

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1067 of 2014

IN

C. REV. 115 of 2013

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1. Heera Chand Swarnkar @ Heera Chandra Swarnkar son of Late Ramdeo Prasad resident of village and Mouza Begusarai Main Chak, Tarwana, Ward no. 13, at present Ward no. 20, Perganas Maliki, Thana, P.O. Sub Division, Sub Registry and District Begusarai.

.... Appellant

VERSUS

1. Sri Radhe Shyam Jee Maharaj Virajman, through Pradeep Kumar, Son of late Sukhdeo Narayan Agrawal
2. Prakash Kumar Agrawal, Son of late Sukhdeo Narayan Agrawal,
Both are residents of Mohalla Mungeriganj Ward no. 8 at present Ward no. 13 Perganas Balia Thana P.O. Sub Division Sub - Registry and District Begusarai.

.... Respondents

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Appearance :

For the Appellant : Mr. Nirmal Kumar Shrivastava

For the Respondents : NONE

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 16-09-2015

Even though an appeal does not lie against an order made under Article 227 of the Constitution of India, whether an appeal will lie against an order made in a review petition, declining to review an order, which was passed in a petition made under Article 227 of the Constitution of India? This is the moot question, which this appeal has raised. Another important question, which this appeal has raised is, what is the nature of a review proceeding? Yet another question, which this appeal has raised is: Why no *intra*-Court

appeal lies under Clause 10 of the Letters Patent of Patna High Court against an order made under Article 227 of the Constitution of India?

MATERIAL FACTS ;

2. The materials facts and circumstances, leading to the present appeal, may, in brief, be set out as under:

(i) By order, dated 03.12.2009, passed, in Title Suit No. 142 of 1997, by learned Sub Judge 4, Begusarai, the evidence of the plaintiff-appellant was closed. The appellant, on 07.12.2009, filed a petition to recall of the order, dated 03.12.2009, aforementioned and allowing him to adduce evidence. The prayer for recall was declined by learned Sub Judge 4, Begusarai, by making an order, in this regard, on 14.12.2009.

(ii) Aggrieved by the order, dated 14.12.2009, aforementioned, the plaintiff-appellant filed an application under Article 227 of the Constitution of India, giving rise to CWJC No. 8763 of 2012, for necessary relief. By order, dated 14.12.2012, a learned single Judge of this Court dismissed the writ petition made under Article 227 of the Constitution of India.

(iii) The appellant-plaintiff, thereafter, filed a review application, under Section 114 of the Civil Procedure Code, giving rise to Civil Review No. 115 of 2013, seeking review of

the order, dated 14.12.2012, passed in CWJC No. 8763 of 2012.

(iv) By order, dated 26.02.2014, the learned single Judge of this Court noted that the appellant-plaintiff had been deliberately delaying the disposal of the suit by adopting different tactics, the last of such tactics being filing of the application for recall of the order, whereby his evidence had been closed, and no reason was shown, which could warrant interference with the order, dated 14.12.2014, aforementioned. With the reasonings so assigned, a learned single Judge dismissed the review application.

3. Against the order, dated 26.02.2014, passed in Civil Review No. 115 of 2013, dismissing the review application this Letters Patent Appeal has been preferred purportedly under Clause 10 of the Letters Patent Appeal of the High Court of Judicature at Patna.

SUBMISSION MADE ON BEHALF OF THE APPELLANT :

4. We have heard Mr. Nirmal Kumar Shrivastava, learned Counsel, appearing on behalf of the appellant-plaintiff.

5. It is the contention of Mr. Nirmal Kumar Shrivastava, learned Counsel, appearing on behalf of the appellant-plaintiff, that though an order, passed in exercise of power under Article 227 of the Constitution of India, is not an appealable order, an order, passed in a review petition,

declining to review an order, which was passed in exercise of power under Article 227 of the Constitution of India, is an appealable order.

DISCUSSIONS

6. While considering the submission noted above, it needs to be noted that under Section 114 of the Code of Civil Procedure, a person may apply for review of A *decree or order*.

7. Section 114 of the Code of Civil Procedure is reproduced hereinbelow:

"114. Review.— Subject as aforesaid, any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court, which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."

8. Ordinarily, therefore, review will lie against an order, which may or may not be appealable. The question is : If the original order is not an appealable order, such as, an order under Article 227 of the Constitution of India, can a

person, aggrieved by an order passed under Article 227 of the Constitution of India, be allowed to file appeal against the order, passed upon review of the order, which was passed or made under Article 227 of the Constitution of India? This is the crucial question, which we have to, now, address.

SCOPE OF ARTICLE 226 VIS-À-VIS ARTICLE 227

9. There is no dispute before us that as against an order, made under Article 226 of the Constitution of India, and *intra*-Court appeal, under Clause 10 of the Letters Patent of Patna High Court, lies. There is also no dispute that whereas an order, made under Article 226 of the Constitution of India, is an appealable order under Clause 10 of the Letters Patent of Patna High Court, no *intra*-Court appeal lies as against an order, which has been passed in exercise of power under Article 227 of the Constitution of India.

10. When an order passed, under Article 226 of the Constitution of India, is an appealable order, why an order, made under Article 227 of the Constitution of India, is not an appealable order under Clause 10 of the Letters Patent of Patna High Court?

11. Our quest for an answer to the above question brings us to the distinction between an order, which is made by a High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, as against an

order, which is made by a High Court in exercise of its power of *superintendence* under Article 227 of the Constitution of India.

12. Articles 226 and 227 of the Constitution of India stand on distinctly different footing. Every High Court has been conferred with the power to issue *writs* under Article 226 of the Constitution of India and these are original proceedings. (***State of U.P. v. Dr. Vijay Anand Maharaj (AIR 1963 SC 946)***). (See also ***Shalini Shyam Shetty v. Rajendra Shankar Patil, reported in (2010) 8 SCC 329***); whereas the power exercisable, under Article 227 of the Constitution of India, is neither original nor is it appellate. Clearly held the Supreme Court, in ***Umaji Keshao Meshram v, Radhikabai***, reported in, ***1986 (Supp) SCC 401***, “a proceeding, under Article 226 of the Constitution of India, is an original proceeding, while a proceeding, under Article 227 of the Constitution of India, is not an original proceeding.”

13. Article 227 of the Constitution of India vests in every High Court the power of *superintendence* over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction. This jurisdiction of *superintendence*, under Article 227 of the Constitution of India, is for both, *administrative* and *judicial superintendence*.

14. Therefore, the powers, conferred under Articles

226 and 227 of the Constitution of India, are separate and distinct and operate naturally in different fields.

15. Another distinction between Article 226 of the Constitution of India and Article 227 of the Constitution of India jurisdictions is that under Article 226 of the Constitution of India, the High Court normally *annuls* or *quashes* an order or proceeding; but in exercise of its jurisdiction under Article 227 of the Constitution of India, the High Court, apart from annulling a proceeding, in question, can also substitute the impugned order by the order, which the inferior Tribunal should have made.

16. With regard to the above, one may gainfully refer to the decision, in ***Hari Vishnu Kamath v. Ahmad Ishaque (AIR 1955 SC 233)***, wherein the Constitution Bench of the Supreme Court, observed, “ ... while 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.”

17. The jurisdiction, under Article 226 of the Constitution of India, is, normally, exercised, where a party is affected; but power under Article 227 of the Constitution of India can be exercised by the High Court *suo motu* as a custodian of justice.

18. In fact, the power under Article 226 of the

Constitution of India is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. The jurisdiction, under Article 227 of the Constitution of India, is exercised by the High Court for vindication of its position as the highest judicial authority in the State.

19. 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 the cases, where the High Court exercises its jurisdiction under Article 227 of the Constitution of India, 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 of the Constitution of India, 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 of the Constitution of India. (See ***Shalini Shyam Shetty v. Rajendra Shankar Patil***, reported in **(2010) 8 SCC 329**).

20. Having analyzed a number of its decisions, the Supreme Court in ***Shalini Shyam Shetty v. Rajendra Shankar Patil***, reported in **(2010) 8 SCC 329**, has culled out following principles with regard to exercise of power under Article 227 of the Constitution of India :

(a) A petition, under Article 227 of the Constitution of India, 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 of the Constitution of India;

(b) High Courts cannot, at the drop of a hat, 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 exercise of its power of *superintendence* under Article 227 of the Constitution of India. In the cases, where an alternative statutory mode of redressal has been provided, such alternative remedy would also operate as a restrain on the exercise of this power by the High Court.

(c) While laying down the principle, on the basis of which power of *superintendence*, embodied, under Article 227 of the Constitution of India, is exercised by the High Court, a Constitution Bench of the Supreme Court has pointed out, in ***Waryam Singh v. Amarnath (AIR 1954 SC 215)***, that a High Court, in exercise of its jurisdiction of *superintendence*, can interfere with an order only to keep the tribunals and courts subordinate to it "*within the bounds of their authority*". This power of *superintendence* cannot be equated with

appellate jurisdiction.

(d) Merely, therefore, the fact that an order is incorrect, the High Court may not exercise its power of *superintendence* under Article 227 of the Constitution of India. However, the power of *superintendence* vested in a High Court, under Article 227 of the Constitution of India, can be invoked to remove a patent perversity in an order of the tribunal or court subordinate to the High Court or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(e) 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 supervisory jurisdiction, under Article 227 of the Constitution of India, has to be very sparingly exercised.

(f) The main object of Article 227 of the Constitution of India is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(g) The power of interference, under Article 227 of the Constitution of India, is to be kept to the minimum to ensure that the wheels of justice do 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.

21. This power of *superintendence*, therefore, under Article 227 of the Constitution of India, 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 of the Constitution of India is meant for protection of individual grievance.

22. Thus, though the power, under Article 227 of the Constitution of India, may be unfettered, its exercise is subject to high degree of judicial discipline pointed out above. An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality. (See ***Shalini Shyam Shetty v. Rajendra Shankar Patil***, reported in **(2010) 8 SCC 329**).

23. In ***Lokmat Newspapers (P) Ltd. v. Shankar Prasad***, reported in **(1999) 6 SCC 275**, the Supreme Court clearly laid down that if a single Judge exercises jurisdiction, under Article 226 of Constitution of India,, letters patent appeal would be maintainable;, but if the jurisdiction is exercised under Article 227 of the Constitution of India, *intra*-Court appeal will not be maintainable. It was, however, made clear in ***Lokmat Newspapers (P) Ltd.*** (supra), that if a single



Judge of a High Court, while considering the petition under Article 226 or Article 227 of the Constitution of India, does not state under which provision he has decided the matter and where the facts justify filing of petition, both under Article 226 and Article 227 of the Constitution of India, and a petition so filed is dismissed by the Single Judge on merits, the matter may be considered in its proper perspective in an appeal. (See ***Umaji Keshao Meshram v. Radhikabai***, reported in **1986 Supp SCC 401**, ***Ratnagiri Distt. Central Coop. Bank Ltd. v. Dinkar Kashinath Watve***, reported in **1993 Supp1) SCC 9**, and ***Sushilabai Laxminarayan Mudliyar v. Nihalchand Waghajibhai Shaha***, reported in **1993 Supp (1) SCC 11**. See also ***Kanhaiyalal Agrawal v. Factory Manager, Gwalior Sugar Co. Ltd.***, **(2001) 9 SCC 609**).

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. v. 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 v. Garden Silk Mills Ltd.**, reported in **(2009) 10 SCC 584**).

27. In **Ramesh Chandra Sankla v. 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 v. 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.

WHY NO *INTRA-COURT* APPEAL LIES AGAINST AN ORDER PASSED OR MADE UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

29. Bearing in mind, now, the distinction between Articles 226 and 227 of the Constitution of India, let us turn to a more complex question; and the question is : Why is it that as against an order made under Article 227 of the Constitution of India, no *intra-Court* appeal lies, whereas an *intra-Court* appeal lies, under Clause 10 of the Letters Patent of Patna High Court, against an order made in exercise of power under Article 226 of the Constitution of India?

30. A search for an answer to the above question brings us to the historical background of Article 227 of the Constitution of India. This historical ancestry of Article 227 of the Constitution of India can be traced to Section 107 of the Government of India Act, 1915. Sections 107 and 108 of the Government of India Act, 1915, being relevant, are reproduced below :

"107. Powers of High Courts with respect to subordinate courts.— *Each of the High Courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—*

(a) call for returns;

(b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the High Court at Calcutta, of the Governor-General-in-Council, and in other cases of the local government.

108. Exercise of jurisdiction by single judges or division courts.— (1) Each High Court may by its own rules provide, as it thinks fit, for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the High Court, of the original and appellate jurisdiction vested in the court.

(2) The Chief Justice of each High Court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the Chief Justice, are to constitute the several division courts."



31. From a minute reading of the provisions embodied in Section 107 of the Government of India Act, 1915, what becomes transparent is that the High Court was given the power of *superintendence* over all the Courts subject to its appellate jurisdiction and in exercise of this power of *superintendence*, the High Court could *call for returns; direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction; make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:*

32. While considering Section 107 of the Government of India Act, 1915, it needs to be borne in mind that prior to coming into force of the Government of India Act, Section 15 of the Indian High Courts Act, 1861, conferred upon each of the Chartered High Courts the power of *superintendence* over all courts subject to its appellate jurisdiction. As the High Courts, other than the three Chartered High Courts, did not have the power of *superintendence* over all the Courts subject to its respective appellate jurisdiction, Section 107 of the Government of India Act, 1915, conferred on every High Court similar power of

superintendence, which had been conferred on the Chartered High Courts by Section 15 of the Indian High Courts Act, 1861.

33. We may, however, hasten to point out that Government of India Act, 1915, underwent an amendment by the Government of India (Amendment) Act, 1916, and, then, by the Government of India Act, 1919, which, eventually, came to be replaced by the Government of India Act, 1935, and Section 224 of the Government of India Act, 1935, vested limited power of *superintendence* on the subordinate Courts by the High Court.

34. It is of immense importance to note that it was Section 224 of the Government of India Act, 1935, which incorporated, in substance, the provisions of Section 107 of the Government of India Act, 1915. Section 224 of the Government of India Act, 1935, being relevant, is reproduced below:

"224. (1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say. –

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(c) prescribe forms in which books, entries and accounts shall be kept by the

officers of any such courts; and

(d) settle tables of fees to be allowed to the sheriff attorneys, and all clerks and officers of courts :

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision."

35. From a careful reading of Section 224 of the Government of India Act, 1935, *vis-a-vis* Section 107 of the Government of India Act, 1915, what can be safely gathered is that the High Court's power of *superintendence*, subject to the appellate jurisdiction of the High Court, was continued under the Government of India Act, 1935. By sub-Section (2) of Section 224 of the Government of India Act, 1935, the High Court's power of *superintendence* was restricted inasmuch as this power of *superintendence* did not exceed to the extent of questioning any judgment of any inferior Court, which was not otherwise subject to appeal or revision. This restriction — imposed on the High Court that it cannot have power of *superintendence* on the judgment of any inferior Court, which

is not otherwise subject to appeal or revision of the High Court — has been done away with, while making Article 227 of the Constitution of India.

36. In substance, the power of *superintendence* introduced by the Government of India Act, 1915, was continued till the Government of India Act, 1935, remained in force and it was thereafter that Article 227 of the Constitution of India confers on the High Court the power of *superintendence* over all the Courts and Tribunals subject to the territorial jurisdiction of the High Court. This constitutional aspect would become clearer as we proceed further.

37. Under Section 113 of the Government of India Act, 1915, the Crown, by Letters Patent, could establish a High Court of Judicature in any territory in British India and it was pursuant to the power conferred by Section 113 of the Government of India Act, 1915, that the Crown established High Court of Judicature, at Patna, by Letters Patent, on February 9, 1916.

38. We may, at this stage, pause and take note of what Article 227 of the Constitution of India conveys. For this purpose, Article 227 is reproduced below :

"227. Power of superintendence over all courts by the High Court

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to

which it exercises jurisdiction

(2) Without prejudice to the generality of the foregoing provisions, 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 clause (2) or clause (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"

39. A careful reading of Article 227 of the Constitution of India clearly shows that Article 227 of the Constitution of India vests in the High Courts the power of *superintendence*. However, while Section 107 of the Government of India Act vested, in the High Courts, the power of *superintendence* over all the 'Courts' subject to its appellate

jurisdiction, Article 227 of the Constitution of India has vested, in the High Courts, the power of *superintendence* not only over the *Courts*, which are subject to its territorial jurisdiction, but also over all the Tribunals in relation to which the High Court exercises territorial jurisdiction.

40. Bearing in mind the fact that Section 107 of the Government of India Act had conferred power of *superintendence* over all the *Courts* subordinate to the High Court's appellate jurisdiction and such a power of *superintendence* is also available with the High Courts, under the Constitution of India, over not only all the *Courts*, but *Tribunals* too subordinate to the High Court's territorial Jurisdiction, we may pause, to take note of Clause 10 of the Letters Patent of the Patna High Court, which reads as follows:

“10. Appeal to the High Court from Judges of the Court. –

And we do further ordain that an appeal shall lie to the said High Court of Judicature at Patna from the Judgment (not being a Judgment passed in the exercise of appellate jurisdiction in respect of a decree or order) made in the exercise of Appellate Jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of Revisional Jurisdiction, and not being a sentence or



order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of Criminal Jurisdiction of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court. Pursuant to Section 108 of the Government of India Act, made on or after the first day of February, One thousand nine hundred and twenty-nine, in the exercise of Appellate Jurisdiction in respect of a decree or order made in the exercise of Appellate Jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the Judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided.”

41. When broken into different components, what

emerges is that under Clause 10 of the Letters Patent of Patna High Court, an appeal lies to the High Court of Judicature at Patna,

(1) from a judgment
(2) of one Judge of the High Court
(3) pursuant to Section 108 of the Government of India Act, 1915

(4) not being—
(a) a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the *superintendence* of the High Court,

(b) an order made in the exercise of revisional jurisdiction,

(c) a sentence or order passed or made in exercise of the power of *superintendence* under the provisions of Section 107 of the Government of India Act, 1915, or

(d) a sentence or order passed or made in the exercise of criminal jurisdiction.

42. From a close reading of Clause 10 of the Letters Patent of this High Court, it becomes abundantly clear that from an order of a single Judge of this High Court, no *intra*-Court appeal could lie if the order is passed or made in exercise of power of *superintendence* conferred by Section

107 of the Government of India Act, 1915.

43. Since an order, which was passed by a single Judge of this Court, in exercise of power of *superintendence* under Section 107 of the Government of India Act, 1915, was not an appealable order, under Clause 10 of the Letters Patent of the Patna High Court, it logically follows that an order, now, passed or made by a single Judge of this Court, in exercise of this Court's power of *superintendence* over the subordinate Courts and Tribunals, under Article 227 of the Constitution of India, would also not be an appealable under Clause 10 of the Letters Patent of this High Court.

44. With regard to the power of *superintendence* of the High Court's under Article 227, it was contended, in ***Waryam Singh v. Amarnath***, reported in, **1954 SCR 565 : AIR 1954 SC 215**, that a High Court can exercise power of only *administrative superintendence* on the Courts and Tribunals subordinate to it, but not the power of judicial *superintendence*.

45. Disagreeing with the contention that Article 227 of the Constitution of India confers on the High Courts only power of *administrative superintendence*, the Supreme Court pointed out, in ***Waryam Singh*** (Supra), that in ***Waryam Singh*** (supra) that the material part of Article 227 substantially reproduces the provisions of Section 107 of the

Government of India Act, 1915, except that the power of *superintendence* has been extended by Article 227 to, apart from Courts, to *tribunals* too and that this power of *superintendence* not only includes *administrative superintendence*, but also *judicial superintendence*. The relevant observations, appearing in this regard, in **Waryam Singh** (supra), read as under:

"The material part of Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915, except that the power of superintendence has been extended by the Article also to tribunals. The only question raised is as to the nature of the power of superintendence conferred by the article. Reference is made to clause (2) of the article in support of the contention that this article only confers on the High Court administrative superintendence over the subordinate courts and tribunals. We are unable to accept this contention because clause (2) is expressed to be without prejudice to the generality of the provisions in clause (1). Further, the preponderance of judicial opinion in India was that Section 107 which was similar in terms to Section 15 of the High Courts Act, 1861, gave a power of judicial superintendence to the High Court apart from and independently of



*the provisions of other laws conferring revisional jurisdiction on the High Court. In this connection it has to be remembered that Section 107 of the Government of India Act, 1915, was reproduced in the Government of India Act, 1935, as Section 224. Section 224 of the 1935 Act, however, introduced sub-section (2), which was new, providing that nothing in the section should be construed as giving the High Court any jurisdiction to question any judgment of any inferior court which was not otherwise subject to appeal or revision. The idea presumably was to nullify the effect of the decisions of the different High Courts referred to above. Section 224 of the 1935 Act has been reproduced with certain modifications in Article 227 of the Constitution. It is significant to note that sub-section (2) to Section 224 of the 1935 Act has been omitted from Article 227. **This significant omission has been regarded by all High Courts in India before whom this question has arisen as having restored to the High Court the power of judicial superintendence it had under Section 15 of the High Courts Act, 1861, and Section 107 of the Government of India Act, 1915.***

(Emphasis is supplied)

46. In the light of the decision in **Waryam Singh**



(supra), what clearly follows is that material part of Article 227 of the Constitution of India substantially reproduces the provisions of Section 107 of the Government of India Act, 1915, except that the power of *superintendence* has been extended to the Tribunals as well. This apart, the power of *superintendence* of the High Court under Article 227 of the Constitution of India is both, administrative as well as judicial. Under Clause 10 of the Letters Patent of Patna High Court, no *intra-Court* appeal lies against an order passed or made in the exercise of the power of *superintendence* under the provisions of Section 107 of the Government of India Act nor can an *intra-Court* appeal lie against an order made under Article 227 of the Constitution of India (which substantially reproduces Section 107 of the Government of India Act).

47. The Supreme Court has also pointed out, in ***Umaji Keshao Meshram*** (supra), that when a Single Judge of a Chartered High Court decides a petition under Articles 226 or 227, his judgment is one given pursuant to Article 225 of the Constitution and is appealable under Clause 15 of the Letters Patent unless it falls within one of the excluded categories and further held that an *intra-Court* appeal does not lie against the judgment of a Single Judge of the Bombay High Court given in a petition under Article 227 by reason of such appeal being expressly barred by Clause 15 of the Letters

Patent of that High Court. We may point out that Clause 15 of the Letters Patent of Bombay High Court is *pari material* Clause 10 of the Letters Patent of the Patna High Court.

48. Situated thus, it becomes abundantly clear that the expression, "*order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act*" has to be read as "*order passed or made in the exercise of the power of superintendence under the provisions of Article 227 of the Constitution*" and if so read, it becomes clear that an *intra-Court* appeal does not lie against the order of a single Judge passed or made under Article 227 of the Constitution of India such an appeal having been barred by Clause 10 of the Letters Patent of Patna High Court. [see ***Umaji Keshao Meshram*** (supra)].

WHAT IS THE NATURE OF REVIEW JURISDICTION:

49. A review petition is not an appeal before the superior court; rather, it is only a form of request to the same court, which pass the earlier order, which is sought to get reviewed. By a review petition, a review petitioner seeks to persuade the court, which made the order to recall the order or reconsider its own decision on the grounds which are available for a review.

50. No wonder, therefore, that Order 47 Rule 5 of

the Code of Civil Procedure warrants that as far as possible, the same two Judges, who passed the decree or made the order, have to hear the review petition arising from their own judgment.

51. In substance, thus, a review amounts to reconsideration by a court of its own decision. Naturally, therefore, when a court seeks to review its own order, it is not really sitting over its own decision as an appellate court, but is having a fresh look at its own decision within, of course, the limits of review powers. What logically follows from the above discussion is the court, reviewing its order, is actually invoking the same jurisdiction, which it had exercised earlier, while making the order, which is sought to be review.

52. When, therefore, a Division Bench of a Chartered High Court exercised original jurisdiction and when its decision was sought to be reviewed, it can be safely said to be a reconsideration by the Division Bench in exercise of its same original jurisdiction a review jurisdiction.

53. Review jurisdiction, therefore, cannot be said to be a jurisdiction independent of the jurisdiction, which was exercised, while making the order under review. (See **Reliance Industries Ltd. Vs. Pravinbhai Jabhai Patel and others**, reported in, **(1997) & SCC 300**, wherein the Supreme Court, in the context of the case, laid down the law

on the scope of review, thus:

"As the decision sought to be reviewed in the present proceedings was rendered by the Division Bench in exercise of its original jurisdiction, the review proceedings emanating from the very same judgment would partake the character of the very same exercise of original jurisdiction. It remained in the domain of original jurisdiction, which could be said to have been invoked by the appellant, when it requested the Court to review its earlier decision rendered in exercise of original jurisdiction. It is, therefore, not possible to agree with the contention of the learned Senior Counsel Shri Sorabjee for Respondent 6 that the review proceeding in the present case which was arising out of the decision of the High Court rendered in exercise of its original jurisdiction under Article 226 of the Constitution of India sought to invoke an independent and separate jurisdiction of the High Court, which was neither original nor appellate. It must be held that both the learned Judges, who heard the review petition arising out of the decision rendered by the High Court in exercise of its original jurisdiction under Article 226 of the Constitution of India, were also called upon to exercise the very same original jurisdiction at the second stage,

and for the second time, when they were to reconsider the legality of the very same decision subject of course to the limitations of review power as enjoined by the well-settled fetters and parameters for exercise of such review jurisdiction.”

(Emphasis is added)

WHY NO INTRA-COURT APPEAL LIES AGAINST AN ORDER PASSED OR MADE IN A PETITION SEEKING REVIEW OF AN ORDER PASSED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA?

54. Because of the fact that as against an order passed or made under Article 227 of the Constitution of India, no *intra-Court* appeal, under the Letters Patent of this High Court, lies, it logically follows that when a single Judge of this Court reviews an order passed or made under Article 227 of the Constitution of India, the single Judge would nevertheless be exercising the jurisdiction under Article 227 of the Constitution of India and such an order passed or made would not be appealable under Clause 10 of the Letters Patent of Patna High Court.

55. In short, thus, when an order under Article 227 of the Constitution of India is not an appealable order under Clause 10 of the Letters Patent of the Patna High Court, it logically follows that an order, made upon review of an order passed or made under Article 227 of the Constitution of India, would still remain a non-appealable order and, therefore, no

intra-Court appeal would lie, under Clause 10 of the Letters Patent of the Patna High Court, when the original order, i.e., the order made under Article 227 of the Constitution of India, is not an appealable order.

56. Considered this, what crystallizes from the above discussion is that when the original order, passed or made under Article 227 of the Constitution of India, is not an appealable order, the person, aggrieved by the order passed under Article 227 of the Constitution of India, cannot be allowed to file appeal or else, any person, aggrieved by an order made under Article 227 of the Constitution of India, would, first, file a review petition and if the review petition is not allowed, then, he would file an appeal. This indirect route to an appeal cannot be allowed.

57. We are, therefore, clearly of the view that the present appeal is wholly misconceived and cannot be admitted.

58. In the result and for the reasons discussed above, this appeal stands dismissed.

59. There shall be no order as to costs.

(I. A. Ansari, ACJ.)

P. Anand/AFR

(Chakradhari Sharan Singh, J.)

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