प्रकार का व्यादेश जारी नहीं किया जा सकता है। वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम 2002 की धारा 34 के प्रावधानों से यह स्पष्ट है कि यदि वाद पोषणीय नहीं है तब निषेधाज्ञा का कोई प्रश्न उत्पन्न नहीं होता और यदि वाद पोषणीय है, तब उक्त अधिनियम अथवा वित्तीय संस्थाओं को शोध्य ऋण वसूली अधिनियम 1993 के अधीन प्रदत्त किसी शक्ति के अनुसरण में बैंक द्वारा की गई या की जाने वाली किसी कार्यवाही के बावत् किसी न्यायालय या अन्य प्राधिकारी द्वारा कोई निषेधाज्ञा जारी नहीं की जाएगी। उक्त प्रावधान आज्ञापक प्रकृति का है, जिस पर विद्वान विचारण न्यायालय द्वारा प्रश्नगत आदेश में विचार नहीं किया गया है। उक्त अधिनियम की धारा 35 से यह भी स्पष्ट है कि इस अधिनियम के उपबंध तत्समय प्रवृत्त किसी अन्य विधि में अंतर्विष्ट इससे असंगत किसी बात या ऐसी किसी विधि के कारण प्रभावी किसी लिखत के होते हुए भी प्रभावी होंगे। विद्वान विचारण न्यायालय द्वारा प्रश्नगत आदेश में उक्त प्रावधानों पर विचार नहीं किया गया है, जिससे प्रश्नगत आदेश दोषपूर्ण होकर स्थिर रखे जाने योग्य नहीं है। परिणामस्वरूप अपीलार्थी/ प्रतिवादी कमांक 5 द्वारा प्रस्तुत विविध अपील 84/25 स्वीकार कर प्रश्नगत आदेश अपास्त किया जाता है।"

10. Considering the fact that from the material available on the record, the findings given by the appellate Court is in consonance with the factual aspects in accordance with law, as learned appellate Court has rightly considered the aspect of Section 34 and 35 of the SARFAESI Act.

11. For convenience and ready reference, Section 34 and 34 of the SARFAESI Act are reproduced below:

*"**34.** Civil Court not to have jurisdiction.*
- No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

***35.** The provisions of this Act to override other laws.*
- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

12. It is also transpired that there is no dispute about the fact that petitioner is the brother of deceased Sunil Kumar. In the year, 2022, Sunil Kumar has availed the loan by executing mortgage. The amount of loan and outstanding amount is now more than Rs. 75 lakhs. Pursuant to the fact that Sunil Kumar has expired after availing loan after a period of two years, bank has initiated proceedings under the SARFAESI Act. It further came to light from the record that suit is filed in the year 2024 when the bank has initiated proceedings pursuant to SARFAESI Act. It is also relevant to note that the said Sunil Kumar had claimed the right in the property on the basis of '*dan patra*'[gift deed] and it is the contention of the petitioner that the petitioner has 1/3 share in the property and the gift deed is given by the mother of the petitioner.

13. Considering the fact that *prima-facie* the suit is filed with a view to defeat the legitimate process of recovery of the amount of loan by the bank, pursuant to proceedings initiated under the SARFAESI Act as it is observed by the learned lower Appellate Court also that the trial Court has committed error in not considering these aspects that all the three factors of *prima-face* case, balance of convenience and irreparable loss cannot be

considered in favour of the present petitioner as respondent no.5/bank is having valid mortgage deed executed in its favour and pursuant to that, proceedings under the 13(2) of SARFAESI Act have already been initiated for recovery of huge amount of money from the legal heirs of the deceased Sunil Kumar, therefore, such findings regarding the factors of *prima-facie* case, balance of convenience and irreparable loss which are given in favour of the petitioner are reversed by the learned lower Appellate Court .

14. I find that the learned lower Appellate Court has rightly come to the conclusion and dismissed the appeal filed by the petitioner. Even otherwise, assuming that at the end of said proceedings Court will come to the conclusion that there is some interest still existing in the suit property, though prima-face from the material on record, more particularly the gift deed and mortgage, *prima-facie* case is made out, even then, after full-fledged trial, Court came to the conclusion regarding any interest in the property then, it can be compensated in terms of money. On that count also, other factors are not in favour of the petitioner.

15. Considering the scope of Order 39 Rule 1 and 2 r/w Section 151 CPC

> ORDER XXXIX
> TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS
> Temporary injunctions
> 1. Cases in which temporary injunction may be granted.-3[*] Where in any suit it is proved by affidavit or otherwise-
> (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
> : (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [1][defrauding] his creditors,
> 2[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders. 4[*]

2. Injunction to restrain repetition or continuance of breach.-(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right. (2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise as the Court thinks fit.

Section 151 CPC

"151.Saving of inherent powers of Court-Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

16. The learned lower Appellate Court has exercised power under Order 43 Rule 1 CPC has dismissed the appeal by the impugned order.

17. In this regard, Order 43 Rule 1 CPC is worthy of reference:

ORDER XLIII

APPEALS FROM ORDERS

1. Appeal from orders. An appeal shall lie from the following orders under the provisions of section 104, namely:-

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court [except where the procedure specified in rule 10A of Order VII has been followed];

(r) an order under rule 1, rule 2 8 [rule 2A], rule 4 or rule 10 of Order XXXIX

18. In view of the above discussion, I found no illegality, infirmity, impropriety or perversity in the findings recorded by the learned lower Appellate Court.

19. Even other wise, considering the totality of facts and circumstances of the case and the judgment passed by the Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty and Another Vs. Rajendra Shankar***

Patil reported in ***2010(8) SCC 329*** this Court has very limited power to interfere in the order impugned. Relevant para 39-43 & 47 to 49 are reproduced below for convenience and ready reference:

> **"37.** The Constitution Bench in *Nagendra Nath* [AIR 1958 SC 398] , unanimously speaking through B.P. Sinha, J. (as His Lordship then was) pointed out that High Court's power of interference under Article 227 is not greater than its power under Article 226 and the power of interference under Article 227 of the Constitution is limited to ensure that the tribunals *function within the limits of its authority*.
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> (emphasis supplied)
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> **38.** The subsequent Constitution Bench decision of this Court on Article 227 of the Constitution, rendered in *State of Gujarat* v. *Vakhatsinghji Vajesinghji Vaghela* [AIR 1968 SC 1481] also expressed identical views. Bachawat, J. speaking for the unanimous Constitution Bench opined that the power under Article 227 cannot be fettered by the State Legislature but this supervisory jurisdiction is meant to keep the subordinate tribunal within the limits of their authority and to ensure that they obey law.
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> **39.** So the same expression, namely, to keep the courts and tribunals subordinate to the High Court "within the bounds of their authority" used in *Manmatha Nath Biswas* [AIR 1933 Cal 132] , to indicate the ambit of High Court's power of superintendence has been repeated over again and again by this Court in its Constitution Bench decisions.
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> **40.** Same principles have been followed by this Court in *Mani Nariman Daruwala* v. *Phiroz N. Bhatena* [(1991) 3 SCC 141] , wherein it has been held that in exercise of its jurisdiction under Article 227, the High Court can set aside or reverse finding of an inferior court or tribunal only in a case where there is no evidence or where no reasonable person could possibly have come to the conclusion which the court or tribunal has come to. This Court made it clear that except to this "limited extent" the High Court has no jurisdiction to interfere with the findings of fact (*see* SCC pp. 149-50, para 18). In coming to the above finding, this Court relied on its previous decision rendered in *Chandavarkar Sita Ratna Rao* v. *Ashalata S. Guram* [(1986) 4 SCC 447] . The decision in *Chandavarkar* [(1986) 4 SCC 447] is based on the principle of the Constitution Bench judgments in *Waryam Singh* [AIR 1954 SC 215] and *Nagendra Nath* [AIR 1958 SC 398] discussed above.
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> **41.** To the same effect is the judgment rendered in *Laxmikant Revchand Bhojwani* v. *Pratapsing Mohansingh Pardeshi* [(1995) 6 SCC 576] . In SCC para 9 at pp. 579-80 of the Report, this Court clearly reminded the High Court that under Article 227 that it cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Its exercise must be restricted to grave dereliction of duty and flagrant abuse of fundamental principles of law and justice.
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> **42.** Same views have been taken by this Court in respect of the ambit of High Court's power under Article 227 in *Lonand Grampanchayat* v. *Ramgiri Gosavi*

[AIR 1968 SC 222] (*see* AIR pp. 222-34, para 5 of the Report) and the decision of this Court in *Jijabai Vithalrao Gajre* v. *Pathankhan* [(1970) 2 SCC 717] . The Constitution Bench ratio in *Waryam Singh* [AIR 1954 SC 215] about the scope of Article 227 was again followed in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd.* v. *Ram Tahel Ramnand* [(1972) 1 SCC 898] .

43 [Ed.: Para 43 corrected vide Official Corrigendum No. F.3/Ed.B.J./84/2010 dated 26-8-2010.] . In a rather recent decision of the Supreme Court in *Surya Dev Rai* v. *Ram Chander Rai* [(2003) 6 SCC 675] , a two-Judge Bench of this Court discussed the principles of interference by the High Court under Article 227. Of course in *Surya Dev Rai* [(2003) 6 SCC 675] this Court held that a writ of certiorari is maintainable against the order of a civil court, subordinate to the High Court (SCC p. 688, para 19 of the Report). The correctness of that ratio was doubted by another Division Bench of this Court in *Radhey Shyam* v. *Chhabi Nath* [(2009) 5 SCC 616] and a request to the Hon'ble Chief Justice for a reference to a larger Bench is pending. But insofar as the formulation of the principles on the scope of interference by the High Court under Article 227 is concerned, there is no divergence of views.

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* [(2003) 6 SCC 675] , SCC p. 690, para 25 and also the decision of the Constitution Bench of this Court in *Hari Vishnu Kamath* v. *Ahmad Ishaque* [AIR 1955 SC 233] , 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 Courts, 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 restrain 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* [AIR 1954 SC 215] and the principles in *Waryam Singh* [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(*e*) According to the ratio in *Waryam Singh* [AIR 1954 SC 215] , 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* [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.

(*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."

20. In view of the above settled position of law, the 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 which is not the case herein as the learned appellate Court below has not committed any error while dismissing the appeal warranting interference of this Court in exercise of the limited supervisory jurisdiction under Article 227 of the Constitution of India.

21. Petition deserves to be and is hereby dismissed.

(SANDEEP N. BHATT)
JUDGE

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